UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 13, 2025 at 10:30 a.m.

1.	**24-23905-E-12 FRB-1**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION** **David Goodrich**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-3-25 [230]**

Items 1 thru 2

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on January 3, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The court would note that Movant was not specific in its Notice of Hearing under which Local Rule provision this Motion is noticed. Moreover, Movant incorrectly stated that written opposition must be filed at least 28 days prior to the hearing. However, Local Bankruptcy Rule 9014-1(f)(1) only requires 14 days to submit written opposition. At the hearing, **xxxxxxx**

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is xxxxxxx .

Creditor AgWest farm Credit, PCA ("Creditor") objects to Kenneth Henry Deaver And Mary Jean Deaver's ("Debtor in Possession's") claimed exemptions under California law. Creditor states:

1. Debtor in Possession has no equity in their assets for which exemption are claimed. and therefore, there is nothing to exempt. Obj. 2:7-8.

2. Debtor in Possession cannot exempt livestock under Cal. Code of Civil Procedure § 704.060 and because they claimed to exempt more value under § 704.060 than what that exemption allows. *Id.* at 2:8-3:1.

3. Debtor in Possession can also not exempt their new Holland Tractors and 2017 Chevrolet Tahoe Trucks under Cal. Code of Civil Procedure § 704.060. *Id.* at 5:15-22.

4. Debtor in Possession claim they are a family farmer, but are not actually a "family farmer" or a "farmer" as defined in the Bankruptcy Code, and therefore cannot claim equipment as a tool used as part of their trade under § 704.060. *Id.* at 3:2-5.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on January 27, 2025. Docket 287. Debtor in Possession states:

1. Creditor's argument that the exemptions should be disallowed because there is no equity for Debtor in Possession to exempt is wholly without merit. The plain language of Cal. Code of Civil Procedure § 704.060 only allows any exemption "to the extent [of] the aggregate equity." Opp'n 2:21-25.

2. Debtor in Possession is not asking to exempt equity beyond the limitation of Cal. Code of Civil Procedure § 704.060. *Id.* at 3:9-13.

3. There does not appear to be any controlling case law in determining whether livestock are tools of the trade. However, here, the sheep are used mostly to control weeds on the farm, and are thus used in the exercise of Debtors' farming operations. *Id.* at 4:27-5:2.

4. Creditor's objection that the exemption should be disallowed because Debtor in Possession is not a farmer is without merit. The California exemption statutes pertain to any Debtor, not just a Chapter 12 Debtor. *Id.* at 5:4-11.

CREDITOR'S RESPONSE

Creditor filed a Response on February 6, 2025. Docket 321. Creditor states:

1. Debtor in Possession has not met its burden of production and persuasion rebutting the Objection. *Id.* at 2:14-23.

2. Debtor in Possession has not shown how sheep are tools of their trade subject to Cal. Code of Civil Procedure § 704.060. *Id.* at 3:3-16.

3. Debtor in Possession has not equity at the time of filing th petition so they cannot claim an exemption. *Id.* at 3:23-4:4.

APPLICABLE LAW

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

The exemption in question is Cal. Code of Civil Procedure § 704.060. That statute provides for exemptions to be claimed in certain personal property assets, and states (emphasis added):

> § 704.060. Personal property used in trade, business, or profession
>
> (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, **and other personal property are exempt to the extent that the aggregate equity therein does not exceed**:
>
> > (1) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.
> >
> > (2) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.
> >
> > (3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.
>
> (b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.
>
> (c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably

adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars ($4,850).

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to twice the amount of the exemption provided in paragraph (1) of this subdivision.

In California Code of Civil Procedure § 680.290, the term "Personal Property" is defined as:

§ 680.290. "Personal property"

"Personal property" includes both tangible and intangible personal property.

Cal Code Civ Proc § 680.290

"Tangible personal property" is defined in California Code of Civil Procedure § 680.370 to be:

§ 680.370. "Tangible personal property"

"Tangible personal property" includes chattel paper, documents of title, instruments, securities, and money.

In Objecting Creditor's Points and Authorities it is argued:

Second, the Debtors are trying to claim sheep as exempt under section 704.060, which only allows tools of the trade to be considered exempt, which makes no sense. **See Matter of Patterson,** 825 F.2d 1140, 1147 (7th Cir. 1987) ("**To regard cows and other livestock as 'tools' or 'implements' does particular violence to the English language**, and there is no indication that the terms are being used in a technical sense"). Hence, for purposes of the sheep, the exemption is improper. Moreover, the Deavers listed (8) new holland Tractors and (2) 2017 Chevrolet Tahoe trucks citing to Cal. Code of Civil Procedure section 704.060, as a basis for their exemptions, which is also improper.

While citing to *Matter of Patterson*, Objecting Creditor does not provide an analysis of what statutory exemption and the language of the statute that the Seventh Circuit Court of Appeals was reading.

Looking to the plain language of California Code of Civil Procedure § 704.060, it is not limited to "mere" implements or tools, but has a much broader scope of exempt personal property, go so far as to provide an exemption for "other personal property."

Objecting Creditor has not made any meritorious argument or provided the court with any law that "all other personal property" would not include the sheep if used as part of the business.

DISCUSSION

The assets claimed as exempt under Cal. Code of Civil Procedure § 704.060 are as follows:

1. 2017 Chevrolet Tahoe, claiming $1,100 as exempt;

2. eight New Holland Tractors, claiming $15,675 as exempt;

3. 35-40 sheep, claiming $8,000 as exempt;

4. four pickup trailers, claiming $600 as exempt;

5. a flat bed trailer, claiming $600 as exempt;

6. a box trailer, claiming $250 as exempt;

7. two sheep trailers, claiming $200 as exempt;

8. two tilt bed tin trailers, claiming $400 as exempt;

9. four grape trailers, claiming $1,200 as exempt;

10. five storage containers, claiming $4,000 as exempt;

11. five fuel tanks, claiming $500 as exempt;

12. three sprayers, claiming $1,625 as exempt;

13. four water tanks, claiming $1,400 as exempt; and

14. six travel trailers, claiming $2,400 as exempt.

Ex. 9 at 112, Schedule C, Docket 234.

As an initial matter, the court agrees with Debtor in Possession in finding Creditor's argument that Debtor in Possession may not claim exemptions due to a lack of equity is without merit. The plain language of the exemption statute clearly states an exemption only applies to any equity in the assets; if there is no equity in the event of a sale, then the exemption does not apply.

However, the court agrees with Creditor's contention that Debtor in Possession must limit the exemption to the statutorily permitted amount. The statute, in the case of married persons, may claim up to $17,450 in equity in tools of the trade as exempt. Debtor in Possession has exceeded that number, arguing that certain assets where the exemption is claimed will not actually result in equity to claim as exempt if sold, so Debtor in Possession has been cautious in claiming more than what is statutorily permitted. The court finds that Debtor in Possession's claimed exemptions must be limited to the figure provided for by

statute. The statute does not provide for a cautious approach where Debtor in Possession is permitted to exempt beyond the provided figure in the event certain tools do not realize any equity if sold.

The answer to this "problem" is for the Debtor to list all of the tools of the trade for which the exemption is being claimed pursuant to California Code of Civil Procedure § 704.060 (a) . What the Debtor has done here is listed 19 different sets of assets in which the exemption is being claimed generically pursuant to California Code of Civil Procedure § 704.060, claiming exemption amounts that total $21,325.00. This is greater than the $17,450 amount stated in California Code of Civil Procedure § 704.060(a)(3). There is, by Debtor's calculation, $3,875 in non-exempt equity for the confirmation calculation.

Are Sheep Tools

The court is presented with the issue of whether livestock, the sheep, may be exempted as tools of the trade. In *In re Stewart*, 110 B.R. 11, 12 (Bankr. D. Idaho 1989), that court found that three horses used in the debtor's farming operation could be exempt under the applicable tools of the trade exemption. The court has not found any binding authority on whether the sheep in this instance should also be given such a classification.

Debtor in Possession states that the sheep are "primarily" used to graze the fields and control weeds. However, there are no details provided as to whether Debtor in Possession also raises the sheep for slaughter or to be sold, so as to be considered inventory, and whether there would be other more effective means to keep the pastures properly maintained, meaning the sheep have varying uses.

