UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 27, 2025 at 10:30 a.m.

1.	**24-25180-E-11** **RFL-7**	**KAMALJIT KALKAT** **Robert Marticello**	**MOTION TO EMPLOY DUNDON ADVISERS LLC AS FINANCIAL ADVISER(S)** **2-7-25 [82]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties in interest, and Office of the United States Trustee on February 7, 2025. By the court's calculation, 20 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.

Debtors in Possession in this jointly administered case, Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K") seek to employ Dundon Advisers LLC ("Advisor," "Dundon") as their financial advisor pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. *See generally* Mot., Dckt. 82. Kalkat and Diamond K seek the employment of Advisor to provide financial advisory services in preparation of a Chapter 11 proceeding. *Id.* at 3-9.

Kalkat and Diamond K argue that Advisor's appointment and retention is necessary to enhance the restructuring efforts of Debtor's complex operations. Kalkat and Diamond K will receive the following services:

1. business and financial advice;
2. assistance in preparation for the Section 341 meeting of creditors and the preparation of all other analysis as required in a Chapter 11 plan;
3. participation in any efforts to raise capital or sell assets;
4. to the extent requested by Debtor in Possession, furnishing a chief restructuring officer or other officer (but not members of the board of managers); and
5. provide testimony, declarations, certificates and affidavits.

Mot. 3:9-21, Dckt. 82.

Kalkat and Diamond K further request that the firm's employment be approved retroactive to the date of Dundon's retention, which is December 4, 2024. Mot. 7:7-21, Dckt. 82. This exceeds the presumptive 30-day order set forth in Local Rule 2014-1(b)(1). Dundon claims that it did not file its employment application earlier because Dundon and Debtors' counsel prioritized more pressing matters in the Debtor's case such as the preparation of the Debtor's bankruptcy schedules and statement of financial affairs. Decl. 6:18-27, Dckt 85.

Eric Reubel, a Managing Director of Dundon Advisers LLC, testifies that he entered into an engagement letter with the Kalkat and Diamond K on December 4, 2024. Decl. 2:17-18, Dckt. 85. He further testifies that Dundon is primarily responsible for providing financial advisory services to the Debtors, including business and financial analysis. *Id.* at 13-17. Eric Reubel testifies he and the firm do not represent or hold any interest adverse to Debtors or to the Estates and that they have no connection with Debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mot. 6:1-5, Dckt. 85.

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 Advisor, considering the declaration demonstrating that Advisor 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 Dundon Advisers LLC as Financial Advisor for the Chapter 11 Debtors in Possession. 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 Debtors in Possession in this jointly administered case, Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion to Employ is granted, effective December 4, 2024, and Kalkat and Diamond K are authorized to employ Dundon Advisers LLC as Financial Advisor for Kalkat and Diamond K.
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> **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 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.

2. **23-21205-E-7 BLF-7** | **JERAMIE SABELMAN** / **Michael Hays** | **MOTION FOR COMPENSATION FOR TMC AUCTION, INC., AUCTIONEER(S) 1-30-25 [104]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, other parties in interest, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Allowance of Professional Fees is granted.

Nikki. B. Farris, the Chapter 7 Trustee, makes a Supplemental Application for Compensation for TMC Auction, Inc. ("Auctioneer"). On July 21, 2023, the court entered an Order authorizing Auctioneer's employment and approving commission of 20% on the gross sales price of the property. Order, Docket 84. The commission was ordered not to exceed $13,740; however, the court permitted Auctioneer to seek a higher amount of fees by simple supplemental motion showing the reasonableness of the requested fees. *Id.*

Here, Auctioneer grossed $97,100 in selling assets of the Estate, which is far in excess of the estimated net value. Mot. 3:6-8. Auctioneer seeks a rate of 20% in connection with his work in generating funds for the Estate in excess of what was originally estimated, totaling a commission of $19,420. Auctioneer also seeks reimbursement of $3,025 in expenses. This court authorized expenses not to exceed $3,195 in its Order employing Auctioneer. Docket 84.

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 Auctioneer's services for the Estate include selling various items of property of the Estate, including five motor vehicle and a liquor license. The record shows that Auctioneer's efforts created a return for the Estate higher than anticipated, especially with regard to the liquor license. The liquor license was originally estimated to be worth from $18,000 to $24,000, and Auctioneer sold the liquor license for $50,000. The Estate has $97,100 of unencumbered monies resulting from these efforts. The court finds the services were beneficial and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED
Fees

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

Selling the Liquor License: Auctioneer spent 52 hours in this category. Auctioneer's time included review of the target market for advertising (7.0 hours), the marketing of the Liquor License (7.0 hours), oversight of the bidding during the auction (7.0 hours), communications with interested purchasers (7.0 hours), and communications with the broker for the buyer regarding the procedure and appropriate documentation necessary to transfer the license (7.0 hours). Further, Mr. Papp and TMC had multiple communications with buyer's broker and with Ms. Farris and her counsel, regarding the significant delay in the process due to oversight by the California Department of Alcoholic Beverage Control ("ABC") including, for example, changes to the buyer's menu offerings for approval by ABC (7.0 hours). This time also included review and preparation of multiple forms to be completed and delivered to ABC to complete the sale (5.0 hours), and communications with title and escrow regarding the same (5.0 hours). Mot. 3:20-4:3.

