



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 6, 2025
Department A – 510 19th street
Bakersfield, California

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) via **ZoomGov Video**, (2) via **ZoomGov Telephone**, and (3) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:00 AM

1. [24-13401](#)-A-13 **IN RE: CYNTHIA BERMUDEZ**
[KSH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
12-27-2024 [[19](#)]

CAPITAL ONE AUTO FINANCE/MV
KRISTIN SCHULER-HINTZ/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to March 6, 2025 at 9:00 a.m.

ORDER: The court will issue an order.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service forms. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. ##22, 30. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Cynthia Cabides Bermudez ("Debtor") filed a voluntary petition under chapter 13 on November 25, 2024, and a chapter 13 plan ("Plan") on December 9, 2024. Doc. ##1, 13. Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") objects to confirmation of the Plan on the grounds that the Plan fails to: (1) pay the full replacement value of the collateral; (2) pay the applicable prime plus interest rate; and (3) make any provision for pre-confirmation distributions to provide adequate protection to Creditor. Doc. #19.

This objection will be continued to March 6, 2025 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than February 20, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Creditor shall file and serve a reply, if any, by February 27, 2025.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 27, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Creditor's opposition without a further hearing.

2. [24-13401](#)-A-13 **IN RE: CYNTHIA BERMUDEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-17-2025 [\[31\]](#)

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to March 6, 2025 at 9:00 a.m.

ORDER: The court will issue an order.

Cynthia Cabides Bermudez ("Debtor") filed a voluntary petition under chapter 13 on November 25, 2024 and a chapter 13 plan ("Plan") on December 9, 2024. Doc. ##1, 13. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtor has: (1) failed to file complete and accurate schedules and statement of financial affairs; (2) improperly stated her claimed exemptions; (3) not completed section 3.14 of the Plan; and (4) not properly completed Form 122C-1. Doc. #31.

This objection will be continued to March 6, 2025 at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than February 20, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by February 27, 2025.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 27, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

3. [24-13217](#)-A-13 **IN RE: MARIBEL MEJIA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-6-2024 [\[12\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [24-13217](#)-A-13 **IN RE: MARIBEL MEJIA**
[RSW-1](#)

MOTION TO ALLOW COUNSEL'S ELECTION FOR FEES
1-9-2025 [\[20\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE.

Local Rule of Practice 9014-1(d)(3)(D) requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, the motion does not include a declaration of the moving party testifying to facts that are required for the court to make the necessary findings of fact to grant the motion. Since no evidence was filed or served with the motion to allow counsel's election for fees, the moving party has not met the required burden of proof or complied with this court's Local Rules of Practice.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

5. [24-12629](#)-A-13 **IN RE: MICHAEL LOPEZ**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
10-23-2024 [\[32\]](#)

LILIAN TSANG/MV
DISMISSED 01/10/25

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing the bankruptcy case was entered on January 10, 2025. Doc. #54. Therefore, the objection to confirmation of the plan will be OVERRULED AS MOOT.

6. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**
[DHC-7](#)

MOTION TO CONFIRM PLAN
12-11-2024 [[112](#)]

SALINA THOMAS/MV
DAVID CHUNG/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion, and it shall reference the plan by the date it was filed.

7. [23-12338](#)-A-13 **IN RE: SALINA THOMAS**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
10-18-2024 [[92](#)]

LILIAN TSANG/MV
DAVID CHUNG/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

On October 18, 2024, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to file a modified plan with notice to creditors. Doc. #92. The debtor filed a sixth modified plan and set a motion to

confirm that plan for hearing on February 6, 2025. Doc. #112-117. That motion has been granted by final ruling, matter #6 above.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. It appears that confirmation of the debtor's sixth modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c) (1) or (c) (6).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

8. [24-11841](#)-A-13 **IN RE: HEATHER CORONADO**
[RSW-3](#)

CONTINUED MOTION TO CONFIRM PLAN
11-5-2024 [[40](#)]

HEATHER CORONADO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [24-11342](#)-A-13 **IN RE: MIGUEL/MARIA DE LEON**
[RSW-2](#)

CONTINUED MOTION TO MODIFY PLAN
12-4-2024 [[23](#)]

MARIA DE LEON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10. [24-11342](#)-A-13 **IN RE: MIGUEL/MARIA DE LEON**
[RSW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLIAMS & WILLIAMS, INC.
FOR ROBERT S.WILLIAMS, DEBTORS ATTORNEY(S)
1-9-2025 [[42](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE.

Local Rule of Practice 9014-1(d)(3)(D) requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence

establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, the motion does not include a declaration of the moving party testifying to facts that are required for the court to make the necessary findings of fact to grant the motion. Since no evidence was filed or served with the motion to allow counsel's election for fees, the moving party has not met the required burden of proof or complied with this court's Local Rules of Practice.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

11. [24-12881](#)-A-13 **IN RE: HILDA JIMENEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-6-2025 [\[80\]](#)

DISMISSED 01/10/25

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on January 10, 2025. Doc. #85. The order to show cause will be dropped as moot.

12. [24-12783](#)-A-13 **IN RE: EMANUEL/KAREN DOZIER**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-6-2025 [\[34\]](#)

J.P. MORGAN MORTGAGE ACQUISITION CORP./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

NO RULING.

13. [24-12783](#)-A-13 **IN RE: EMANUEL/KAREN DOZIER**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
10-30-2024 [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. [24-12783](#)-A-13 **IN RE: EMANUEL/KAREN DOZIER**
[LGT-2](#)

CONTINUED MOTION TO DISMISS CASE
12-6-2024 [\[20\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. [23-10993](#)-A-13 **IN RE: CHRISTOPHER/STACEY WILSON**
[PLG-2](#)

MOTION TO MODIFY PLAN
12-17-2024 [\[45\]](#)

STACEY WILSON/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

16. [24-10893](#)-A-13 **IN RE: CECELIA MCNABB**
[LGT-1](#)

MOTION TO DISMISS CASE
12-19-2024 [[49](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10:00 AM

1. [24-13746](#)-A-7 **IN RE: ROWELDO MALAPIT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-2025 [\[12\]](#)

JOSEPH PEARL/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 1/14/25

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid. The case shall remain pending.

2. [24-13747](#)-A-7 **IN RE: ALEJANDRO VILLAGOMEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-2025 [\[12\]](#)

JOSEPH PEARL/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 1/14/25

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid. The case shall remain pending.

1. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
9-17-2024 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[WJH-14](#)

CONTINUED MOTION FOR TURNOVER OF PROPERTY UNDER SEC. 542(A)
12-11-2024 [[140](#)]

KEWEL MUNGER/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with respect to the insurance proceeds and set
for evidentiary hearing with respect to the diamond.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an order after the
hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Janie N. Munger ("Munger") timely filed written opposition on December 18, 2024. Doc. #160. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Debtor in possession Kewel K. Munger dba Munger Investments ("Debtor") moves pursuant to 11 U.S.C. §§ 541(a)(2) and 542(a) to compel Munger, Debtor's wife, to (1) turn over and account for insurance proceeds in the amount of \$255,843.00 ("Insurance Proceeds") relating to the real property commonly known as 10509 Finchley Dr., Bakersfield, California 93311 ("Finchley Property"), and (2) turn over a 7.03 carat investment grade diamond ("Diamond"). Doc. #140.