In reviewing the Objection, no citation is made to California Law as to the interpretation of the California Statute providing for this exemption. Rather Objecting Creditor cites the court to a Seventh Circuit Decision from 1987. The Debtor in Possession does not provide the court with any California law analysis, legislative history, or other California Law analysis.

Time of Determination if Exemption May be Claimed and Time Amount of Exemption is Determined

In the Reply, Creditor cites the court to various decisions for the proposition that "Case law is clear in that the value of the exemption is limited to the value that lawfully may be claimed as of the petition date." Thus, Creditor concludes that it is the value of the exempt equity in the property as of the bankruptcy case filing, and there can be no increase in the exemption if the property increases in value post-petition.

The first case Creditor cites is identified as *In re Anderson*, 988 F.3d 1210, 1216 (9th Cir. 2021). However, that citation is to *Enriquez v. Wilkinson*, 988 F.3rd 1210 (9th Cir. 2021). The *Enriquez* Decision relates to the remand of a matter to the Immigration Court.

The second cited case is *Wilson v. Rigby*, 909 F.3d 306, 312 (9th Cir. 2018). The holding in the *Wilson* decision related to the application of the State of Washington statutory homestead exemption and the interpretation of that Washington Statute. In that discussion, the Ninth Circuit examined the difference between a Washington State exemption and the California statutory exemptions.

> The first set of cases cited by Wilson and *Amici* involved California's homestead statute, which differs in material respects from Washington's statute.

> Under California law, **every debtor is entitled to claim an exemption with a fixed dollar value, based on demographic criteria—not home equity**. *See, e.g., Alsberg v. Robertson (In re Alsberg)*, 68 F.3d 312, 314 (9th Cir. 1995); Cal. Civ. Proc. Code § 704.730.[2] By contrast, Washington applies a sliding scale in which "the homestead exemption amount shall not exceed the lesser of (1) the total net value of the [homestead] . . . or (2) the sum of one hundred twenty-five thousand dollars . . . ." Wash. Rev. Code § 6.13.030 (emphasis added).
>
> In both California and Washington, the value of the homestead must be fixed as of the date of the bankruptcy petition. **In California, the value of the homestead is always a defined statutory figure.** *See* Cal. Civ. Proc. Code § 704.730. However, **in Washington, the value is tied to the equity in the debtor's home as of the date of the filing of the petition**. See Wash. Rev. Code § 6.13.030. Because the value that can be claimed **in California is determined by demographic criteria, the homestead amount claimed at filing may exceed home equity on that petition date. *See Alsberg*, 68 F.3d at 313-14** (noting that under California law "in effect at the time of filing [the debtor] was entitled to claim a homestead exemption of $45,000 on the residence" where the home equity at the time of filing was only $33,875). **If the home subsequently appreciates, it enures to the California debtor up to the amount she was entitled to claim under California law on the petition date.** *See id.* at 313-15 **(affirming** the BAP's determination that, **upon the sale of the home, the California debtor was entitled to the full $45,000 exemption even though the equity at the time of the filing was less than this amount**). Accordingly, our cases (that appear to allow California debtors to obtain post-petition appreciation) have merely allowed the debtors to receive the full value of the homestead exemption that they were entitled to claim as of the petition date. See, e.g., id.; Hyman, 967 F.2d at 1321.3

Wilson v. Rigby, 909 F.3d at 309-310 (double emphasis added).

It appears that this authority cited by Objecting Creditor is opposite of what is stated in the Reply Brief (which is subject to the certifications made by counsel and Creditor pursuant to Federal Rule of Bankruptcy Procedure 9011), and demonstrates that the dollar amount claimed exempt under California Law is limited to the exempt equity that only existed when the Bankruptcy Case was filed is without merit.

The third case cited by Objecting Creditor is *White v. Stump*, 266 U.S. 310, 313 (1924), a now century old Supreme Court Decision. In *White*, the Supreme Court was addressing Idaho homestead exemption law. In discussing the old Bankruptcy Act, which is no longer applicable law, the Supreme Court states on the page (313) cited by Objecting Creditor:

> These and other provisions of the bankruptcy law show that the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed. This has been recognized in our decisions. Thus we have said that the law discloses a purpose "to fix the line of cleavage" with special regard to the conditions existing when the petition is filed, *Everett v. Judson*, 228 U.S. 474, 479, and that -- **"It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes**

> **actually or potentially into the control of the bankruptcy court**." *Bailey v. Baker Ice Machine Co*., 239 U.S. 268, 275; *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 307. When the law speaks of property which is exempt and of rights to exemptions it of course refers to some point of time. **In our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control, and with respect to which the status and rights of the bankrupt, the creditors and the trustee in other particulars are fixed.** The provisions before cited show -- some expressly and others impliedly -- that one common point of time is intended and that it is the date of the filing of the petition. The bankrupt's right to control and dispose of the estate terminates as of that time, save only as to "property which is exempt." § 70a. The exception, as its words and the context show, is not of property which would or might be exempt if some condition not performed were performed, but of property to which there is under the state law a present right of exemption -- one which withdraws the property from levy and sale under judicial process.

White v. Stump, 266 U.S. at 313. It appears that all this states is that under the Bankruptcy Act in effect in 1924, is that it is the date of filing that which property is exempt would be determined under § 70 of the Bankruptcy Act. This does not appear to apply to say that under the Bankruptcy Code that the amount of the property exempt is frozen as of the filing of the bankruptcy case based on the value of the asset in which the exemption is claim. Rather, merely the Supreme Court will look to the law in effect at the bankruptcy case is filed. Objecting Creditors offers no analysis as to why the Decision in *Wilson* somehow holds that the California exemptions in the 21st Century are not computed as set forth by the Ninth Circuit Court of Appeals in *White*.

The final case cited, without any analysis provided, by Objecting Creditors is *In re Cerchione*, 414 B.R. 540, 548 (9th Cir. BAP 2009), which Objecting Creditor provides the following quote,

> "A debtor's entitlement to claimed exemptions generally is determined as of the date of such debtor's bankruptcy filing.

in support of its contention that the dollar amount of the exemption is locked into the value of the exempt property as of the filing of the case and not when (with the possibility of appreciation in value) the exempt property is cashed out (and the exempt proceeds paid to the debtor) or the exempt property is abandoned to the debtor. Reply, p. 3:26-4:1. A review of the *Crechione* Decision, at the page cited by Objecting Creditor, provides the following analysis:

> Under Idaho Code § 55-1003, a homestead exemption is limited to no more than $100,000. The Cerchiones originally claimed a homestead exemption under § 55-1003 in the amount of $100,000 in the Property. Ultimately, in their amended Schedule C, the Cerchiones claimed an exemption of $ 95,700 in the Property under Idaho Code § 55-1008.
>
> Idaho Code § 55-1008(1) deals with proceeds from the sale of a homestead and provides in relevant part as follows:
>
> > HOMESTEAD EXEMPT FROM EXECUTION--WHEN PRESUMED VALID. (1) Except as provided in section 55-1005,

> Idaho Code, 6 the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in section 55-1003, Idaho Code. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, . . . up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds. (emphasis added).

> A **debtor's entitlement to claimed exemptions generally is determined as of the date of such debtor's bankruptcy filing**. *See In re Chiu*, 266 B.R. at 751 (exemptions are determined as of the date of bankruptcy filing and without reference to subsequent changes in the character of the property claimed exempt); *In re Lane*, 364 B.R. 760, 762-63 (Bankr. D. Or. 2007) ("Generally, only facts existing on the filing date are relevant to determining whether a **debtor qualifies for her homestead exemption**." (citing *Harris v. Herman (In re Herman)*, 120 B.R. 127, 130 (9th Cir. BAP 1990)).

Hopkins v. Cerchione (In re Cerchione), 414 B.R. at 548.

The text cited states that the entitlement to the claimed exemptions is "generally" determined as of the date of filing. However, it does not say that the amount of the exemption is limited by the value of the exempt property as of the date the bankruptcy case is filed.