Costs & Expenses

Auctioneer also seeks the allowance and recovery of costs and expenses in the amount of $3,025 pursuant to this application. The court allows these expenses, these expenses being within the amounts previously permitted by the court.

FEES AND COSTS & EXPENSES ALLOWED
Fees
Percentage Fees

The court finds that the fees computed on a percentage basis recovery for the Estate are reasonable and a fair method of computing the fees of Auctioneer in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $19,420 pursuant to 11 U.S.C. § 330 for these services provided. The Chapter 7 Trustee is authorized to pay these fees from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Costs in the amount of $3,025 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.

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

Fees	$19,420
Costs and Expenses	$3,025

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 Nikki. B. Farris, the Chapter 7 Trustee, making a Supplemental Application for Compensation for TMC Auction, Inc. ("Auctioneer") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that TMC Auction, Inc. is allowed the following fees and expenses as a professional of the Estate:
>
> TMC Auction, Inc., Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $19,420
> Expenses in the amount of $3,025,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Auctioneer for the Chapter 7 Trustee and Bankruptcy Estate.
>
> **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.

3. 24-23905-E-12 BJ-1	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION**	**CONTINUED MOTION TO DISMISS CASE OF SHENANDOAH INVESTMENT PROPERTIES, INC.**
	David Goodrich	
Item 3 thru 9		**1-27-25 [288]**

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 27, 2025. By the court's calculation, 31 days' notice was provided. 21 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Dismiss is xxxxxxx.

Secured Creditor the Prudential Insurance Company of America ("Movant") moves this court for an order dismissing the case of Shenandoah Investment Properties, Inc. ("SIP, "Debtor in Possession"). Movant makes its request pursuant to 11 U.S.C. §§ 101(18)(B), 101(19), 101(21), 105, 109(f), and 1208. Specifically, Movant states:

1. Debtor is not eligible for relief under Chapter 12, including on the grounds that:

   a. less than 80% of the value of Debtor assets do not relate to its farming operation; and/or

   b. less than 50% of its aggregate noncontingent liquidated debt arise out of a farming operation of the Debtor. [Fn.1.]

   Debtor SIP also has the burden of demonstrating that Mr. Deaver conducts a farming operation. Debtor SIP is not eligible for relief under

Chapter 12 as a matter of law including for reasons it conducts no farming operation. Mot. 2:17-22.

FN. 1. It appears that this statement may contain a typo. 11 U.S.C. § 101(18)(B) provides that for a corporation to be a family farmer (emphasis added):

> (i)**more than 80 percent of the value of its assets** consists of assets related to the farming operation;
>
> (ii)its aggregate debts do not exceed $11,097,350 and **not less than 50 percent of its aggregate noncontingent, liquidated debts** (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; . . . .

The use of the double negatives, less than 80% of the Debtor's assets do not relate to the farming operation, could be read to say that more than 80% of the Debtor's assets relate to farming operations.

Additionally, the value of assets and the percentage of debts relating to farming operations are not and/or conditions, but ones in a series of required conditions to qualify for Chapter 12 relief.

From the totality of the pleadings, the court6 takes the and/or and the less than 80% of the value of the assets do not relate to farming operations as clerical errors.

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2. Debtor SIP, a separate California corporation, operated a retail bed and breakfast and retail wine sales through its tasting room and internet wine club sales, and did not and does not conduct any farming operation and did not grow any farm products. *Id.* at 5:20-22.

3. Debtor, under penalty of perjury, identified its business in its 2022 and 2023 tax returns as one of retail "HOSPITALITY" and the retail product and services as "B&B/WINE TASTING". These retail operations of Debtor SIP are not a farming operation as a matter of law. *Id.* at 6:4-9.

4. Debtor only sold and currently sells retail wine at its leased wine tasting room facility, as well as through its over 800-member internet wine club. Selling wine retail in a tasting room or by means of an internet wine club is not a farming operation. *Id.* at 6:13-15.

5. Debtor does not farm any vineyard or produce or raise any farm crop or any farm products. Debtor SIP' s Schedules confirm that it has no crops, whether planted or harvest, and owns no farm animals. *Id.* at 6:20-22.