After consideration of the motion, opposition, reply and supporting documents, the court is inclined to grant the motion with respect to the Insurance Proceeds and set an evidentiary hearing with respect to the Diamond.

BACKGROUND

Debtor filed his chapter 11 bankruptcy case on September 17, 2024. Doc. #1. Debtor and Munger have been married since November 1983. Decl. of Kewel K. Munger, Doc. #142. Munger filed for dissolution of marriage on June 12, 2023 in

the Kern County Superior Court. Id. Munger and Debtor own multiple assets together as community property. Id. The Kern County Superior Court has not entered an order dividing the community property between Debtor and Munger. Id.

According to Debtor, Munger, Debtor, and Debtor's brother, Baldev Munger, are all co-borrowers of loans from AG West Farm Credit ("Farm Credit"). K. Munger Decl., Doc. #142. As of December 11, 2024, the loan balance with Farm Credit was approximately \$132 million. Id. The loan bears annual interest at 8.3%, and interest accrues at approximately \$30,433.33 per day. Id. Farm Credit has informed the co-borrowers that the debt must be significantly reduced in the very near term. Id.

Debtor is in the process of arranging for the sale of several business assets to pay down debts. K. Munger Decl., Doc. #142. On September 23, 2024, Debtor's counsel sent a demand letter to Munger's counsel requesting Munger turn over all items of community property in Munger's possession, including the Insurance Proceeds and the Diamond. Id.; Ex. A, Doc. #144.

APPLICABLE LAW

Section 541(a)(2) of the Bankruptcy Code defines property of the estate as "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is – (A) under the sole, equal, or joint management and control of the debtor; or (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable."

For "purposes of § 541(a)(2), all community property not yet divided by a state court at the time of the bankruptcy filing is property of the bankruptcy estate." Dumas v. Mantle (In re Mantle), 153 F.3d 1082, 1085 (9th Cir. 1998), cert. denied, 1999 U.S. LEXIS 2626 (Apr. 19, 1999).

Under California law, separate property of a married person includes all of the following: (1) all property owned by the person before marriage; (2) all property acquired by the person after marriage by gift, bequest, devise, or descent; and (3) the rents, issues, and profits of the property described Cal. Fam. Code § 770(a). Cal. Fam. Code § 770(a).

"A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected. This section does not apply to a gift between the spouses of clothing, wearing apparel, jewelry, or other tangible articles of a personal nature that is used solely or principally by the spouse to whom the gift is made and that is not substantial in value taking into account the circumstances of the marriage." Cal. Fam. Code § 852.

Section 1107 of the Bankruptcy Code gives Debtor all the rights and powers of a trustee and requires Debtor perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107.

11 U.S.C. § 542(a) requires, subject to exceptions not applicable here, "an entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value and benefit to the estate."

LEGAL ANALYSIS

Debtor is the debtor in possession of his bankruptcy estate and has the rights and powers of a trustee. Pursuant to 11 U.S.C. § 541(a)(2), all community property interests of Debtor and Munger became property of Debtor's bankruptcy estate on September 17, 2024, when Debtor filed his chapter 11 bankruptcy petition. Pursuant to 11 U.S.C. § 542(a), Munger must turnover any property that Debtor can use, sell or lease under 11 U.S.C. § 363 unless such property is of inconsequential value or benefit to the estate. Here, the Insurance Proceeds are worth \$255,843.00 and the Diamond was purchased for \$485,000.00 in October 2014. K. Munger Decl., Doc. #142. The court finds that both the Insurance Proceeds and the Diamond are of consequential value and benefit to the estate.

A. Insurance Proceeds

Munger and Debtor own the Finchley Property of which Munger is currently in possession. K. Munger Decl., Doc. #142. Debtor asserts the Finchley Property is community property under California law. Id. Pre-petition, on January 29, 2024, the Finchley Property sustained flood damage. Id. Munger submitted an insurance claim to Pure Insurance related to the flood damage, and Pure Insurance paid out \$255,843.00 by check to Munger and Debtor pre-petition. Id. Pre-petition, Munger deposited the check into an account under Munger's name only. Id.

Debtor alleges that Munger has not accounted for the Insurance Proceeds or any other insurance proceeds Munger has recovered with respect to the Finchley Property and has refused to turn over the Insurance Proceeds. K. Munger Decl., Doc. #142. Debtor also claims that since Munger has had the Insurance Proceeds in her possession, no repairs have commenced to be made on the Finchley Property. Id.

In her opposition, Munger asserts that she has informed Debtor that she will take responsibility for making the repairs to the Finchley Property and account to Debtor for the payments and repairs made to the Finchley Property. Decl. of Janie Munger, Doc. #160. However, Munger asserts Debtor has not disclosed to the court that Debtor refused to acknowledge that Munger had sole and exclusive control of the Insurance Proceeds before Debtor filed his chapter 11 bankruptcy case, and Debtor refuses to cooperate with Munger in making the repairs needed to the Finchley Property. Id.

In reply to Munger's opposition, Debtor states that Munger has failed to cite a single instance of Debtor's alleged non-cooperative behavior and whether Debtor cooperates is irrelevant to whether the Insurance Proceeds are part of the bankruptcy estate. Reply, Doc. #186.

With respect to the Insurance Proceeds, there does not appear to be a dispute that (i) Finchley Property is community property, and (ii) the Insurance Proceeds were paid with respect to an insurance policy against the Finchley Property. Thus, it appears that the Insurance Proceeds are community property. Because Debtor is a debtor in possession, the Insurance Proceeds are community property and part of Debtor's bankruptcy estate, and Munger has not turned over the Insurance Proceeds to Debtor, the motion will be granted as to the Insurance Proceeds.

B. Diamond

Debtor asserts Munger refuses to turnover the Diamond currently in Munger's possession. K. Munger Decl., Doc. #142. Debtor asserts that the Diamond was purchased as an investment for \$485,000.00 in October 2014 and at no time was the Diamond a gift to Munger. Id.

Munger asserts that the Diamond was a gift given to Munger by Debtor during their marriage and at no time has Munger ever recognized the Diamond as anything other than her sole and separate property. J. Munger Decl., Doc. #160. Munger states that Debtor's attempt to seize the Diamond from her represents nothing more than Debtor's ongoing attempt to control her and hurt her for filing an action to dissolve the marriage. Id. Further, Debtor never asserted an interest in the Diamond before Munger filed for divorce, and Munger states the value of the Diamond compared to all of Debtor's assets provides little benefit to Debtor's estate. Id.

In reply to Munger's opposition, Debtor asserts that Munger has not rebutted the community property presumption as to the Diamond and further denies gifting the Diamond to Munger. Reply, Doc. #186.

The court finds there is a dispute of material fact as to whether the Diamond is community property or Munger's separate property. That dispute of a material issue of fact must be resolved before this motion can be granted or denied.

CONCLUSION

Accordingly, the motion will be granted with respect to the Insurance Proceeds and set discovery deadlines and an evidentiary hearing with respect to the Diamond. The parties should come to the hearing with proposed deadlines for Federal Rule of Civil Procedure 26(a)(1)(A) initial disclosures and close of fact discovery, a recommendation as to whether experts are needed and, if so, deadlines for designation of experts and rebuttal experts as well as submission of expert and rebuttal expert reports, and a deadline for the close of expert discovery with respect to the dispute over the Diamond.

3. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[YW-2](#)

MOTION TO DISMISS CASE
1-7-2025 [\[211\]](#)

JANIE MUNGER/MV
RILEY WALTER/ATTY. FOR DBT.
LEONARD WELSH/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on January 24, 2025 pursuant to an approved stipulation of the parties. Doc. ##250, 258-269. The debtor's brother, Baldev K. Munger (also known as "David Munger"), also filed a timely response. Doc. ##255-257. The moving party timely replied by January 31, 2025 pursuant to the approved stipulation. Doc. ###250, 286-290. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Janie N. Munger ("Munger"), the wife of debtor in possession Kewel K. Munger dba Munger Investments ("Debtor"), moves to dismiss Debtor's chapter 11 bankruptcy case pursuant to 11 U.S.C. § 1112(b). Doc. #211. According to Munger, Debtor has sufficient assets to repay his creditors and does not need chapter 11 bankruptcy. Doc. #215. Rather, Debtor filed his chapter 11 bankruptcy case for the express purpose of avoiding state and local law requirements imposed on spouses going through a dissolution marriage proceeding and is using the Bankruptcy Code only as a litigation tactic against Munger. Id. Debtor asserts that he has legitimate reasons for filing his bankruptcy case, his bankruptcy case was filed in good faith, and his bankruptcy case should not be dismissed. Doc. #255.

The court has considered the motion, opposition, David Munger response, reply, evidentiary objections and supporting documents. After due consideration, Munger's motion to dismiss will be DENIED based on the following.

EVIDENTIARY OBJECTIONS

Debtor filed evidentiary objections to the (i) Declaration of Janie Munger (Doc. #217), (ii) Declaration of Michael A. Carlovsky (Doc. #213), and (iii) Declaration of Zane S. Averbach (Doc. #214), each filed in support of the motion. Doc. ##259, 261, 262. The court is inclined to make the following rulings on Debtor's evidentiary objections:

Declaration of Janie Munger, Doc. #217

Statement Location	Basis for Objection	Ruling
Paragraph 4	Improper hearsay, lacks foundation, not based on personal knowledge (FRE 602, 701, 802)	Sustained in part and overruled in part. The objection to Ms. Munger's statement as to her belief about her and Debtor's financial situation is overruled. The objection to the testimony regarding the value of community assets based on a draft financial report prepared by another person is sustained.
Paragraph 8	Improper hearsay, not based on personal knowledge, speculation, argumentative (FRE 602, 701, 802)	Sustained in part and overruled in part. The testimony regarding the purchase of a house for Debtor is sustained for lack of foundation and improper hearsay. The objection to the remainder of the testimony in paragraph 8 is overruled.
Paragraph 10 at 3:20-24	Not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's beliefs regarding Debtor's actions.
Paragraph 15	Legal assertion (FRE 602, 701)	Overruled. The testimony states Ms. Munger's belief regarding Debtor's actions.
Last sentence of paragraph 17	Speculation, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony, and the testimony states Ms. Munger's belief regarding Debtor's actions.

Statement Location	Basis for Objection	Ruling
Last three sentences of paragraph 18	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Overruled. The objection is based on statements about Skye stock but paragraph 18 does not discuss Skye stock.
Paragraph 21 at 6:9-13	Improper hearsay, not based on personal knowledge (FRE 602, 701)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony, and the testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 21 at 6:14-16	Not based on personal knowledge, lacks foundation, argumentative (FRE 602, 701)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony, and the testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 22 at 6:19-21	Improper hearsay (FRE 802)	Sustained. The testimony is improper hearsay.
Paragraph 25 at 7:5-8	Not based on personal knowledge, lacks foundation, argumentative (FRE 602, 701)	Sustained in part and overruled in part. The objection to the testimony regarding when Debtor retained bankruptcy counsel is sustained for lack of personal knowledge. The objection to the remainder of the testimony in paragraph 25 at 7:5-8 is overruled because Ms. Munger was a party to the litigation that is the basis of the testimony, and the testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 26 at 7:18-19	Lack of foundation, not based on personal knowledge (FRE 602, 701)	Sustained. The statement, "However, Debtor was able to pay his bankruptcy attorney \$210,000.00 before Debtor filed his Chapter 11 case[,] " lacks foundation and is not based on personal knowledge.
Paragraph 26 at 7:18-20	Improper hearsay (FRE 802)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony. The lack of any evidence such as minutes or a transcript in support of the testimony goes to the weight of the testimony, not its admissibility.
Paragraph 26 at 7:20-22	Not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's understanding regarding the impact of Debtor's bankruptcy case on the family court litigation.
Paragraph 27 at 7:25-26	Improper hearsay (FRE 802)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony. The lack of any evidence such as minutes or a transcript in support of the testimony goes to the weight of the testimony, not its admissibility.

Statement Location	Basis for Objection	Ruling
Paragraph 27 at 7:27	Speculative, not based on personal knowledge (FRE 602, 701)	Sustained in part and overruled in part. The objection to the portion of the testimony "Debtor was not happy with the Orders" in paragraph 27 at 7:27 is sustained as speculative. The objection to the remainder of the testimony in paragraph 27 at 7:27 is overruled because Ms. Munger was a party to the litigation that is the basis of the testimony.
Paragraph 27 at 8:1-3	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's understanding regarding the impact of Debtor's bankruptcy case on the family court litigation.
Paragraph 27 at 8:3-4	Speculative, improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The statement "For this reason, the joinder Order was not signed by the Family Law Court" is sustained as speculative.
Paragraph 27 at 8:4-6	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701)	Sustained in part and overruled in part. The objection to the portion of the testimony "Debtor's family law attorney had agreed to facilitate service of the joinder documents but, once the automatic stay was in place, the attorney rescinded her agreement" in paragraph 27 at 8:4-5 is sustained for lack of personal knowledge and improper hearsay. The objection to the remainder of the testimony in paragraph 27 at 8:5-6 is overruled because the testimony states Ms. Munger's understanding regarding the impact of Debtor's bankruptcy case on the family court litigation.
Paragraph 28 at 8:10-13	Speculative, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's understanding regarding the impact of Debtor's bankruptcy case on the family court litigation.
Paragraph 29	Relies on improper hearsay, speculative, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Overruled. The testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 30 at 8:23-25	Relies on improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 33 at 9:17-18	Improper hearsay (FRE 802)	Overruled. The testimony states Ms. Munger's understanding regarding the impact of Debtor's bankruptcy case on her actions.

Statement Location	Basis for Objection	Ruling
Paragraph 33 at 9:20-23	Speculative, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's belief regarding Debtor's actions.
Paragraph 34 at 9:24-25	Improper hearsay (FRE 802)	Overruled. Ms. Munger was a party to the litigation that is the basis of the testimony. The lack of any evidence such as minutes or a transcript in support of the testimony goes to the weight of the testimony, not its admissibility.
Paragraph 34 at 9:26-28	Speculative, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. Debtor's statements are an exception to hearsay as statements of a party opponent. FRE 801(d)(2).
Paragraph 36 at 10:15-16	Speculative, not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Ms. Munger's belief regarding Debtor's actions.

Exhibits in support of Declaration of Janie Munger, Doc. #216

Exhibit	Basis for Objection	Ruling
Exhibit A (Draft Financial Statement)	Improper hearsay (FRE 802)	Sustained. The draft financial statement attached as Exhibit A needs to be supported by a declaration of the person who prepared it, which was not done.
Exhibit E (Retainer Agreement)	Improper hearsay (FRE 802)	Sustained. Ms. Munger is not a party to the retainer agreement attached as Exhibit E.