Though it does not appear that either the Debtor in Possession or Objecting Creditor cited to California exemption law, the court notes that in determining exemptions, California Code of Civil Procedure § 703.100 provides (emphasis added):

> § 703.100. Time for determination of exemptions
>
> (a) **Subject to subdivision (b)**, the **determination whether property is exempt** shall be made under the circumstances existing at the earliest of the following times:
>
> (1) The time of levy on the property.
>
> (2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.
>
> (3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.
>
> (b) **The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing**:
>
> (1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the

creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) **A change in the value of the property if the exemption is based upon the value of property.**

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

At the hearing, **xxxxxxx**

Exemption in Certain Vehicles

Creditor states that certain vehicles cannot be exempted under Cal. Code of Civil Procedure § 704.060 but provides little analysis or argument as to why. Vehicles are often found to be tools of the trade when used as such. *See In re McNutt*, 87 B.R. 84, 87 (B.A.P. 9th Cir. 1988) ("[T]he proper inquiry is whether or not the vehicle is used by and is necessary to a debtor for his or her work, trade or occupation. . . The bankruptcy court, based upon the stipulation of the parties in open court, was entitled to find that the truck was used in the debtor's trade, and properly concluded that as a matter of law the truck was a tool of the trade.").

In explaining what the vehicles and trailers are used for, at the hearing, **xxxxxxx**

Finally, the court is also not persuaded by Creditor's argument that Debtor in Possession is not a farmer, so Debtor in Possession may not claim exemptions. The argument fails to consider that claiming the exemptions is not limited by the Chapter of the Code under which a debtor files.

2.	**24-23905-E-12 BJ-1**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION** **David Goodrich**	**MOTION TO DISMISS CASE OF SHENANDOAH INVESTMENT PROPERTIES, INC.** **1-27-25 [288]**

Final Ruling: No appearance at the February 13, 2025 hearing is required.

The Motion to Dismiss has been continued to 10:30 a.m. on February 27, 2025. Order, Docket 327. No appearance of the parties is required at the hearing held on February 13, 2025.

3.	**24-90528-E-11** **BSH-3**	**HERITAGE HOME FURNISHINGS, LLC** **Brian Haddix**	**CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO GRANT REPLACEMENT LIENS , MOTION TO SCHEDULE FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001** **11-1-24 [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.

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

The Certificate of Service, Dckt. 49, documents service having been made on parties in interest on November 1, 2024. At least fourteen days notice is required (L.B.R. 9014-1(f)(2)), and twenty days notice was given.

The Motion for Authority to Use Cash Collateral was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

No opposition was stated at the hearing.

The Motion for Authority to Use Cash Collateral is xxxxxxx.

February 13, 2025 Hearing

The court continued the hearing on this Motion and Debtor in Possession informed the court it was communicating with the SBA regarding the use of cash collateral. A review of the Docket on February 6, 2025 reveals nothing new has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Heritage Home Furnishings, LLC ("Debtor in Possession") moves for an order approving the use of cash collateral from generated from the business, a family-owned California limited liability company created in 2009 which operates as a commercial furniture retailer with a showroom and separate warehouse located in Turlock, CA. Debtor in Possession requests the use of cash collateral to continue the Debtor's operations and to reorganize.

Debtor in Possession proposes to use cash collateral to be allocated to critical business expenses necessary to sustain operations, including payment of rent to maintain the premises, payroll to retain essential employees, inventory purchases to meet customer demand, and adequate protection payments to secured creditors. Mot. 3:14-21, Docket 41.

In the Motion the Debtor in Possession requests that replacement liens be granted creditors in the new cash proceeds generated from the operation of the business. While not expressly stating such, the regular practice is to grant such replacement liens in the same priority as the original lien and to the extent that the creditor's collateral was reduced through the use of cash collateral (thus, a creditor's collateral is not increased).

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

In the prayer, Debtor/Debtor in Possession requests that a super-priority claim be granted pursuant to 11 U.S.C. § 503(b) and § 507(b) to the extend that their has been a diminution in the amount of Creditor's collateral, notwithstanding the replacement lien. Motion, p. 7:18-21; Dckt. 41.

Debtor in Possession has submitted a proposed Stipulation with the court between it and the Small Business Administration ("SBA"). Exhibit A; Dckt. 43. The Stipulation calls for providing the SBA with superpriority claim pursuant to 11 U.S.C. §§ 503(b), 507(b),to the extent that the use of cash collateral results in a diminution of the SBA cash collateral notwithstanding the replacement lien.

The Debtor/Debtor in Possession also seeks authorization to make adequate protection payment in the amount of $731 monthly.

With respect to the "super priority claim," Congress provides for a super priority administrative expense in 11 U.S.C. § 507(b), stating:

> (b) If the trustee, under section 362, 363, or 364 of this title**, provides adequate protection of the interest of a holder of a claim secured by a lien on property** of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) [unsecured administrative expense] of this section

> arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

Collier's Treatise on Bankruptcy states:

> A creditor seeking to assert a claim under section 507(b) must meet three criteria. First, the trustee must have, under section 362, 363 or 364(d), provided adequate protection of the interest of the holder of a claim secured by a lien on property.[1] Second, such creditor must have a claim allowable under section 507(a)(2). Third, the claim must have arisen from either the stay of action against property under section 362, from the use, sale or lease of property under section 363, or from the granting of a lien under section 364(d).

4 COLLIER ON BANKRUPTCY ¶ 507.14[1].

This priority administrative expense arises statutorily when the adequate protection lien provided.

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. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period September 9, 2024 (the commencement of this Case), through February 14, 2025, including required adequate protection payments of $731 to the SBA. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The Stipulation between Debtor in Possession and the SBA is not approved at this time, the court finding a noticed motion is required.

The court continues the hearing to 10:30 a.m. on January 30, 2025, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by January 21, 2025, with any opposition to be presented orally at the continued hearing.

January 30, 2025 Hearing

The court continued the hearing on this Motion, having granted the use of cash collateral through February 14, 2025. Order, Docket 54. A review of the Docket on January 27, 2025 reveals that Debtor in Possession has filed a proposed Plan. Docket 56. On or before January 21, 2025, Debtor in Possession was to file and serve supplemental pleadings for the further use of cash collateral and notice of the January 30, 2025 hearing.

Debtor in Possession has not filed supplemental pleadings as of the court's January 29, 2025, review of the Docket.

On December 9, 2024, a Subchapter V Plan was filed. Dckt. 56. No order setting a hearing on confirmation has been entered. [Fn.1.]

FN. 1. The voluminous text in the Order Setting Subchapter V Chapter 11 Status Conference Date (Dckt. 6), paragraph 4 is titled "Filing of Plan and Lodging of Confirmation Hearing Order." In that paragraph it

states that the plan proponent shall lodge with the court the proposed order setting the hearing for confirmation.

At the hearing, counsel for the Debtor/Debtor in Possession reports that he has been communicating with the SBA for the further use of cash collateral.

The hearing is continued to 10:30 a.m. on February 13, 2025, specially set to the Sacramento Division Calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Heritage Home Furnishings, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Authority to Use Cash Collateral is **XXXXXXX**.

4.	**25-20329-E-11 GEL-1**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. Gabriel Liberman**	**MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION , MOTION SCHEDULING DEADLINES RELATING TO A FINAL HEARING ON USE OF CASH COLLATERAL 1-30-25 [8]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on January 30, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Authority to Use Cash Collateral is granted, and the hearing is continued to xxxxxxx.

California Environmental Systems, Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral in form of account receivables, equipment, machinery, tools and materials which may be used to generate post-petition proceeds, and to grant adequate protection to the secured creditors, Bank of America, N.A., Zurich American Insurance Company, Great American Insurance Company, Collectronics of California, assignee for Gary Looney dba Aaction Rents, Internal Revenue Service and Employment Development Department, that may have an interest in the Cash Collateral.

Debtor in Possession is a full-service mechanical contractor specializing in the installation and design/build of plumbing, heating, and air conditioning systems. With a focus on serving the healthcare, institutional, commercial, and industrial sectors across the western United States. At its peak, Debtor once employed 115 team members and experienced steady growth, fueled by a dedication to its employees,

customers, and the construction industry. As of the Petition Date, Debtor employs a team of 55 professionals. Mot. 2:18-23.