6. The bulk of Debtor SIP's purchased wine grapes are crushed, fermented, stored and bottled by third party wineries offsite of Debtor SIP's leased property, currently by the wineries known as Drytown Cellars and Miraflores Winery. Having third party wineries always crush, process, ferment, bottle and store Debtor SIP' s purchased wine grapes is not a farming operation by Debtor SIP. *Id.* at 6:28-7:3.

Debtor in Possession's Opposition

Debtor in Possession filed an Opposition on February 13, 2025. Docket 347. Debtor in Possession states:

A. Prudential has, through its own documents, admitted SIP is part of a farming operations. Prudential's loan documents, security agreement and UCC-1 financing statement are chalk full of admissions that its loan was to a farm and was to be used for crops and farming equipment. Opp'n 7:27-8:3, Docket 347.

On this point, the related Debtor entities obtained a combined loan from prudential. It is not disputed that at least one of the borrowers was a farming operation. (This is Deaver Ranch, the business operation that the Debtors in Possession are discussing shutting down.) The court does not read there being admissions of every borrower being an agricultural, farming business, but that given the closely related and control relationship between the various borrowers, the collective reference was used to make sure all the bases were covered in the event that "farming business" got transferred from one related entity to the other.

B. The Court has the power to bind Prudential to its admissions of fact in its loan documents, which Prudential chose to include as part of its evidence in support of its Motion, and estop Prudential from taking a position contrary to its loan and security agreement because Prudential's admissions are conclusively binding upon Prudential. *Id.* at 8:11-14.

C. The three cases are inextricably connected by, among other things, the Prudential loan; Prudential's loan documents appear to concede this fact. Further, the Deaver Ranch and SIP cases are so interconnected that the farming operations at the vineyard, which are promoted through SIP's wine, should not be severed by dismissal of SIP's case. The collective operations of Deaver Ranch, SIP and the Deavers constitutes a "family farm" for eligibility purposes. *Id.* at 9:3-8.

D. SIP is a corporation with 100% of its stock held by Ken and Jeanne Deaver.

E. Under the totality of the circumstances, SIP believes it qualifies for chapter 12 under the liberal examination what constitutes a family farm. As explained above, SIP is an integral, inextricable part of the collective farming efforts of Deaver Ranch and the Deavers. Although SIP does not receive its income from traditional farming operations, the totality of the Deaver farming operations are dependent upon SIP's production of wine. Without SIP's tasting room, which features Deaver Ranch wine and lamb,

Deaver Ranch and the Deavers' farming operations will collapse. Collectively, SIP and Deaver Ranch constitute the Deavers' farming operations. *Id.* at 10:14-21.

F. Prudential's loan is more than 50% of the total undisputed debt in each of the three bankruptcy cases. Prudential's loan unequivocally refers to a "farm," "farm equipment" and "farming operations." *Id.* at 10:26-28.

Movant's Reply

Movant filed a Reply on February 21, 2025. Dockets 367. Movant also filed a list of evidentiary objections on the same date at Docket 366. In its Reply, Movant states:

A. Debtor in Possession has not successfully refuted Movant's arguments for dismissal. Rather, Debtor in Possession is relying on other farm operations of related cases to make it eligible for Chapter 12.

B. Mr. Deaver's own testimony at the original 341 Meeting shows Mr. Deaver admitting SIP does not engage in any type of farming activity. Reply at 8:3-18.

C. There are problems with Mr. Deaver's Declaration in support of the Opposition.

APPLICABLE LAW

11 U.S.C. § 109(f) defines when a debtor may file under Chapter 12. That section states:

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

A "family farmer," is defined in the Bankruptcy Code as:

(A)individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $11,097,350 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i)the taxable year preceding; or

(ii)each of the 2d and 3d taxable years preceding;

> the taxable year in which the case concerning such individual or such individual and spouse was filed; or
>
> (B)corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and
>
> (i)more than 80 percent of the value of its assets consists of assets related to the farming operation;
>
> (ii)its aggregate debts do not exceed $11,097,350 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and
>
> (iii)if such corporation issues stock, such stock is not publicly traded.

11 U.S.C. § 101(18). The operative term for purposes of this Motion is whether an individual or corporate debtor is engaged in a farming operation. "Farming operation" is defined as:

> The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

At least two Circuits have differed in determining what defines a "farming operation." On one hand, the Seventh Circuit held that a farming operation must involve "traditional risks of farming." *In re Armstrong*, 812 F.2d 1024, 1028 (7th Cir. 1986). For instance, in *Armstrong*, the Seventh Circuit rejected a debtor's addition of rental income from rented farm land under a Chapter 12 because the debtor received the rent money "in cash and up front." *Id.* at 1027. Since the debtor in *Armstrong* would have received the rent money regardless of disease or bad weather–which is a risk involved in farming–the debtor was thus "insulated from the traditional risks of farming." *Id.* at 1028. Therefore, the Seventh Circuit found that the renting of a farmland in which a debtor receives payment up front is not a farming operation as defined under the Bankruptcy Code. *Id.*