Declaration of Michael A. Carlovsky, Doc. #213

Statement Location	Basis for Objection	Ruling
Paragraph 3 at 2:4-5 and 2:16-19	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 3 at 2:5-17	Improper hearsay, not based on personal knowledge (FRE 602, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 4 at 2:23 - 3:22	Improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The testimony is based on a July 2022 appraisal that the declarant did not prepare.
Paragraph 5 at 3:23 - 4:24	Improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The testimony is based on a July 2022 appraisal that the declarant did not prepare.

Statement Location	Basis for Objection	Ruling
Paragraph 6	Improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 7 at 5:1-13	Improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The testimony is based on a July 2022 appraisal that the declarant did not prepare.
Paragraph 7 at 5:12-13	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a February 2023 appraisal, and the declarant did not prepare either document.
Paragraph 8	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a February 2023 appraisal, and the declarant did not prepare either document.
Paragraph 9	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 10	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 11 at 6:4-7	Improper hearsay, not based on personal knowledge (FRE 602, 701, 802)	Sustained. The testimony is based on a July 2022 appraisal that the declarant did not prepare.
Paragraph 11 at 6:8-11	Not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's schedules and a July 2022 appraisal, and the declarant did not prepare either document.
Paragraph 12 at 6:13-14	Lacks foundation (FRE 602, 701, 802)	Sustained. The declarant does not state how he knows what happened at the hearing in Family Law Court on September 6, 2024.
Paragraph 12 at 6:17-20	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on Debtor's monthly operating report that the declarant did not prepare.

Declaration of Zane S. Averbach, Doc. #214

Statement Location	Basis for Objection	Ruling
Paragraph 4 at 2:9-10	Argumentative (FRE 602)	Overruled. The testimony states Mr. Averbach's belief regarding Debtor's state of mind.

Statement Location	Basis for Objection	Ruling
Paragraph 4a at 2:16-21	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on a draft financial statement that the declarant did not prepare.
Paragraph 4b at 2:22-26	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on a refinance in which the declarant was not involved.
Paragraph 4c at 2:26 - 3:1	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The testimony is based on a transaction in which the declarant was not involved.
Paragraph 4d at 3:2-3	Improper hearsay, not based on personal knowledge, argumentative (FRE 602, 701, 802)	Sustained. The declarant does not state how he knows in what litigation Munger Entities are involved.
Paragraph 5 at 3:12-14	Argumentative (FRE 602, 701)	Overruled. The testimony states Mr. Averbach's belief regarding Debtor's actions.
Paragraph 6	Not based on personal knowledge, argumentative (FRE 602, 701)	Sustained in part and overruled in part. The objection to the portion of the testimony "However, AG West only appeared at the First Meeting and it asked no questions at the First Meeting" in paragraph 6 at 3:19-20 is overruled because the declarant states in other parts of the declaration that he attended the first and second meeting of creditors. The objection to the remainder of the testimony in paragraph 6 is sustained because the testimony is based on a refinance in which the declarant was not involved and is speculation as to AG West's motives.
Paragraph 7	Not based on personal knowledge, argumentative (FRE 602, 701)	Sustained. The declarant does not state how he knows the information testified to regarding the AG West loans.
Paragraph 8	Not based on personal knowledge, argumentative (FRE 602, 701)	Overruled. The testimony states Mr. Averbach's belief regarding Debtor's actions.

RELEVANT FACTUAL BACKGROUND

Debtor filed his chapter 11 bankruptcy case on September 17, 2024. Doc. #1. Debtor and Munger have been married since November 1983. Decl. of Janie Munger at ¶ 2, Doc. #217. Munger filed for dissolution of marriage on June 12, 2023 in Kern County Superior Court ("Family Law Case"). Id. at ¶ 10; Decl. of Zane S. Averbach at ¶ 1, Doc. #214. Munger and Debtor own multiple assets together as community property. Decl. of Kewel K. Munger in support of turnover motion at

¶ 2, Doc. #142.¹ The Kern County Superior Court has not entered an order dividing the community property between Debtor and Munger in the Family Law Case. Id.

Debtor is a successful businessman, farmer and real estate developer. J. Munger Decl. at ¶ 3, Doc. #217. The farming business, made up of several businesses and subsidiaries commonly referred to as the "Munger Entities," is Debtor and Munger's largest asset. Id. at ¶ 5. The Munger Entities are owned one-half by Debtor and one-half by Debtor's brother, David Munger. Id. Debtor and Munger own Monarch Nut Company equally. Id. According to Debtor, the Munger Entities are a vertically integrated, diversified agri-business that operate and manage approximately 14,000 acres of land holdings across California, Oregon and Washington. Decl. of Kewell K. Munger in support of Debtor's First Status Conference Statement ("K. Munger Status Decl.") at ¶ 11, Doc. #33.² The agri-business conducted through Munger Entities includes the growing, harvesting, processing and marketing of various agricultural products. Id. Blueberries and pistachios are the two major commodities, which account for more than 75% of the Munger Entities' farming revenues. Id. According to Munger, all four of Debtor and Munger's children, two adult daughters and two adult sons, work for Munger Entities. J. Munger Decl. at ¶ 5, Doc. #217.

Family Law Case

According to Munger, Debtor has engaged in bad faith tactics in the Family Law Case since Munger filed for divorce in June 2023 to frustrate and deprive Munger of the rights afforded to her under California law. J. Munger Decl. at ¶ 10, Doc. #217. After Munger filed the Family Law Case, Debtor made the divorce proceedings unbearable for Munger, leaving Munger without funds and causing Munger high stress. Id. Specifically:

- (1) Munger's credit card was declined in August 2023 while Munger was out of the country despite there being Automatic Temporary Restraining Orders ("ATROs") in the Family Law Case to prevent such action. Id. at ¶ 12.
- (2) Debtor's preliminary declaration of disclosure ("PDD") in the Family Law Case, due on September 25, 2023, was not served until March 1, 2024, and then had many of the values marked as "TBD." In addition, Debtor simply re-attached documents from Munger's PDD to his PDD, which Munger asserts was not a good faith disclosure as required by the law. Id. at ¶ 18.
- (3) Debtor failed to include Debtor's and Munger's interest in Skye Bioscience, Inc. ("Skye") stock and a \$5 million promissory note from Skye Bioscience, Inc. to MFDI, LLC dated August 23, 2023 on his schedule of assets and debts served on Munger in the Family Law Case. Id. at ¶ 19; Ex. C, Doc. #216. Debtor disregarded multiple requests from Munger's family law attorneys for information about the Skye stock. J. Munger Decl. at ¶ 19, Doc. #217.
- (4) Munger has received distributions from the Munger Entities for approximately 40 years and has received approximately \$35,000 per month since at least 2016 or 2017. Id. at ¶ 13. These distributions were in

¹ The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

² The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Owner Mgmt. Serv., 530 B.R. at 717.

addition to certain expenses of Munger being paid directly or via credit cards and checks by the Munger Entities. Id. However, on January 4, 2024, Munger went to withdraw cash from a joint bank account and found only \$800.00 in the account instead of the expected amount of approximately \$35,000.00 in monthly distributions. Id. at ¶ 14. In speaking with the chief executive officer of the Munger Entities, Munger learned for the first time that Debtor deducted Munger's credit card charges from Munger's payment from the Munger Entities. Id. Munger was not provided any advance notice that she would not receive a distribution from the Munger Entities in January 2024 nor was Munger provided an accounting of what was deducted from her payment until weeks later. Id. As a result, Munger was forced to deplete her savings to pay for basic living expenses. Id. at ¶ 15.