Debtor in Possession provides the following table for which security interests are asserted in the cash collateral and the amount of corresponding adequate protection payments:

No.	**Recorded**	**Creditor**	**Claim Amount**	**Proposed Adequate Protection Payment**
1	2/10/2020	Bank of America, N.A.	$814,213.55	$7,000.00
2	12/3/2021	Zurich American Insurance Company	$332,045.10	$1,000.00
3	11/17/2023	Great American Insurance Company	$12,100,034.47	$2,500.00
4	2/15/2024	Collectronics of California, assignee for Gary Looney dba Aaction Rents	$7,994.89	$500.00
5	5/10/2024	Internal Revenue Service (940/941) for periods 09/30/2023, 12/31/2023	$961,332.89	$1,000.00
6	8/5/2024	Employment Development Department	$223,586.45	$1,000.00
7	11/25/2024	Internal Revenue Service (941) for period 06/30/2024	$40,052.86	$1,000.00
8	1/6/2025	Internal Revenue Service (941) for period 03/31/2024	$142,504.85	$1,000.00
			$14,621,765.06	$15,000.00

Debtor in Possession additionally proposes to use cash collateral for the expenses related to operating the business including equipment expenses, insurance expenses, payroll expenses, and other customary expenses associated with running the business. Interim Budget, Ex. A, Docket 11.

Debtor in Possession proposes that the cash collateral be approved on an interim basis through February 28, 2025, pending a final hearing, with a 15% variance permitted.

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. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period January 27, 2025, through February 28, 2025, including required adequate protection payments to the various creditors. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to **xxxxxxx**, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by **xxxxxxx** (seven days before hearing), with any opposition to be presented orally at the continued hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by California Environmental Systems, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period January 27, 2025, through February 28, 2025, and the cash collateral may be used to pay the expenses detailed in the Interim Budget filed as Exhibit A, Docket 11, granting Debtor in Possession a variance of 15% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget.
>
> **IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.
>
> **IT IS FURTHER ORDERED** that Debtor in Possession shall make the following monthly adequate protection payments:

No.	Recorded	Creditor	Claim Amount	Proposed Adequate Protection Payment
1	2/10/2020	Bank of America, N.A.	$814,213.55	$7,000.00

2	12/3/2021	Zurich American Insurance Company	$332,045.10	$1,000.00
3	11/17/2023	Great American Insurance Company	$12,100,034.47	$2,500.00
4	2/15/2024	Collectronics of California, assignee for Gary Looney dba Aaction Rents	$7,994.89	$500.00
5	5/10/2024	Internal Revenue Service (940/941) for periods 09/30/2023, 12/31/2023	$961,332.89	$1,000.00
6	8/5/2024	Employment Development Department	$223,586.45	$1,000.00
7	11/25/2024	Internal Revenue Service (941) for period 06/30/2024	$40,052.86	$1,000.00
8	1/6/2025	Internal Revenue Service (941) for period 03/31/2024	$142,504.85	$1,000.00
			$14,621,765.06	$15,000.00

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xxxxxxx**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxxxxx**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxxxxx** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

5.	**25-20329-E-11 GEL-2**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. Gabriel Liberman**	**MOTION TO CONTINUE INSURANCE COVERAGE ENTERED INTO PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED THERETO, INCLUDING BROKER FEES. AND/OR MOTION TO RENEW SUPPLEMENT, OR PURCHASE INSURANCE POLICIES O.S.T. 2-6-25 [21]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 6, 2025. By the court's calculation, 7 days' notice was provided. The court set the hearing for February 13, 2025. Dckt. 19.

The Motion Authorizing Debtor in Possession to Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 **xxxxxxx**.

The Motion Authorizing Debtor in Possession to Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations is granted.

California Environmental Systems, Inc. ("Debtor in Possession") moves this court for an interim Order pursuant to 11 U.S.C. §§ 105(a), 363 and Fed. R. Bankr. P. 6004. The Motion seeks authorization to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto, including broker fees; and (ii) renew, supplement, or purchase insurance policies in the ordinary course of business.

Debtor in Possession seeks authority to pay $64,255 which has come due and payable. The Insurance Policies are described as follows:

• Liability Insurance. The Debtor maintains three (3) general commercial liability insurance policies that provide coverage relating to, among other things, personal injury liability, property damage, advertising injury, environmental liability, voluntary compensation liability, workers' compensation liability, and travel and automobile-related liability (collectively, the "Liability Insurance Policies"). The Liability Insurance Policies also include excess liability policies and rented/lease equipment coverage. The aggregate monthly premium paid for the Liability Insurance Policies is approximately $6,316.17. These policies expire in July 21, 2025.

• Property Insurance. The Debtor maintains one property insurance policy that provide coverage for damages to the Debtor's property (the "Property Insurance Policy"). The monthly premium paid for the Property Insurance Policies is approximately $197.00. This policy expires in July 21, 2025.

• Workers Compensation Insurance. The Debtor maintains one workers compensation insurance policy that provides coverage for approximately 55 employees (the " Workers Compensation Insurance Policy"). The monthly premium paid for the Workers Compensation Insurance Policy varies based on payroll obligations owed each period and on average is approximately $14,523 per month. This policy expires in October 1, 2025.

• Pollution Insurance. The Debtor maintains one pollution insurance policy, also known as environmental insurance, which covers losses caused by unexpected pollution (the "Pollution Insurance Policy"). The annual premium paid for the Pollution Insurance Policies is approximately $4,823.72. This policy expires in August 25, 2025.

Mot. 4:18-5:5.

The insurance policies are as follows:

No.	Insurance Carrier	Policy Number	Coverage	Policy Term	Monthly Premium	Financed
1	Sentry Insurance	A02270860 01	Property	7/21/2024-7/31/2025	$197.57	No
2	Sentry Insurance	A02270860 02	General Liability	7/21/2024-7/31/2025	$1,051.33	No
3	Sentry Insurance	A02270860 03	General Liability	7/21/2024-7/31/2025	$3,881.92	No
4	Sentry Insurance	A02270860 04	Umbrella / Excess ($5M)	7/21/2024-7/31/2025	$1,382.92	No

5	Republic Indemnity Company of America	25757301	Workers Compensat-ion	10/1/2024-10/1/2025	$14,523.00	No
6	Westchester Surplus Lines Insurance Company	G71667467002	Pollution	8/25/2024-8/25/2025	$4,823.72 (billed annually)	No

Ex. B, Docket 24.

Debtor in Possession explains it pays for the cost of insurance in the ordinary course of business in monthly installments (the "Insurance Premiums") from immediately available funds, which total $21,450.00 per month. Debtor does not use a finance company or third party to finance the Insurance Premiums. *Id.* at 5:7-10.

Debtor in Possession moves this court pursuant to 11 U.S.C. § 363(c) and argues that paying the necessary insurance costs to operate the business falls within the ordinary course of business, but out of an abundance of caution, Debtor in Possession moves for authorization to pay the insurance costs.

APPLICABLE LAW

11 U.S.C. § 363(c) states:

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(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.

Collier's Treatise on this subject discusses two potential tests a court would use in determining whether a Debtor in Possession / Trustee is using property of the estate in the ordinary course. Collier's states:

> Courts have developed two commonly used joint tests for determining whether a transaction is in the ordinary course of business: (1) horizontal dimension test; and (2) vertical dimension (also known as the reasonable expectations) test.
>
> [a] Horizontal Dimension Test
> The horizontal dimension test requires the court to look to similar businesses and determines whether the transaction at issue is one that would normally be entered into by a similar business. In effect, this test is aimed at determining whether the transaction is abnormal or unusual, in which case it is probably not in the ordinary course of business, or whether it is a reasonably common type of transaction. Significantly, a transaction may be considered reasonably common even if it does not occur frequently, provided that it is an ordinary type of transaction within the business and the industry.
>
> [b] Vertical Dimension Test
> The vertical dimension test reviews the transaction from the perspective of creditors, asking whether the transaction is one that creditors would reasonably expect the debtor to enter into. This test measures the types of risks that creditors impliedly agreed to when they extended credit to the debtor and determines whether the transaction at issue is within the range of risks reasonably expected by creditors. Under this test, even a transaction that might be ordinary for similar businesses might not be ordinary for the debtor's business. For example, it might be unusual for a relatively small business to undertake a particularly large transaction, even if other larger businesses in the same industry might do so as a matter of course. On the other hand, transactions of a type that the debtor commonly engaged in, or which the debtor might have reasonably been expected to engage in prepetition, are likely to be within the ordinary course of business after the commencement of a case, whether or not common in the debtor's industry.