On the flip side, the Eight Circuit rejected the Seventh Circuit's interpretation of a "farming operation;" instead finding that the "inquiry requires courts to identify those farming activities engaged in or owned or operated by someone claiming statutory 'family farmer' status and then to determine whether that individual received more than fifty percent of his or her gross income in the relevant year form those activities." *In re Easton*, 883 F.2d 630, 632 (8th Cir. 1989). Indeed, the Eight Circuit held that the even if a debtor received rent up front, such income may still qualify as a farming operation so long as there is some "relation to his farming activities prescribed by the words of [§101(18)]." *Id.* As such, if the debtor can show that the activity was "an integral part of debtor's farming operation," then it may sufficiently qualify as a farming operation as defined in § 101(18). *Id.* (internal citation and quotations omitted); *see also In re Tim Wargo & Sons, Inc.*, 869 F.2d 1128, 1130 (8th Cir. 1989) (finding that a member of the debtor's family

"must at minimum play an active role in the farming operation taking place on its land" to be a farming operation).

The Eastern District of California in the Sacramento Division leans into the Seventh Circuit's definition. *See In re Gibson*, 355 B.R. 807, 810 (Bankr. E.D. Cal. 2006), with the Hon. Michael McManus concluding that a rental of farmland is not a farming operation as it shifts the responsibility for farming to someone else and avoiding the risks inherent in farming). As Judge McManus explained:

> A farming operation "includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." See 11 U.S.C. § 101(21). While the use of the word "includes" indicates that section 101(21) is not meant to be an exhaustive definitional list, to be considered a farmer a debtor must be engaged in an activity that subjects the debtor to the risks traditionally associated with farming. *See Armstrong v. Corn Belt Bank (In re Armstrong)*, 812 F.2d 1024 (7th Cir. 1986) (rental of farmland is not considered a farming operation because the debtor bore none of the traditional risks associated with farming).
>
> Section 101(18) requires that a family farmer be "engaged" in a farming operation. By requiring a debtor to be engaged in a farming operation, Congress limited chapter 12 eligibility to true farmers and excluded speculators and investors who use farm losses to shelter non-farm income.
>
> Section 109(f) limits eligibility for chapter 12 relief to family farmers "with regular income." That is, a farmer otherwise meeting the definition of a family farmer must also have "annual income . . . sufficiently stable and regular to enable such family farmer to make payments under a plan. . . ." See 11 U.S.C. § 101(19).

In re Gibson, 355 B.R. at 809-810.

The Northern District of California similarly finds that "farming operations" are "generally held to be those activities that subject the debtor to the risks traditionally associated with farming." *In re Powers*, No. 10-14557, 2011 WL 3663948 at *1 (Bankr. N.D. Cal. Aug. 12, 2011) (holding that a sale of land is not a farming operation "unless it is shown to be an inherent part of active farming").

A debtor bears the burden of proof in establishing that the farming operation in question is one that involves "traditional risks of farming."*Armstrong*, 812 F.2d at 1028; *Gibson*, 355 B.R. at 810; *see also In re Sohrakoff*, 85 B.R. 848, 850 (Bankr. E.D. Cal. 1988) (holding that the burden of proof of establishing eligibility for bankruptcy relief under a Chapter 12 lies with the party who files the petition).

In reviewing these requirements necessary for a debtor to qualify for Chapter 12 relief, Collier on Bankruptcy provides the following analysis:

> In contrast to the definition of "family farmer with regular annual income," the definition of "family farmer" is detailed and precise and was carefully drafted to limit chapter 12 eligibility. The definition of family farmer is contained in section 101 and is divided into two parts. . .

> For a corporation or partnership to qualify as a family farmer, a different four-part test must be met. The corporation or partnership must:
>
> (1)have more than 50 percent of the outstanding stock or equity in the corporation or partnership held by one family, or by one family and the relatives of the members of the family and the family or the relatives of the family must conduct the farming operation;
>
> (2)have at least 80 percent of the value of the corporations's or partnership's assets relate to the farming operation;
>
> (3)have aggregate debts that do not exceed $11,097,350; and
>
> (4)have at least 50 percent of the corporation's or partnership's aggregate noncontingent, liquidated debts (exclusive of a debt for a dwelling owned by such corporation or partnership, so long as the dwelling is used as a principal residence by one of the shareholders or partners, unless the debt for the dwelling arose out of the farming operation) arise out of a farming operation owned or operated by the corporation or partnership.

2 COLLIER ON BANKRUPTCY ¶ 109.07.

The court may grant a motion to dismiss a chapter 12 case for cause. 11 U.S.C. § 1208(c). Eligibility is a for cause reason for dismissal.