- (5) Debtor also removed Munger from multiple bank accounts at Bank of the West and US Bank on which Munger was a signatory without notice to Munger and in violation of the ATROs. Id. at ¶ 15. Munger only discovered Debtor's actions by chance while obtaining copies of bank statements in response to Debtor's requests for documents made in the Family Law Case or when Munger visited bank branches for in-person banking. Id.
- (6) Despite Debtor controlling the businesses in which Debtor and Munger have interests, Debtor deposed Munger as part of the Family Law Case to harass and intimidate Munger. Id. at ¶ 15.
- (7) Munger has requested personal and business information from Debtor through Debtor's family law attorneys, including information about the Skye stock. Id. at ¶ 21. Debtor has not been forthcoming regarding requests for information and has objected to form interrogatories and nearly every request for information and documents made by Munger. Id. For example, Debtor objected to Munger's request for fee information yet asked for the same information from Munger. Id. Debtor's stonewalling of Munger's discovery requests has increased Munger's attorney fees and costs in the Family Law Case and required Munger to subpoena Debtor's attorneys and accountants for information regarding fees and costs incurred and paid by Debtor in the Family Law Case. Id.
- (8) For months, Debtor and Munger attempted to negotiate a resolution of their disputes in the Family Law Case through the use of a private judge. Id. at ¶ 22. Munger learned that the private judge recommended by one of Debtor's attorneys had officiated at the wedding of the recommending attorney and that fact was not previously disclosed to Munger. Id. Munger asserts the failure to disclose this critical fact was complete bad faith by Debtor and led Munger to distrust Debtor more. Id.
- (9) Since May 1, 2024, when the family law court ordered Debtor to pay Munger \$35,000 per month for spousal support, Debtor has made it difficult for Munger to receive her support payments on time by sending the payments to Munger via FedEx (signature required), which meant that Munger never knew when the payments would arrive or whether the payments would be late. Id. at ¶ 16.
- (10) On August 2, 2024, only three months after the spousal support order was made, Debtor requested a new trial in the Family Law Case on that issue. Id. at ¶ 17. Debtor's request was denied on September 6, 2024. Id.

- (11) On August 8, 2024, Munger received a letter from Debtor's family law attorney informing Munger that Debtor intended to enter into an agreement with his brother, David Munger, that would assign all of the Skye stock, worth over \$5 million, to David Munger. J. Munger Decl. at ¶ 20, Doc. #217. Munger's family law attorneys objected to the assignment and asserted that Debtor was unilaterally disposing of a community interest in the Skye stock through the assignment. Id. Munger was later informed that the Skye stock was assigned to David Munger without Munger's consent and over her objection. Id. Because the assignment took place pre-petition, Debtor did not disclose the Skye stock as an asset in Debtor's bankruptcy case. Id.
- (12) Debtor has accused Munger of having \$230,000.00 in cash, yet Munger has never had this amount of cash on hand and testified to the same when Debtor's family law attorney deposed Munger on May 14, 2024. Id. at ¶ 23.

Shortly before Debtor's bankruptcy petition was filed, a great deal of time had been spent reaching agreements in the Family Law Case that were made at a status conference in the family law court held on September 6, 2024 ("Status Conference"), yet Debtor made no mention at the Status Conference that Debtor was going to file for bankruptcy in the near future. J. Munger Decl. at ¶ 25, Doc. #217. At the Status Conference, Debtor stated that he had no funds to pay the over \$500,000.00 in outstanding attorney and accountant fees owed to professionals employed by Munger, and Debtor was ordered to pay Munger's family law attorneys \$250,000.00 from proceeds from the sale of real property owned as community property by Debtor and Munger and identified as "Eagle Crest Drive Property." Id. at ¶ 26; Sched. A/B, Doc. #40.³ Debtor did not object to the sale or payment of such fees in that manner. J. Munger Decl. at ¶ 26, Doc. #217. Munger asserts that, by failing to inform the family law court at the Status Conference that Debtor would be filing a bankruptcy petition shortly thereafter, Debtor misled the family law court and Munger into believing that the Eagle Crest Drive Property would be sold and Mungers' attorneys' fees paid from such sale. Id. At the Status Conference, Debtor also requested an immediate trial of the family law case even though Debtor was planning to file his bankruptcy case and stay the Family Law Case. Id. at ¶ 25.

Since filing his bankruptcy case, Debtor has stayed the Family Law Case. J. Munger Decl. at ¶ 25, Doc. #217; Ex. D, Doc. #216. On December 6, 2024, Debtor removed the Family Law Case to this court. See Adv. Proc. No. 24-1057, Doc. #1.⁴ The removed Family Law Case is subject to a motion for remand filed by Munger. Adv. Proc. No. 24-1057, Doc. #9.

The filing of Debtor's bankruptcy petition has prevented several business entities and Debtor's brother from being joined into the Family Law Case as ordered pre-petition by the family law court. J. Munger Decl. at ¶ 27, Doc. #217.

Post-Petition Acts by Debtor

On September 23, 2024, only five days after learning that Debtor had filed his chapter 11 bankruptcy case, Munger received a letter from Debtor's bankruptcy counsel demanding that Munger turn over all community property in Munger's possession to Debtor's bankruptcy counsel by September 30, 2024. J. Munger

³ The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Owner Mgmt. Serv., 530 B.R. at 717.

⁴ The court, on its own, takes judicial notice of pleadings filed in Debtor's adversary proceeding filed in this court. Fed. R. Evid. 201; Owner Mgmt. Serv., 530 B.R. at 717.

Decl. at ¶ 32, Doc. #217; Ex. G, Doc. #216. Munger believes that the request for turnover of community property is another attempt by Debtor to intimidate and control Munger. J. Munger Decl. at ¶ 32, Doc. #217.

At the pre-petition Status Conference in the Family Law Case, Debtor was ordered to make support payments to Munger via electronic transfer starting on October 1, 2024. J. Munger Decl. at ¶ 34, Doc. #217. However, since filing his bankruptcy case, Debtor has not paid Munger her support payments through electronic transfer. Id. Instead, Debtor has mailed checks to Munger because Debtor claims that the United States Trustee will not permit electronic payments of spousal support from a Debtor-In-Possession bank account. Id. All spousal support paid by Debtor to Munger post-petition has been paid late. Id.

On October 5, 2024, Munger learned that Debtor had removed cabinets and fixtures from the real property owned by Munger and Debtor referred to as the "Finchley Drive Property" without Munger's knowledge or consent. J. Munger Decl. at ¶ 31, Doc. #217. The cabinets and fixtures were purchased for repairs to the Finchley Drive Property that are needed as the result of a flood. Id.

On October 17, 2024, Munger learned that Debtor had changed the locks to the Finchley Drive Property, something Debtor would not have been able to do in the Family Law Case. J. Munger Decl. at ¶ 30, Doc. #217.

Post-petition, on October 21, 2024, Debtor closed a joint bank account at BMO that Debtor and Munger had had for more than 25 years without Munger's consent and in violation of the Family Law Case ATROs. J. Munger Decl. at ¶ 35, Doc. #217. Munger contends that the account had about \$1,445.59 that were funds remaining from spousal support payments and were not Debtor's money. Id. However, when Debtor closed the BMO account, Debtor withdrew the funds that belong to Munger. Id.