3 COLLIER ON BANKRUPTCY ¶ 363[1][a] & [b].

DISCUSSION

In this case, it is clear to the court the requests use of state funds to pay insurance policies would satisfy either the horizontal or vertical test courts have developed. Debtor in Possession is a full-service mechanical contractor specializing in the installation and design/build of plumbing, heating, and air conditioning systems, with a focus on serving the healthcare, institutional, commercial, and industrial sectors across the western United States. Mot. 3:6-8. Such work necessarily involves risk, either to persons or

property, especially where the work involves physical installation of these systems. Insurance is necessary to operate, and such costs would be accrued by similar businesses in the industry.

To be sure, the requested transaction is also one that creditors would reasonably expect this Debtor in Possession to enter into in order to continue to operate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion Authorizing Debtor in Possession to Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations filed by California Environmental Systems, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted. Counsel for Debtor in Possession shall propose the order consistent with this ruling and lodge it with the court.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause, the court finding payment pursuant to this Order is necessary immediately.
>
> **IT IS FURTHER ORDERED** that Federal Rule of Bankruptcy Procedure 6003 is waived for cause, the court finding payment pursuant to this Order is necessary to avoid immediate and irreparable harm.

6.	**25-20329-E-11 GEL-3**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. Gabriel Liberman**	**MOTION TO PAY PREPETITION WAGES, SALARIES, WITHHOLDING OBLIGATIONS, AND OTHER COMPENSATION AND BENEFITS AND/OR MOTION TO MAINTAIN EMPLOYEE BENEFITS PROGRAMS O.S.T. 2-6-25 [26]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 6, 2025. By the court's calculation, 7 days' notice was provided. The court set the hearing for February 13, 2025. Dckt. 20.

The Motion for Authority to Pay Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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, **xxxxxxx**

The Motion for Authority to Pay Prepetition Priority Wage Claims, Payroll-Related Local, State, and Federal Withholding Taxes, and to maintain employee benefit programs is granted.

California Environmental Systems, Inc. ("Debtor in Possession") moves this court for an order authorizing it to pay the following prepetition obligations: (a) wages, salaries, reimbursement, and other compensation; (b) payroll taxes; (c) vacation and holiday programs; and (d) health and welfare benefits provided to the Employees in the ordinary course of business ("Employee Obligations"). Debtor in Possession employees approximately 45 people as of filing the petition. The Employee Obligations are described as follows:

a. Wages, salaries, and other compensation. None.

b. Vacation and sick programs. These obligations consist of time off for vacation, illness and company holidays:

o Sick Leave. In accordance with California law, all Employees may take up to three days of sick leave per year.

o Vacation. All Employees receive two weeks of paid vacation per year after one year of service.

The Debtor desires to continue to honor its obligations for sick days and vacation on a going-forward basis. The Debtor does not have a reliable estimate that the aggregate amount of accrued vacation time as of the Petition Date. Any amounts owing for accrued vacation time is not included in the total Payroll Obligations described above.

c. Expense reimbursement and other benefits. The Debtor reimburses eligible Employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtor. These reimbursement obligations include such things as travel expenses, meals and entertainment and office supply reimbursements.

d. Health and welfare benefits. The Debtor provides health and welfare benefit plans for its Employees, including insurance plans relating to medical (health and prescription), dental, vision, and life insurance (collectively, the "Employee Health Benefits").

o Medical Plans. The Debtor maintains a medical care plans for its Employees through Kaiser Permanente, Sutter Health Plus and Humana. The Debtor funds approximately one half of the plan's cost per Employee, with the Employees paying the other one half. Additionally, Employees may add family members to the plan, but they pay 100% of the additional premium.

o Dental; Vision. The Debtor also provides all Employees with dental plan and vision plan (the "Supplemental Health Plans") administered by Blue Shield. Under the Supplemental Health Plans, Debtor pays 100% to the costs of the Supplemental Health Plans.

Mot. 4:17-5:11.

As of the Petition Date, the Debtor owe approximately $41,477.81 on account of the Employee Health Benefits. *Id.* at 5:12-13.

The Declaration of Jeanette Pierce, the Vice President, Secretary and majority shareholder of Debtor in Possession is submitted in support. Docket 28. Ms. Pierce testifies as to the facts alleged in the Motion. Ms. Pierce state the following Employee Health Benefit claims must be paid through granting this Motion:

Name	**Description**	**Amount**

Prepetition Employee Wages and Payroll	Wages	$0
Kaiser	Employee Healthcare Plan	$20,095.96
Humana	Employee Healthcare Plan	$3,563.18
Sutter Health Plus	Employee Healthcare Plan	$17,074.60
Blue Shield	Employee Healthcare Plan	$744.07

APPLICABLE LAW

11 U.S.C. § 507(a) provides, in relevant part:

(a) The following expenses and claims have priority in the following order:

. . .

> (4) Fourth, allowed unsecured claims, but only to the extent of $10,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—
>
> > (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual. . .

Such claims are often authorized to be paid during the course of a Chapter 11 case by motion when a Debtor in Possession shows the payments will assist in an effective reorganization. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 467,68 (2017) (discussing the role of "first-day" motions when bankruptcy courts authorize payment of employees' prepetition wages). Collier's Treatise on Bankruptcy states:

> Because wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be more difficult to justify "first day" orders approving payment of prepetition wages.

4 COLLIER ON BANKRUPTCY ¶ 507.06[1].

The wages and taxes to be paid are for a period within 180 days of the January 27, 2025 filing of this Bankruptcy Case.

DISCUSSION

The court finds that authorization for Debtor in Possession to pay the Pre-Petition Payroll for its Employees, as well as the local, state, and federal withholding and payroll-related taxes and to continue the employee benefit programs is in the best interest of the Estate.

Without the payment of Employee Obligations, the Employees would be less motivated to operate the business, and the Debtor in Possession would be unable to produce income for itself or creditors of the Estate.

The Motion for Authority to Pay Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes and to maintain employee benefits programs is granted, the court finding such payment is necessary for an effective reorganization.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Pay Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes and to maintain employee benefits programs filed by California Environmental Systems, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted. Counsel for Debtor in Possession shall propose the order consistent with this ruling and lodge it with the court.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause, the court finding payment pursuant to this Order is necessary immediately.
>
> **IT IS FURTHER ORDERED** that Federal Rule of Bankruptcy Procedure 6003 is waived for cause, the court finding payment pursuant to this Order is necessary to avoid immediate and irreparable harm.

7. 24-25743-E-7 NF-1 | **DONALD JOHNSON** Nikki Farris | **MOTION TO AVOID LIEN OF CACV OF COLORADO, LLC** 1-6-25 [11]

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 Creditor, creditors holding allowed secured claims, and Office of the United States Trustee on January 6, 2025. By the court's calculation, 38 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 xxxxxxx.

This Motion requests an order avoiding the judicial lien of CACV of Colorado, LLC ("Creditor") against property of the debtor, Donald L. Johnson ("Debtor") commonly known as 2719 Houghton Ave., Corning, Ca 96021 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,443.12. Exhibit B attached to the Motion, Dckt. 11. An abstract of judgment was presumably recorded; however, Debtor has not attached a copy of the abstract that has the relevant recorder information included. Moreover, Debtor has improperly attached the exhibits to the Motion in violation of LOCAL BANKR. R. 9004-2(c)(1). At the hearing, xxxxxxx

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $227,200 as of the petition date. Schedule A, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $227,200 on Schedule C. Schedule C, Docket 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Donald L. Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of CACV of Colorado, LLC, California Superior Court for Tehama County Case No. 12751, recorded on **xxxxxxx**, Document No. **xxxxxxx**, with the **xxxxxxx** County Recorder, against the real property commonly known as 2719 Houghton Ave., Corning, Ca 96021, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. 24-25163-E-11 AK INVESTMENTS, LLC
Pro Se

CONTINUED MOTION TO DISMISS CASE
11-25-24 [10]

Item 8 thru 9

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The court set the hearing for December 19, 2024. Dckt. 11.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Motion to Dismiss is xxxxxxx.