DISCUSSION

The question the parties present before the court is simply whether SIP fits the statutory definition of family farmer. Movant is alleging that SIP cannot fit this definition as none of SIP's activities and debts arise out of a farming operation. By SIP's accord, SIP engages in the following activities:

> SIP was established in 1985. SIP sells approximately 2,500 - 3,000 cases of wine annually, primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members. Its assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels and tumblers.
>
> SIP produces 10 different wines that are a product of 10 different vineyards at Deaver Ranch. Specifically, SIP produces varietal wines such as zinfandel, alicante, sangiovese, petite syrah, and port. *Id*. Each of the 10 different wines produced by SIP showcase the various "terroir" characteristics of the Deaver Ranch's diverse vineyards.
>
> SIP is the promotional arm of Deaver Ranch and its wine grapes. SIP purposefully produces different styles of wines to cater to different wine makers. Id. SIP's targeted wine making aids Deaver Ranch in luring lucrative contracts for the sale of wine grapes in bulk to other wineries. SIP obtains raw material (mainly grapes), with nearly all of the grapes provided by Deaver Ranch, and produces wine that is sold at the Deaver's flower farm located on the Deaver's farm. As a homage to the

> high-quality grapes grown by the Deavers at Deaver Ranch, SIP uses the name "Deaver Vineyards" on its wine labels and prominently promotes grapes grown at Deaver Ranch at its tasting room. The SIP tasting room attracts customers from all over the country that often benefit Deaver Ranch by spreading information about the quality of Deaver Ranch's wine grapes throughout the entire wine industry.

Opp'n 3:1-19.

In reviewing the above, the Debtor in Possession appears to argue that these three entities are just three intertwined entities without any separate distinction. Of that Debtor SIP operates a "liquor store and bar" from which it sells wine, and also has a marketing division to help farmers (here the Deaver Ranch Debtor sell its grapes).

Prudential informs the court that SIP receives it grapes from not only Deaver Ranch but a variety of vineyards, and SIP contracts the actual wine-making process out to third parties in many instances. We also have the testimony of Mr. Deaver informing the court that SIP does not engage in typical farming operations to the best of his knowledge.

In opposing the Motion, SIP urges the court to consider that Prudential has admitted itself on the loan documents that SIP engages in a farming operation, and if that admission is not sufficient, then the court should view the three related cases as an entire farming operation when considered together.

As to the first argument, it is true that Prudential referred to farming practices and a farming operation in its loan documents. *See* Ex. 1 at 15, Docket 294. However, this argument fails to address the fact that Prudential has its loan cross-collateralized with assets owned by Deaver Ranch, and Deaver Ranch is undisputably a farming operation. It may be that Prudential was describing the operations of deaver ranch, and not SIP, in its loan documents.

Moreover, SIP presents no law as to how the court can borrow another Chapter 12 debtor's status as its own, and the court has not found any on its own accord. SIP asks the court to view the three related cases as a single operation, and without each other, the single operation would cease to exist. Therefore, SIP concludes with all three operations of the three separate Debtors working together, SIP is a farming operation for eligibility purposes. This begins to sound in the nature of the legal separateness as represented by these three entities was a "fiction" and not respected by these Debtors and their principals.

Here, the owners of the Debtors, Kenneth and Mary Deaver, chose to create two corporations to carry on their respective business operations. Deaver Ranch, Inc. would grow the grapes and then sell them. The buyer, in substantial party, was SIP, which then had the grapes crushed and processed into wine by third-parties, receive back the bottled and bulk wine, and then SIP would operate its wine cellar and club to market and sell SIP's wine.

The language of the Code itself says nothing of borrowing actions from other related chapter 12 entities in deciding eligibility. Rather, the Code directs the court to look at and examine the nature of a corporate Chapter 12 debtor's actions and debts.

SIP's actions before the court appear to involve the sale and marketing of wine, hospitality (the B&B formerly operated by SIP), and the running of a "bar" where wine was served to customers. None of those actions sound in farming. SIP does not own land, it does not produce crops, and it does not raise

livestock. If the court were to find SIP's actions and related debts to constitute a farming operation, then by similar reasoning vodka or gin bars or breweries would also be eligible for Chapter 12 status. Such an outcome is not reasonable. As Collier's Treatise has stated, "the definition of 'family farmer' is detailed and precise and was carefully drafted to limit chapter 12 eligibility."

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by Secured Creditor the Prudential Insurance Company of America ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxx**.

4.	**24-23905-E-12 BJ-2**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich**	**MOTION TO DISMISS CASE OF KENNETH HENRY DEAVER AND MARY JEAN DEAVER 2-3-25 [305]**

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 February 3, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Dismiss is xxxxxxx.