On October 29, 2024, Munger learned that Debtor had changed the locks to the Eagle Crest Drive Property after Munger was forced out of that property, again something Debtor would not have been able to do in the Family Law Case. J. Munger Decl. at ¶ 30, Doc. #217.

On November 13, 2024, Munger was served with a Notice of Severance of Joint Tenancy, which Munger understands means that if anything happens to Debtor, his one-half of the community property would not go to Munger but rather to whomever Debtor decides. J. Munger Decl. at ¶ 36, Doc. #217; Ex. H, Doc. #216.

On December 5, 2024, Munger learned that Debtor, through the Munger Entities, ceased paying for an important medical concierge service that the Munger Entities had been paying on Munger's behalf for the last four to five years. J. Munger Decl. at ¶ 35, Doc. #217. Munger contends that cessation of this important medical service violates the ATROs and is another attempt by Debtor to intimidate and control Munger. Id.

On December 11, 2024, Debtor filed a motion for Munger to turn over to Debtor's bankruptcy estate a diamond as well as insurance proceeds to repair flood damage at the Finchley Drive Property. Doc. ##140-146.⁵ Munger believes that this demand for Munger to turn over is an attempt by Debtor to rob Munger from having access to any community property assets and Munger's separate property assets. J. Munger Decl. at ¶ 33, Doc. #217.

⁵ The court, on its own, takes judicial notice of pleadings filed in Debtor's bankruptcy case. Fed. R. Evid. 201; Owner Mgmt. Serv., 530 B.R. at 717.

Munger's Evidence of Lack of Financial Distress

Munger does not believe that Munger and Debtor are in the financial peril that Debtor has asserted in his bankruptcy case for three main reasons. J. Munger Decl. at ¶ 4, Doc. #217. First, Munger believes that Debtor undervalued real property owned by Debtor and Munger in Debtor's bankruptcy schedules based on appraised values for the same property from June 2022 and February 2023. Id. at ¶ 29. Munger believes that the value for the real property set forth in Debtor's bankruptcy schedules shows less net worth than Munger and Debtor actually have and, if the appropriate value is used, Debtor does not need bankruptcy relief. Id.

Second, while the agri-business of the Munger Entities is cyclical, Munger asserts that the Munger Entities have had more good years than bad. J. Munger Decl. at ¶ 5, Doc. #217. Id. As further evidence of Debtor's solvency, Debtor provided Munger and Debtor's two sons with \$118,002.00 in gifts in 2023:

(a) \$20,000.00 to Munger and Debtor's son Diwan in June 2023 for tuition to St. John's school for Diwan's children; (b) a diamond necklace with a value of \$7,300.00 to Diwan's wife in September 2023; (c) Debtor charged \$45,702.00 on Debtor's credit card for the purchase of furniture for Diwan's new house in September 2023; and (d) Debtor gave \$20,000.00 to Debtor and Munger's son Ajay for Ajay's purchase of a motorcycle in September 2023. Id. at ¶ 6. Also, on August 4, 2023, Debtor received a distribution of \$825,258.00 from Munger Bros., LLC and MFDI, LLC for the purchase of Diwan's and Diwan's wife's house located at 18540 Johnson Road, Bakersfield, California. Id. at ¶ 7. According to Debtor, Munger Bros., LLC is the overarching entity of the Munger Entities farming entities and is owned by Debtor and David Munger equally. K. Munger Status Decl. at ¶ 13, Doc. #33. MFDI, LLC is a diversified investment company also owned equally by Debtor and David. Id. at ¶¶ 22-23.

Third, on October 17, 2024, Munger spoke with Debtor outside of the Eagle Crest Drive Property, and Debtor told Munger that Debtor could stop the bankruptcy at any time if Munger worked with Debtor and not through lawyers. J. Munger Decl. at ¶ 28, Doc. #217. Based on this conversation, Munger believes that Debtor is using his bankruptcy case to get Munger to comply with Debtor's desires and not as a vehicle to repay Debtor's creditors. Id. Munger contends that Debtor does not want to divide Munger and Debtor's community property in the Family Law Case but rather wants all of the power, like throughout the marriage, and the bankruptcy case allows Debtor to have that power. Id.

Debtor's Evidence of Financial Distress

Debtor asserts that he has legitimate reasons and reorganizational objectives for filing his chapter 11 bankruptcy case. Decl. of Kewel K. Munger at ¶ 5, Doc. #263. Specifically:

- (1) Munger refused to cooperate with Debtor in having an orderly downsizing through the Family Law Case, in part by preventing Debtor from selling assets at anything other than the "appraised prices," which Debtor contends are overly inflated based on the current market. Id. at ¶ 5(a).
- (2) Munger refused to recognize that Munger is personally liable to AgWest Farm Credit in the amount of approximately \$140 million. Id. at ¶ 5(b).
- (3) Munger does not appear to understand that AgWest Farm Credit has a deed of trust on all of the farmland owned by Debtor and Debtor's brother, David Munger, as well as a first lien on all of Debtor's business interests in approximately 35 LLCs. Id. at ¶ 5(c). Moreover, the operating agreements of the LLCs contain provisions that David Munger

has characterized as a right to purchase Debtor's LLC interests, which makes it extremely difficult to market those interests to third parties outside of the bankruptcy context. Id.

- (4) AgWest Farm Credit has informed Debtor that the Munger Entities are carrying too much debt and, due to the heavy losses every year since 2021, in order to be afforded additional financing from AgWest Farm Credit, the overall indebtedness to AgWest Farm Credit must be reduced. Id. at ¶ 5(d). Based on Debtor's calculations, Munger Bros., LLC will hit its credit limit with AgWest Farm Credit in late March or April 2025. Id. at ¶ 26. In addition, there is a \$28 million loan coming due in July 2026 that must be paid to avoid default. Id. at ¶ 5(d).

According to Debtor, Munger Bros., LLC began experiencing financial issues in 2018 when Eriksson LLC cancelled a contract that was at the heart of the Munger Bros., LLC business operations. K. Munger Decl. at ¶ 17, Doc. #263; K. Munger Status Decl. at ¶ 38, Doc. #33. Munger Bros., LLC sued Eriksson for damages and, as a result of that lawsuit, Munger Bros., LLC receives \$9 million per year to be paid through 2032 in compensation for an estimated \$80 million in lost revenue from the contract, which was to remain in place until 2042. Id. Munger Bros., LLC expanded its processing facilities at great expense expecting volume from Eriksson and is now stuck with operating a larger facility at a higher operating cost. Id.

In addition to the financial distress stemming from the Eriksson breach, the Munger Entities also suffered operational losses from adverse weather events, deteriorating commodity prices, increasing labor and input costs, and other operational difficulties. K. Munger Decl. at ¶ 17, Doc. #263; K. Munger Status Decl. at ¶¶ 27-34, Doc. #33. As a result, the Munger Entities suffered net operating losses of \$3.7 million in 2021, \$11.2 million in 2022, \$15.6 million in 2023, approximately \$12 million in 2024, and projected losses of \$10 million in 2025. K. Munger Decl. at ¶ 17, Doc. #263. The decline in the income of the Munger Entities has been reflected in the personal income of Debtor and Munger, as shown in their federal tax returns from 2020 through 2023, which show personal income of Debtor and Munger falling from a positive \$13.5 million in 2020 to \$4 million in 2021, to negative \$154,000 in 2022, to \$70,000 in 2023 plus a yet to be determined loss for 2024. Id.