February 13, 2025 Hearing

The court continued the hearing on this Motion after issuing sanctions on Debtor for not appearing at the prior hearing. The court issued an Order to Appear on January 17, 2025, and ensured it was served on the Debtor.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

On November 14, 2024, a Chapter 11 Bankruptcy Petition was filed for Debtor AK Investments, LLC. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor. On the Petition the name Jeff Czech is typed in as an attorney for the Debtor, but Jeff Czech did not sign the Petition. Dckt. 1 at 4. The Clerk of the Court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss if the Documents were not filed. Dckt. 2. The missing documents include: the List of the Creditors holding the 20 largest unsecured claims; List of Equity Security Holders, Master Equity Security Holder Address List, Schedules A/B, D, E/F, G, H; Statement re Corporate Debtor; Statement of Financial Affairs; and Summary of Assets and Liabilities. *Id.*

The Clerk of the Court also issued a Notice to Debtor Concerning Legal Representation. Dckt. 3. This provides notice that the corporate Debtor must be represented by an attorney and cannot represent itself via its officers, managers, and representatives.

On November 25, 2024, a Motion to Dismiss Chapter 11 Bankruptcy Case was filed for the Debtor by Vishal V. Kaura, who is identified as "Authorized Representative, Manager, AK Investments, LLC. Vishal Kaura is not identified as being an attorney licensed to practice law in the State of California. Dckt. 10.

Prior Filing of Bankruptcy Cases
For Debtor - Not Represented by an Attorney

This not the Debtor's and Vishal Kaura's first foray into the world of Bankruptcy with the Debtor not represented by an attorney. The court has identified several prior bankruptcy cases by the Debtor and related entities for whom bankruptcy cases were filed without an attorney representing the limited liability company debtor.

a. AK Investments, LLC.....Chapter 11 Case No. 24-24458

i. Filed.....October 3, 2024

(1) Dismissed.....October 15, 2024.

(a) Dismissed for failure to timely file Documents, including: Schedules, Statement of Financial Affairs, List of Creditors Holding 20 Largest Unsecured Claims, and Summary of Assets and Liabilities.

ii. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor.

(1) On the Petition, in the Signature of Attorney Section, the name Pauldeep Bains is typed in, with the firm name stated to be "Sacramento Bankruptcy Lawyer." 24-24458; Petition, Dckt. 1 at 4.

iii. The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-24458.

b. In Case 24-24458, the U.S. Trustee filed a Notice of Related Cases, in which the U.S. Trustee identified the following cases having been filed by the Debtor or Vera Holdings, LLC, whose address was the same as the Debtor and Petitions for both the Debtor and Vera Holdings, LLC having been signed by Vishal V. Kaura.

i. AK Investments, LLC.....Chapter 11 Case 24-23560

(1) Case filed.....August 12, 2024

(a) Dismissed.....August 26, 2024.

(i) Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).

(2) On the Petition the name of the person signing the Petition for the Debtor is not typed in, but it appears to be the signature of Vishal V. Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.

(3) The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-23560; Dckt. 3.

ii. Vera Holdings, LLC.....Chapter 11 Case 24-22817

(1) Filed.....June 27, 2024

(a) Dismissed..... July 9, 2024

(i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).

(2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-22817; Dckt. 1 at 4. No attorney's name is typed on this Petition.

(3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the Vera Holdings, LLC must be represented by an attorney. 24-22817; Dckt. 3.

iii. Vera Holdings, LLC.....Chapter 11 Case 24-22289

(1) Filed.....May 24, 2024

(a) Dismissed..... May 31, 2024

(i) Dismissed was pursuant to an Order to Show Cause regarding the failure of Vera Holdings, LLC to be represented by Counsel. 24-22289; Order to Show Cause, Dismissal Order, Dckts. 5, 14.

(2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.

(3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing Vera Holdings, LLC and its officers, agents, and representatives that Vera Holdings, LLC must be represented by an attorney. 24-22289; Dckt. 3.

iv. Vera Holdings, LLC.....Chapter 11 Case 24-23695.

(1) Filed.....August 20, 2024

(a) Dismissed..... September 13, 2024

(i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).

(2) On the Petition the name of the person signing the Petition for the Vera Holdings, LL is written in next to the signature, and is Vishal V. Kaura. 24-23695; Dckt. 1 at 4. No attorney's name is typed on this Petition.

(3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the

Vera Holdings, LLC must be represented by an attorney. 24-23695; Dckt. 3.

(4) In connection with Case 24-23695 filed by Vera Holdings, LLC, the U.S. Trustee commenced an Adversary Proceeding and obtained a Judgment prohibiting Vera Holdings, LLC from filing a bankruptcy case for two years without obtaining authorization from the Chief Bankruptcy Judge in the District where it sought to file another bankruptcy case. 24-02181; Judgment, Dckt. 18.

California Secretary of State
Online Status of Entity Service

A review of the California Secretary of State Website online service for checking the status of corporate, LLC, and other non-living person entities provides information with respect to AK Investments, LLC, including: its principal and mailing addresses are 8850 Williamson Dr., Unit 2204, Elk Grove, California 95759, and its Agent is an individual identified as Vishal V. Kaura, 8850 Williamson Dr., Unit 2204, Elk Grove, California 95759. [Fn.1.]

FN. 1. https://bizfileonline.sos.ca.gov/search/business.

From the files in this court, Vishal Kaura, the Manager and representative of Debtor has been informed and educated on multiple prior occasions that the Debtor (and another limited liability company entity) must be represented by an attorney and cannot file bankruptcy merely through an officer or manager who is not an attorney. A search of the State Bar of California website online attorney search service discloses that there is not an attorney named "Vishal Kaura" who is licensed to practice law in California

Motion to Dismiss

The Bankruptcy Code Provides:

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

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

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;
> >
> > (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and

the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

In this case, Vishal V. Kaura, as the Authorized Representative, Manager, AK Investments, LLC has signed and filed a Motion to Dismiss the current Bankruptcy Case. Dckt. 10. In it he states that the Bankruptcy Case was filed to stop a foreclosure sale (Motion, § 1, ¶ 2), the creditor will now negotiate with Debtor, and Debtor concludes that the Bankruptcy Case is now not necessary. Motion, § 1, ¶¶ 2, 3, 4; Dckt. 10.

It appears that notwithstanding having been provided notification that the Debtor, and other non-human entities, must be represented by an attorney, Vishal V. Kaura has knowingly filed multiple bankruptcy cases for Debtor – even though Vishal V. Kaura is not an attorney licensed to practice law in California.

Motion for Relief From Stay

On December 11, 2024, U.S. Bank, N.A., as Indentured Trustee, filed a Motion for Relief From the Stay. Dckt. 17. The relief requested is not only for relief in this Bankruptcy Case, but for relief pursuant to 11 U.S.C. § 362(d)(4), which would then preclude an automatic stay going into effect with respect to the property for a two year period following the entry of the order granting 11 U.S.C. § 362(d)(4) relief.

The hearing on the Motion for Relief From the Stay is set for 10:00 a.m. on January 9, 2025.

Adversary Proceeding

The United States Trustee for Region 17 has commenced Adversary Proceeding 24-02212, against the Debtor from filing a bankruptcy case for a period of two years without first obtaining authorization from the Chief Bankruptcy Judge in the District where Debtor seeks to file another bankruptcy case. The U.S. Trustee notes in the Complaint that such a judgment has been entered against Vera Holdings, LLC, for which Vishal V. Kaura is the person signing the petition and commencing the bankruptcy cases for Vera Holdings, LLC.

January 9, 2025 Hearing

The court ordered Debtor to appear at the hearing on this Motion that was held on December 19, 2024. Debtor did not appear. Debtor has been ordered to appear at the hearing to be held on January 15, 2025, or face sanctions. Order, Docket 32.