Secured Creditor the Prudential Insurance Company of America ("Movant") moves this court for an order dismissing the case of Kenneth Henry Deaver and Mary Jean Deaver ("Debtor in Possession"). Movant makes its request pursuant to 11 U.S.C. §§ 101(18)(A), 101(19), 101(21), 105, 109(f), and 1208. Specifically, Movant states (with the court reformatting some of the text to make the elements more readable:

A.

(a) The Deavers'' aggregate debts exceed $11,097,350;

(b) it appears that less than 50% of the aggregate noncontingent, liquidated debts on the date the case was filed rise out of a farming operation owned and operated by the individual Deavers;

(c) it appears that less than 50% of the Deavers' gross income arose from farming operations in the preceding tax year or in each of the second and third tax years preceding the filing; and

(d) the Deavers do not appear to be involved in a farming operation. The Deavers have the burden of demonstrating that they are eligible for Chapter 12 relief. Mot. 2:18-24.

B. Much of Debtor in Possession's real property is in a revocable trust, and only the Deavers' beneficial interest in that trust are property of the Estate. Mot. 5:18-27.

C. There is misinformation on the Schedules as Debtor in Possession has scheduled these real properties and others on their Schedules as their own, including Deaver Ranch's grape vineyards, but they are not property of this Estate. *Id.* at 6:1-15.

D. Amador Flower Farms is not a sole proprietorship but is a separate entity. *Id.* at 7:4-9. [Fn. 1.]

FN. 1. Movant directs the court to the Debtors' Schedules for statements by the Debtors' that Amador Flower Farm is a separate legal entity, a partnership.

In the Petition, the Debtors state that they are sole proprietors of a business named Amador Flower Farm. Petition, ¶ 12; Dckt. 1.

On Schedule A/B the Debtors state that they have an interest in a farm-related property, they have 35-40 sheep, they have crops consisting of grape vines that Deaver Ranch maintains, and various vehicles and trailers. *Id.*; Sch A/B, ¶¶ 46-49.

Debtors also list having the Amador Flower farm as a sole proprietorship. *Id.*; ¶ 53.

On the Statement of Financial Affairs, ¶ 27, the Debtors state that they have been operating the Amador Flower Farm sole proprietorship from 1990 to the current date. *Id.*

E. Prudential is informed that the Deavers's total aggregate debts as of the petition date total at least $11,952,415.60. This does not factor in the recent claim, Claim No. 18-1, of the IRS in Deaver Ranch reflecting an unpaid tax liability of $736,453.91, where it appears that the Deavers may have liability for portions of the IRS claim for at least those sums identified as FICA and Excise Taxes, which exceeds $200,000. The total aggregate debts as of the petition date exceeds the jurisdictional cap of $11,097,350 and the Deavers are not eligible for Chapter 12 relief for this reason alone. *Id.* at 8:7-13.

F. More than 50% of their aggregate noncontingent, liquidated debts on the date the case was filed did not arise out of a farming operation. Prudential's own indebtedness of $4,892,196.40 did not arise out of farming operations. *Id.* at 8:14-26.

G. Moreover, it appears that less than 50% of the Deavers' gross income arose from farming operations in the preceding tax year or in each of the second and third tax years preceding the filing, and Debtor in Possession is not engage din a farming operation currently. *Id.* at 8:27-9:5.

H. Even if Amador Flower Farm is not a separate entity, it is not clear that the Flower Farm satisfies Chapter 12 status. *Id.* at 9:20-10:3.

I. The totality of the circumstances weigh in favor of finding Debtor in Possession is not eligible for Chapter 12 relief.

Debtor in Possession Opposition

On February 25, 2025, the Debtors in Possession filed their Opposition. Dckt. 385. (This Motion having been noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), opposition could be stated orally at the hearing.) In working to get the tentative and final rulings out for posting on February 27, 2025, the court has conducted only a quick review of the Opposition and supporting pleadings.

It is asserted that for the first 8 months of 2024, $82,095 of the Debtors' total income of $112,117 income came from farming. For the claims in this case, the Debtor in Possession reports that the total amount of claims filed as of the claims bar date total ($6,807,798.34), which is less than the ($11,097,350) limit.

The Debtors in Possession state that a significant portion of the secured debt owed by the Debtors relates to Kenneth Deaver buying out other family members' interest in the land and farm on which the grapes are grown. The Debtors in Possession argue that since this money used to buy out Mr. Deaver's other family members' interests, then this constitutes "farm related debt" since it was done to maintain the farming operation.

The Debtors in Possession state that since the Debtors received substantial "passthrough income" from other entities that were farming operations, that is farm income since it is the earning from the farming operation passed through the Debtors.

The Declaration of Kenneth Deaver is provided in support of the Opposition. Dckt. 286. He testifies that when he stated at the 341 Meeting that the various properties into other entities, he believed that the properties were transferred into the trust he and Mary Deaver had established. He has subsequently learned that the transfers were never made.