In addition to the operating losses of the Munger Entities, there also has been a sharp decline in the value of farmland in Kern County and southern Tulare County. K. Munger Decl. at ¶ 23, Doc. #263. That decrease in value has had a huge impact on the collateral base for secured loans and impacts the amount of rent received from the farmland. Id. Debtor asserts that the value of real estate holdings of Debtor and Munger are not undervalued in Debtor's bankruptcy schedules because the value of Debtor's farmland has declined by 30-57% since 2022. Id.; Decl. of Scott Schuil at ¶ 5, Doc. #265.

It is Debtor's intention through his bankruptcy case to sell non-revenue producing assets within three months. K. Munger Decl. at ¶ 6, Doc. #263. Debtor projects that such sales will bring overall indebtedness down to levels acceptable to AgWest Farm Credit so financial pressure will be alleviated. Id. Debtor believes that by reducing overall secured indebtedness and shrinking the Munger Entities to the core business operations, the Munger Entities will be able to continue to pay all current bills of the Munger Entities trade creditors, who are currently owed in excess of \$10 million, preserve 2,000 seasonal jobs at peak, preserve 314 year-round jobs, save the jobs of Debtor and Munger's four children, and allow Debtor income to pay support to Munger. Id. at ¶ 7.

The declaration of David Munger filed in response to the motion to dismiss is generally consistent with the financial picture presented by Debtor. Decl. of Baldev K. Munger, Doc. #256. The corporate resolution of Munger Bros, LLC and its sister Munger companies adopted at a meeting of the board of directors convened on December 16, 2023 also is consistent with the financial picture of the Munger Entities presented by Debtor. Ex. A, Doc. #266.

DISMISSAL UNDER § 1112(b) : BAD FAITH FILING

A. Applicable Legal Standard

Munger argues that Debtor's bankruptcy case should be dismissed for cause under 11 U.S.C. § 1112(b) because it was not filed in good faith. Doc. #215.

"Dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion." In re Stolrow's, Inc., 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988). A bankruptcy court "may consider any factors which evidence an intent to abuse the judicial process and the purposes of" reorganization. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988)).

If a motion to dismiss is based on bad faith, "[t]he moving party has the initial burden of making a prima facie case to support its allegations of bad faith." In re Avalon Hotel Partners, LLC, 302 B.R. 377, 384 (Bankr. D. Or. 2003). "Once such a showing has been made, the burden shifts to the debtor to establish that its chapter 11 case was filed in good faith." Id.; accord Marshall, 721 F.3d at 1048.

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. for Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7 or appointment of a trustee, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

B. Munger's Initial Prima Facie Showing of Bad Faith

The court finds that Munger has met her initial burden of making a prima facie showing that Debtor's bankruptcy case was filed in bad faith. Based on evidence submitted by Munger in support of the motion, Debtor is a successful businessman, farmer and real estate developer. Debtor and Munger are parties to a contentious divorce proceeding. After Munger filed the Family Law Case, Debtor made the proceedings in the Family Law Case unbearable for Munger, left Munger without funds, and caused Munger high stress. Of note, Debtor has not promptly provided information required in the Family Law Case, has dragged out proceedings, has not been forthcoming with Munger or her attorneys in the Family Law Case, has taken actions in violation of ATROs issued in the Family Law Case, and has delayed payment of spousal support in violation of court orders in the Family Law Case.

Munger asserts that Debtor has no financial distress warranting bankruptcy relief for three main reasons. First, Munger believes that real property owned by Debtor and Munger have sufficient value for Debtor to repay his debts without the use of the bankruptcy laws. Second, the Munger Entities are not

experiencing financial distress because, in 2023, Debtor provided Munger and Debtor's two sons with \$118,002.00 in gifts as well as received a distribution of \$825,258.00 from two of the Munger Entities for the purchase of a house for one of Debtor and Munger's sons and the son's wife. Third, post-petition, Debtor told Munger that Debtor could stop the bankruptcy at any time if Munger worked with Debtor and not through lawyers.

Munger contends that Debtor filed his bankruptcy case solely as a litigation tactic over Munger because Debtor believed he would fare better in this court than that in the Family Law Case where (1) Debtor was ordered to contribute \$250,000.00 to pay Munger's attorney fees and costs, (2) Debtor was ordered to pay \$35,000.00 per month in spousal support to Munger, and (3) business entities owned in part and controlled by Debtor were ordered to join the Family Law Case. Due to the bankruptcy case, Debtor has taken control over community assets previously under Munger's control, which could not have happened in the Family Law Case.

Based on the above, the court finds Munger has met her initial burden of making a prima facie showing that Debtor filed his chapter 11 bankruptcy case in bad faith.

C. Debtor's Showing of Good Faith

Debtor responds that his bankruptcy case was filed in good faith because prosecuting his bankruptcy case is the only way to protect the value of the Munger Entities. While Munger and Debtor could have divided their community property in the Family Law Case, that litigation was not proceeding in such a manner that the debt owed to AgWest Farm Credit would be paid down a sufficient amount so as not to cause a default on those loans.

Based on Debtor's uncontroverted testimony, the Munger Entities suffered cumulative net operating losses of over \$39 million between 2021 and 2024, with additional projected net operating losses of \$10 million in 2025. The decline in the income of the Munger Entities has been reflected in the personal income of Debtor and Munger, which fell from \$13.5 million in 2020 to \$4 million in 2021, to negative \$154,000.00 in 2022, to \$70,000.00 in 2023 plus a yet to be determined loss for 2024.

Debtor and Munger are co-obligors on approximately \$140 million in debt to AgWest Farm Credit along with Debtor's brother, David Munger, and the Munger Entities. The significant net operating losses by the Munger Entities since 2021 have prompted AgWest Farm Credit to require that the overall indebtedness to AgWest Farm Credit be reduced in order for the Munger Entities to be afforded additional financing from AgWest Farm Credit. Based on Debtor's calculations, Munger Bros., LLC will hit its credit limit with Ag West Farm Credit in late March or April 2025. In addition, there is a \$28 million loan coming due in July 2026 that must be paid to avoid default.

In addition to the operating losses of the Munger Entities and the decrease in the personal income of Debtor and Munger, there also has been a sharp decline in the value of farmland in Kern County and southern Tulare County between 2022 and 2025. That decrease in value has had a huge impact on the collateral base for secured loans for which Debtor and Munger are liable as well as impacts the amount of rent that can be received from the farmland. Based on the uncontroverted evidence of Scott Schuil, who has worked in the agricultural real property valuation field since 2010, the value of Debtor's farmland has declined by 30-57% since 2022.

It is Debtor's intention through his bankruptcy case to sell non-revenue producing assets within three months to bring overall indebtedness of the

borrowers down to levels acceptable to AgWest Farm Credit so financial pressure will be alleviated. Debtor believes that by reducing overall secured indebtedness and shrinking the Munger Entities to the core business operations, the Munger Entities will be able to continue to pay all current bills of the Munger Entities trade creditors, who are currently owed in excess of \$10 million, preserve 2,000 seasonal jobs at peak, preserve 314 year-round jobs, save the jobs of Debtor and Munger's four children and allow Debtor income to pay support to Munger.