January 15, 2025 Hearing

At the hearing, no appearance was made by Vishal V. Kaura, the Responsible Representative of the Debtor. The court ordered Vishal V. Kaura to appear, and provided notification that a $5,000.00 corrective sanction would be imposed if he failed to appear as ordered. Order; Dckt. 30. The prospective corrective sanction was ordered by the court given that Vishal V. Kaura failed to appear at the December 19, 2024 hearing as ordered (Dckt. 25) by the court.

The court believed that a potential $5,000.00 corrective sanction would be sufficient enough to have Responsible Representative Vishal V. Kaura, who was engaging in the unlicensed practice of law by

filing *pro se* pleadings and bankruptcy petitions for AK Investments, LLC, to appear at the January 9, 2025 hearing. Clearly the mere $5,000.00 corrective sanction was not sufficient. To avoid the corrective sanction, all that Vishal V. Kaura need to do was appear at the January 9, 2025 hearing.

The U.S. Trustee requested that the court continue the hearing in light of Vishal V. Kaura's failure to appear.

The court also notes that Vishal V. Kaura has filed two prior bankruptcy cases for Debtor AK Investments, LLC in pro se:

I. Chapter 11 Case 24-23560

A. Filed August 12, 2024
B. Dismissed August 26, 2024

C. Notice to Debtor Concerning Legal Representation, for which Vishal V. Kaura, Managing Member is the Responsible Representative. 24-23560; Dckt. 3.

1. The Notice includes the following language (emphasis added):

> Rule 183 of the Local Rules of Practice of the United States District Court for the Eastern District of California, specifically incorporated and made applicable in bankruptcy cases by Local Bankruptcy Rule 1001-1(c), **states that a corporation or other entity may appear only by an attorney.** Debtors who are not individuals (e.g. debtors who are corporations, partnerships, or other entities) must, therefore, be represented by attorneys. The court record in this case indicates that the debtor is a corporation, partnership, or other entity with no legal representation.

II. Chapter 11 Case 24-24485

A. Filed October 12, 2024
B. Dismissed October 14, 2024.

C. Notice to Debtor Concerning Legal Representation, for which Vishal V. Kaura, Managing Member is the Responsible Representative. 24-24458; Dckt. 3.

1. The Notice includes the following language (emphasis added):

> Rule 183 of the Local Rules of Practice of the United States District Court for the Eastern District of California, specifically incorporated and made applicable in bankruptcy cases by Local Bankruptcy Rule 1001-1(c), **states that a corporation or other entity may appear**

> **only by an attorney.** Debtors who are not individuals (e.g. debtors who are corporations, partnerships, or other entities) must, therefore, be represented by attorneys. The court record in this case indicates that the debtor is a corporation, partnership, or other entity with no legal representation.

U.S. Trustee Adversary Proceeding

On December 11, 2024, the U.S. Trustee commenced Adversary Proceeding 24-2212, in Debtor in Possession AK Investments, LLC is named as the Defendant. The U.S. Trustee states in the Complaint that a related entity, Vera Holdings, LLC filed three bankruptcy cases, all of which have been dismissed. 24-2212; Complaint, ¶ 16. The three Vera Holdings, LLC cases were filed in pro se, with Vishal V. Kaura. *Id*.; ¶ 20. A review of the Petitions filed for Vera Holdings, LLC in the other two cases, 24-22289 and 24-22817, show that they to were signed by Vishal V. Kaura.

Attorney's Name on Bankruptcy Petition in AK Investments, LLC Case 24-25163

In this Bankruptcy Case, in § 18 of the Petition it states that a person named Jeff Czech, of the firm Sacramento Bankruptcy Lawyer, is listed as the lawyer. However, Jeff Czech has not signed the Bankruptcy Petition. Dckt. 1 at 4.

The California State Bar lists a Jeffery Joseph Czech as an attorney who was admitted to practice law in 1989 and whose license is active. His address listed by the State Bar is:

Czech & Howell, APC
2400 E Katella Ave Ste 370
Anaheim, CA 92806-6132

https://apps.calbar.ca.gov/attorney/Licensee/Detail/145240.

Requests For Continuance

On January 15, 2025, a combined Motion requesting the continuance of the hearing on the Motion to Dismiss and the Motion for Relief From the Automatic Stay was filed for Debtor in Possession AK Investments, LLC. Dckt. 41. The Motion is signed by Vishal V. Kaura, the Responsible Representative of the Debtor in Possession. Additionally, there is a Declaration of Vishal V. Kaura incorporated into the end of the
Motion. *Id*.; p. 2.

In the Motion the Debtor in Possession requests that the hearings be continued until after February 1, 2025. It is stated that the attorney available to represent the Debtor in Possession on January 9, 2025, cannot now attend the continued hearing date (the hearing was continued from January 9, 2025, to January 16, 2025, due to the closure of the Court for the Memorial for the late President James E. Carter) on January 16, 2025.

In reviewing the Docket, there has been no substitution of attorney and the unidentified attorney who was to appear on January 9, 2025: (1) is not identified and (2) did not file any motions requesting a continuance for his or her client.

The Debtor in Possession further asserts that a short continuance is not requested for purposes of delay, but to allow Debtor in Possession AK Investments, LLC to retain legal counsel.

Vishal V. Kaura, the fiduciary Responsible Representative of the Debtor in Possession and the Debtor, and AK Investments, LLC have know since August 10, 2024, that AK Investments, LLC must be represented by an attorney and cannot be filing bankruptcy (here repeated bankruptcy cases) without being represented by an attorney.

Additionally, this court has provided Vishal V. Kaura with substantial advance notice of not only his being ordered to appear in person at the hearing, and continued hearing on the Motion to Dismiss, but notice that a corrective sanction would be ordered if he failed to comply with the order to appear. Even when the court had to continue the hearing from January 9, 2025, to January 15, 2025, due to the unexpected closing of the Courthouse by the Chief District Court Judge's Order that was filed on January 2, 2025 (E.D. CA District Court General Order 686), this court issued its Order continuing the hearing on the Motion to Dismiss, and telling Vishal V. Kaura that a $5,000.00 corrective sanction would be ordered if he failed to appear, on January 2, 2025.

Vishal V. Kaura was given almost two full weeks notice of the January 15, 2025 continued hearing. It was only the morning of the January 15, 2025 at 6:51 a.m., three hours before the 10:00 a.m. on January 15, 2025 hearing that the Motion to Continue was filed by Vishal V. Kaura. The objective evidence before the court is that Vishal V. Kaura, with full knowledge of the court's ordering him to appear at the January 15, 2025 continued hearing and having two weeks to organize his schedule to be present as ordered by the court, knowingly failed to appear. The filing of a Motion to Continue on the morning of January 15, 2025, was not a reasonable or good faith attempt to comply with this court's order.

The request for continuance of the hearing on the Motion for Relief From the Stay is denied.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on February 13, 2025, the U.S. Trustee having concurred with the continuance of that hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by AK investments, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **XXXXXXX**.

9. 24-25163-E-11 CAE-1 AK INVESTMENTS, LLC

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-14-24 [1]

Debtor's Atty: Pro Se

Notes:
Continued from 1/15/25, Vishal V. Kaura having failed to appear.

Order to Appear re continued Motion to Dismiss filed 1/17/25 [Dckt 52]

The Status Conference is xxxxxxx

FEBRUARY 13, 2025 STATUS CONFERENCE

JANUARY 15, 2025 STATUS CONFERENCE

Thought ordered by the court, Vishal V. Kaura, the managing member of the Debtor serving as the Debtor in Possession, failed to appear at the hearings on January 15, 2025. No attorney appeared for the Debtor in Possession. The Status Conference is continued to 10:30 a.m. on February 13, 2025, to be conducted in conjunction with the hearing on the Motion to Dismiss this Bankruptcy Case.

10. 24-25180-E-11 RFL-5 | **KAMALJIT KALKAT** | **MOTION TO EMPLOY THE OPPENHEIM GROUP AS BROKER(S)**
Robert Marticello | **1-21-25 [67]**

Item 10 thru 11

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 attorneys of record, parties requesting special notice and Office of the United States Trustee on January 21, 2025. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Employ is granted.