APPLICABLE LAW

11 U.S.C. § 109(f) defines when a debtor may file under Chapter 12. That section states:

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

A "family farmer" is further defined in the Code as:

> (A)individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $11,097,350 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—
>
> > (i)the taxable year preceding; or
> >
> > (ii)each of the 2d and 3d taxable years preceding;
> >
> > the taxable year in which the case concerning such individual or such individual and spouse was filed; or
>
> (B)corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and
>
> > (i)more than 80 percent of the value of its assets consists of assets related to the farming operation;
> >
> > (ii)its aggregate debts do not exceed $11,097,350 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and
> >
> > (iii)if such corporation issues stock, such stock is not publicly traded.

11 U.S.C. § 101(18). The operative term for purposes of this Motion is whether an individual or corporate debtor is engaged in a farming operation. "Farming operation" is defined as:

> The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

At least two Circuits have differed in determining what defines a "farming operation." On one hand, the Seventh Circuit held that a farming operation must involve "traditional risks of farming." *In re Armstrong*, 812 F.2d 1024, 1028 (7th Cir. 1986). For instance, in *Armstrong*, the Seventh Circuit rejected a debtor's addition of rental income from rented farm land under a Chapter 12 because the debtor received the rent money "in cash and up front." *Id.* at 1027. Since the debtor in *Armstrong* would have received the rent money regardless of disease or bad weather–which is a risk involved in farming–the debtor was thus "insulated from the traditional risks of farming." *Id.* at 1028. Therefore, the Seventh Circuit found that the

renting of a farmland in which a debtor receives payment up front is not a farming operation as defined under the Bankruptcy Code. *Id.*

On the flip side, the Eight Circuit rejected the Seventh Circuit's interpretation of a "farming operation;" instead finding that the "inquiry requires courts to identify those farming activities engaged in or owned or operated by someone claiming statutory 'family farmer' status and then to determine whether that individual received more than fifty percent of his or her gross income in the relevant year form those activities." *In re Easton*, 883 F.2d 630, 632 (8th Cir. 1989). Indeed, the Eight Circuit held that the even if a debtor received rent up front, such income may still qualify as a farming operation so long as there is some "relation to his farming activities prescribed by the words of [§101(18)]." *Id.* As such, if the debtor can show that the activity was "an integral part of debtor's farming operation," then it may sufficiently qualify as a farming operation as defined in § 101(18). *Id.* (internal citation and quotations omitted); *see also In re Tim Wargo & Sons, Inc.*, 869 F.2d 1128, 1130 (8th Cir. 1989) (finding that a member of the debtor's family "must at minimum play an active role in the farming operation taking place on its land" to be a farming operation).

The Eastern District of California in the Sacramento Division leans into the Seventh Circuit's definition. *See In re Gibson*, 355 B.R. 807, 810 (Bankr. E.D. Cal. 2006), with the Hon. Michael McManus concluding that a rental of farmland is not a farming operation as it shifts the responsibility for farming to someone else and avoiding the risks inherent in farming). As Judge McManus explained:

> A farming operation "includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." See 11 U.S.C. § 101(21). While the use of the word "includes" indicates that section 101(21) is not meant to be an exhaustive definitional list, to be considered a farmer a debtor must be engaged in an activity that subjects the debtor to the risks traditionally associated with farming. *See Armstrong v. Corn Belt Bank (In re Armstrong)*, 812 F.2d 1024 (7th Cir. 1986) (rental of farmland is not considered a farming operation because the debtor bore none of the traditional risks associated with farming).
>
> Section 101(18) requires that a family farmer be "engaged" in a farming operation. By requiring a debtor to be engaged in a farming operation, Congress limited chapter 12 eligibility to true farmers and excluded speculators and investors who use farm losses to shelter non-farm income.
>
> Section 109(f) limits eligibility for chapter 12 relief to family farmers "with regular income." That is, a farmer otherwise meeting the definition of a family farmer must also have "annual income . . . sufficiently stable and regular to enable such family farmer to make payments under a plan. . . ." See 11 U.S.C. § 101(19).

In re Gibson, 355 B.R. at 809-810.

The Northern District of California similarly finds that "farming operations" are "generally held to be those activities that subject the debtor to the risks traditionally associated with farming." *In re Powers*, No. 10-14557, 2011 WL 3663948 at *1 (Bankr. N.D. Cal. Aug. 12, 2011) (holding that a sale of land is not a farming operation "unless it is shown to be an inherent part of active farming").

A debtor bears the burden of proof in establishing that the farming operation in question is one that involves "traditional risks of farming."*Armstrong*, 812 F.2d at 1028; *Gibson*, 355 B.R. at 810; *see also In re Sohrakoff*, 85 B.R. 848, 850 (Bankr. E.D. Cal. 1988) (holding that the burden of proof of establishing eligibility for bankruptcy relief under a Chapter 12 lies with the party who files the petition).