The declaration of David Munger filed in response to the motion to dismiss and the corporate resolution of Munger Bros, LLC and its sister Munger companies adopted at a meeting of the board of directors convened on December 16, 2023 are consistent with the financial picture presented by Debtor.

Based on the above, the court finds that Debtor has shown sufficient financial distress to warrant his bankruptcy filing. Debtor has met his burden of showing that his chapter 11 bankruptcy case was filed in good faith, and cause does not exist to dismiss Debtor's bankruptcy case.

CONCLUSION

Accordingly, Munger's motion to dismiss under 11 U.S.C. § 1112(b) will be denied. Debtor's chapter 11 bankruptcy case will remain pending.

4. [24-12873](#)-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
10-2-2024 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to April 30, 2025 at 9:30 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

Because the debtor's monthly operating reports are current and based on the status conference statement filed on January 30, 2025 (Doc. #184), the court intends to continue this status conference to April 30, 2025 at 9:30 a.m. to be hearing in connection with the continued hearing on the debtor's eligibility to be a Subchapter V debtor. The court will require the debtor to file and serve a further status report on or before April 23, 2025.

CONTINUED MOTION TO BORROW
12-2-2024 [\[75\]](#)

GRIFFIN RESOURCES, LLC/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for final hearing on January 10, 2025 ("Hearing") pursuant to an interim order authorizing the debtor to enter into a commercial insurance premium finance and security agreement ("Interim Order"). Doc. #118. The Hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(c)(2) and Local Rule of Practice 9014-1(f)(2) and opposition could be raised at the Hearing. At the Hearing, the California Department of Conservation, Geologic Energy Management Division ("CalGEM") opposed the relief requested by Griffin Resources, LLC ("DIP" or "Debtor"), debtor and debtor-in-possession herein. On January 23, 2025, CalGEM filed a statement that it has no remaining objection to the court granting Debtor's motion on a final basis. Doc. #173.

The failure of other creditors, the U.S. Trustee, or any other party in interest to file oppose the motion on a final basis at the Hearing is deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed this Subchapter V Chapter 11 bankruptcy case on October 2, 2024. Doc. #1. Debtor owns and operates numerous stripper oil wells in Kern and Kings Counties, California. Decl. of Stephen Griffin, Doc. #77. As part of its operations, Debtor is required to maintain adequate insurance coverage. Id. Without such coverage, Debtor would be forced to cease its operations. Id.

Post-petition, DIP has obtained insurance coverage that will require DIP to finance part of the insurance premium. Griffin Decl., Doc. #77. The total premium for the one-year period starting December 1, 2024 is \$21,275.75 plus a finance charge of \$812.99. Ex. A, Doc. #78. DIP moves the court for an order authorizing DIP to enter into an insurance premium finance agreement ("Agreement") with Ameris Bank ("Lender") similar to the agreement filed as Ex. A, Doc. #78. Under the Agreement, DIP will pay a down payment of \$7,268.94, with ten monthly payments of \$1,481.98 each beginning January 1, 2025. Id. The annual percentage rate for the financing is 12.47%. Id.

In order for Lender to provide the proposed financing, Lender requires that DIP assign to Lender all of DIP's "right, title and interest in the insurance policies listed in the Agreement, and all rights therein including all dividends, payments on claims, unearned premiums and unearned commissions." Agreement, ¶ 1, Ex. A, Doc. #78. The property to be secured is hereafter referred to as the "Insurance-Related Future Assets." DIP further "authorizes Lender to file a UCC financing statement to perfect Lender's security interest." Agreement, ¶ 2, Ex. A, Doc. #78. The motion was heard initially on December 11, 2024 and was granted on an interim basis by the Interim Order. Doc. #118. A final hearing was set for January 9, 2025 pursuant to the Interim Order. Id. Due to the National Day of Mourning for former President Jimmy Carter, the hearing originally set for January 9, 2025 was continued to January 10, 2025. Doc. #128.

In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). With respect to obtaining credit on a secured basis, 11 U.S.C. § 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien[.]; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

Based on the evidence before this court, DIP requires insurance to operate its business. DIP is unable to obtain the necessary credit to obtain insurance

coverage without granting Lender a first-priority security interest in the Insurance-Related Future Assets. Supp. Decl. of Stephen J. Griffin, Doc. #115. The security interest to be granted to Lender in the Insurance-Related Future Assets is a lien on property of the estate that is not otherwise subject to a lien or is a junior lien on property of the estate that is subject to a lien. Id. Thus, DIP has met its required showing under 11 U.S.C. § 364(c).

Accordingly, DIP's request for authority to enter into a commercial insurance premium finance and security agreement with Lender consistent with Ex. A, Doc. #78 is GRANTED on a final basis.

11:00 AM

1. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[24-1057](#) [CAE-1](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
12-6-2024 [[1](#)]

MUNGER V. MUNGER
LEONARD WELSH/ATTY. FOR PL.

NO RULING.

2. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[24-1057](#) [YW-1](#)

MOTION FOR REMAND
1-3-2025 [[9](#)]

MUNGER V. MUNGER
RESPONSIVE PLEADING

NO RULING.

3. [22-10825](#)-A-7 **IN RE: JAMIE/MARIA GARCIA**
[22-1018](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-19-2022 [[1](#)]

AGRO LABOR SERVICES, INC. ET AL V. GARCIA ET AL
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to April 3, 2025 at 11:00 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

Based on the plaintiffs' status conference statement filed on January 30, 2025 (Doc. #147), the court intends to continue this status conference to April 3, 2025 at 11:00 a.m. The court will require the plaintiffs to file and serve a further status report on or before March 27, 2025.

4. [24-13025](#)-A-7 **IN RE: JESSE MAESTAS**
[24-1040](#)

ORDER TO SHOW CAUSE
1-13-2025 [\[16\]](#)

MAESTAS V. UNITED STATES DEPARTMENT OF EDUCATION

NO RULING.

5. [24-13025](#)-A-7 **IN RE: JESSE MAESTAS**
[24-1040](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-18-2024 [\[1\]](#)

MAESTAS V. UNITED STATES DEPARTMENT OF EDUCATION
JESSE MAESTAS/ATTY. FOR PL.

NO RULING.

6. [23-12471](#)-A-7 **IN RE: LIEN QUACH**
[24-1018](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-2-2024 [\[1\]](#)

QUACH V. NELNET, INC. ET AL
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [24-12873](#)-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
[24-1056](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-3-2024 [\[1\]](#)

GRIFFIN RESOURCES, LLC V. CALIFORNIA DEPARTMENT OF
IAN QUINN/ATTY. FOR PL.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to February 27, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

On January 30, 2025, the defendant filed a motion to dismiss this adversary proceeding and set that motion for hearing on February 27, 2025. Doc. ##13-16. Accordingly, this status conference will be continued to February 27, 2025 at 11:00 a.m.

8. [24-12084](#)-A-7 **IN RE: JANETTE MAPANAO**
[24-1046](#) [SLL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
12-23-2024 [\[14\]](#)

BERRI CAPITAL GROUP, LLC V. MAPANAO
STEPHEN LABIAK/ATTY. FOR MV.
CONT'D TO 6/5/25 BY ECF ORDER #33

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to June 5, 2025 at 11:00 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion for entry of discharge to June 5, 2025 at 11:00 a.m. On January 17, 2025, the court issued an order continuing the hearing date to June 5, 2025 at 11:00 a.m. Doc. #33.