NUNC PRO TUNC

As a preliminary matter, Kamaljit Kaur Kalkat is seeking a "retroactive authorization" rather than *nunc pro* tunc authorization. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using nunc pro tunc and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

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

THE MOTION

Kamaljit Kaur Kalkat ("Debtor in Possession") seeks to employ Jason Oppenheim and Vidi Revelli of the Oppenheim Group ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market and sell two parcels of real property commonly known as 5762 Bellevue, La Jolla, CA, 92037 (the "Bellevue Property") and 7546 Caminito Avola, La Jolla, CA 92037 (the "Caminito Avola Property").

The Declaration of Jason Oppenheim is submitted in support of the Motion. Docket 69. Mr. Oppenheim testifies neither he, Vidi Revelli, nor the firm represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶¶ 7-14, Docket 69.

DISCUSSION

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Jason Oppenheim and Vidi Revelli of the Oppenheim Group as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Residential Listing Agreements filed as Exhibits 1 and 2, Docket 70. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Kamaljit Kaur Kalkat ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective January 17, 2025, and Debtor in Possession is authorized to employ Jason Oppenheim and Vidi Revelli of the Oppenheim Group as Broker for Debtor in Possession.

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

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

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

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

11. 24-25180-E-11 RFL-6 | **KAMALJIT KALKAT** **Robert Marticello** | **MOTION TO EMPLOY CHICO GINTER & BROWN AS BROKER(S) 1-27-25 [76]**

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 attorneys of record, parties requesting special notice and Office of the United States Trustee on January 27, 2025. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Employ is granted.

Kamaljit Kaur Kalkat ("Debtor in Possession") seeks to employ Chico Ginter & Brown ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market and sell the real property commonly known as 7071 River Road in Colusa, California 95932 ("Property").

The Declaration of Terry A. Cheney, broker at Chico Ginter & Brown, is submitted in support of the Motion. Docket 78. Mr. Cheney testifies neither he nor the firm represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶¶ 6-14, Docket 78.

DISCUSSION

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee,

or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Chico Ginter & Brown as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit 1, Docket 79. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Kamaljit Kaur Kalkat ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective February 13, 2025, and Debtor in Possession is authorized to employ Chico Ginter & Brown as Broker for Debtor in Possession.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

FINAL RULINGS

12. 24-22667-E-7 MJP-3 | **THU HUYNH / HONG VUONG** | **CONTINUED MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC**
Michael Primus | **12-12-24 [37]**

Final Ruling: No appearance at the February 13, 2025 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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 12, 2024. By the court's calculation, 42 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.

CONTINUANCE OF HEARING

Change From Posted Final Ruling
for January 23, 2025 Calendar

The court posted a Final Ruling on this Motion on January 22, 2025, stating that it was granted and the lien was avoided. However, in a post-hearing review of the pleadings and exhibits the court noted the following inconsistencies:

A. The Motion states that the Debtor seeks to avoid a Judicial Lien held by Portfolio Recovery Associates, LLC. Mtn, p. 1:24-26; Dckt. 37.

B. The State Court Action from which the judicial lien is stated to relate is identified as Portfolio Recovery Associates, LLC v. Thu Huynh, California Superior Court for the County of San Joaquin, Case No. STK-CV-LCCR-2022-1097. *Id.*; p. 2:14-15.

C. The Abstract of Judgment is identified as having been recorded on March 22, 2024 in San Joaquin County, Doc. No. 2024-024056. *Id.*; p. 2:16-17.

D. A copy of the Abstract of Judgment is filed as Exhibit A in support of the Motion. *Id.*; p. 3:14-15.

The Abstract of Judgment filed as Exhibit A; Dckt. 39 at 7; identifies the judgment debtor as Hong D Vuong, one of the debtor's in this Bankruptcy Case.

The judgment creditor is identified as Capital One Bank (USA), N.A. See Abstract, ¶ 3; Dckt. 39 at 7. The judgment creditor is not identified as Portfolio Recovery Associates, LLC.

On Amended Schedule D; Exhibit 3, Dckt. 39 at 14; identifies Capital One as having a judgment lien encumbering the Property that secures Capital One's claim. It states that the Capital One abstract of judgment was recorded on August 2, 2023. The abstract of judgment provided by Debtor as Exhibit A has a recording date of August 2, 2023, and is Doc. No. 2023-060618. The Capital One abstract of judgment relates to County of San Joaquin Case No. STK-CV-LCCR-2022-0007387.

On Amended Schedule D; Exhibit C, Dckt. 39 at 15-16; Debtor lists Portfolio Recovery Associates, LLC as having two claims secured by judgment liens, with the abstracts of judgments being recorded on March 22, 2024 and June 12, 2024.

Thus, it appears that a clerical error may have occurred and the wrong abstract of judgment was attached as Exhibit A in support of this Motion.

The court continues the hearing to afford Debtor the opportunity to file supplemental pleadings that provide a copy of the correct abstract of judgment as an exhibit.

The Hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on February 13, 2025. On or before February 4, 2025, Debtor shall file an serve supplemental pleadings to provide the court with a properly authenticated copy of the abstract of judgment securing the claim of Portfolio Recovery Associates, LLC to be avoided.

REVIEW OF THE MOTION

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against property of the debtor, Thu Yen Huynh and Hong Duy Vuong ("Debtor") commonly known as 2901 Highgate Lane, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,379.64. Exhibit A, Dckt. 46. An abstract of judgment was recorded with San Joaquin County on March 2, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $600,000.00 as of the petition date. Schedule A at 10, Docket 1. The unavoidable consensual liens that total $243,021.00 as of the commencement of this case are stated on Debtor's Schedule D. Am. Schedule D at 8, Docket 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $400,000.00 on Schedule C. Am. Schedule C at 4, Docket 14.

February 13, 2025 Hearing

Debtor filed their supplemental pleadings in the form of a Declaration on February 3, 2025. Docket 46. Debtor informs the court that counsel mistakenly included the wrong abstract of judgment in the original set of pleadings. Attached as Exhibit A to the supplemental pleadings is the correct abstract of judgment. With this issue clarified, the Motion is granted.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Thu Yen Huynh and Hong Duy Vuong ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, LLC, California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2022-10907, recorded on March 22, 2024, Document No. 2024-024056, with the San Joaquin County Recorder, against the real property commonly known as 2901 Highgate Lane, Tracy, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. 18-27974-E-7 KJH-3 | **JEROD KENOYER** Nikki Farris | **MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)** **1-24-25 [114]**

Final Ruling: No appearance at the February 13, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on January 6, 2025. However, the pleadings were not filed with the court until January 24, 2025.

By the court's calculation, 20 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). When operating from the date the moving papers were filed, the Motion is 15 days late of the required notice period.

In light of the very modest amount of the fees and expenses for the Accountant, $1437.50, the court shortens the notice period to the time given and issues a final ruling hereon.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Kimberly Husted and the Estate of Jerod K. Kenoyer, makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 21, 2024, through January 4, 2025. The order of the court approving employment of Applicant was entered on October 19, 2022. Dckt. 64. Applicant requests fees in the amount of $1,437.50 and costs in the amount of $73.59.

APPLICABLE LAW
Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include preparing Federal and California Estate Income Tax Returns as well as preparing this Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Preparing Amended Tax Returns After Change in Federal Tax Law: Applicant spent 2.3 hours in this category.

Preparing the Fee Application: Applicant spent 0.8 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	0.2	$445.00	$89.00
Michael Gabrielson	2.9	$465.00	$1,348.50
Total Fees for Period of Application			$1,437.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $86.36 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	----------	$54.39
Copying Charges	----------	$19.20
Total Costs Requested in Application		$73.59

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,437.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $73.59 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$1,437.50
Costs and Expenses	$73.59

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Kimberly Husted and the Estate of Jerod K. Kenoyer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael Gabrielson is allowed the following fees and expenses as a professional of the Estate:
>
> Michael Gabrielson, Professional employed by the Chapter 7 Trustee

Fees in the amount of $1,437.50
Expenses in the amount of $73.59,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for Chapter 7 Trustee Kimberly Husted and the Estate of Jerod K. Kenoyer.

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

14. 24-25774-E-7 SARA MENDOZA
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-13-25 [15]

Final Ruling: No appearance at the February 13, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on January 15, 2025. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $34 due on December 30, 2024.

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

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

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

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

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

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