Collier's Treatise states on the subject:

> In contrast to the definition of "family farmer with regular annual income," the definition of "family farmer" is detailed and precise and was carefully drafted to limit chapter 12 eligibility. The definition of family farmer is contained in section 101 and is divided into two parts. . .
>
> For a corporation or partnership to qualify as a family farmer, a different four-part test must be met. The corporation or partnership must:
>
> (1)have more than 50 percent of the outstanding stock or equity in the corporation or partnership held by one family, or by one family and the relatives of the members of the family and the family or the relatives of the family must conduct the farming operation;
>
> (2)have at least 80 percent of the value of the corporations's or partnership's assets relate to the farming operation;
>
> (3)have aggregate debts that do not exceed $11,097,350; and
>
> (4)have at least 50 percent of the corporation's or partnership's aggregate noncontingent, liquidated debts (exclusive of a debt for a dwelling owned by such corporation or partnership, so long as the dwelling is used as a principal residence by one of the shareholders or partners, unless the debt for the dwelling arose out of the farming operation) arise out of a farming operation owned or operated by the corporation or partnership.

2 COLLIER ON BANKRUPTCY ¶ 109.07.

The court may grant a motion to dismiss a chapter 12 case for cause. 11 U.S.C. § 1208(c). Eligibility is a for cause reason for dismissal.

DISCUSSION

The Motion being notice don 9014-1(f)(2), Debtor in Possession was not required to file a written opposition and has not opposed the Motion as of yet.

The court would note, without having its opinion yet colored by an opposition, that Prudential is asking the court to view its entire loan as not related to a farming operation. And yet, Prudential's own loan documents filed in support of its Proof of Claim 13-1 make direct reference to farming operations. This argument is not persuasive.

Moreover, Debtor in Possession's papers consistently reflect the Flower Farm as a sole proprietorship throughout the pendency of this case. *See, e.g.*, Mot. at 2:20, Docket 323. The Flower Farm produces and sells daylilies and pumpkins, clearly being a farming operation. The Flower Farm is reportedly the largest daylily grower on the west coast. *Id.* at 5:14.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by Secured Creditor the Prudential Insurance Company of America ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxx**.

5. 24-23905-E-12 DMW-10 DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich

MOTION TO USE CASH COLLATERAL 2-6-25 [323]

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. The Motion was improperly noticed under Local Bankruptcy Rule 9014-1(f)(1), but the Parties have agreed to hear the Motion under Local Bankruptcy Rule 9014-1(f)(2). *See* Reply, Docket 357.

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 13, 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.~~

Chapter 12 Debtors and Debtors in Possession Kenneth Henry Deaver and Mary Jean Deaver ("Debtor in Possession") move for an order approving the use of cash collateral. Debtor in Possession requests the use of cash collateral in moving this case forward and paying personal expenses as well as business expenses. The expenses include maintenance fees, utilities, insurance, payroll, and other customary personal expenses and usual expenses in running this type of business. *See* Exs. 1 and 2, Docket 326.

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.

PRUDENTIAL'S OPPOSITION

The Prudential Insurance Company of America ("Prudential") filed an Opposition on February 13, 2025. Docket 345. Prudential opposes on the following grounds:

1. Contrary to the claims of Mr. Deaver, the real properties (which are Prudential's collateral) are not property of this estate. The real properties are owned by the Deaver Trust, as Mr. Deaver previously testified at the first meeting of creditors. Opp'n 3:23-25.

2. The Motion and these cases reflect that: (i) during this case, Deaver Ranch was unable to sell the majority of the grape crop (over 500 tons) and the crop was largely left to rot in the fields, all at substantial losses to the applicable estates, the prior authorized use of cash collateral and the applicable secured creditors who obtained replacement liens. *Id.* at 3:26-4:1.

3. Debtor in Possession and the related entities are going through business model overhauls, including where Debtor in Possession intends to take over the vineyard and cultivation duties from Deaver Ranch. However, Debtor in Possession has no resources to do so. *Id.* at 4:1-10.

4. Since the filing of these cases, the Deavers have been hemorrhaging cash and consuming assets, including cash, with little visible evidence of continued viability or viable economic success all to the prejudice of the creditors. *Id.* at 4:22-24.

5. The Motion appears primarily directed to providing the Deavers with normal living expenses and to operate Flower Farms. *Id.* at 4:26-27.

6. The Motion reflects and confirms that during the pendency of this case, the Deavers' economic situation has gone from bad to worse--at or near economic collapse. *Id.* at 5:7-8.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed a Reply on February 20, 2025. Docket 357. Debtor in Possession states:

1. The majority of the parcels of real property in question are property of the Estate, as reflected by applicable title records. Only one of the parcels of real property subject to Prudential's interest is owned by a trust. *Id.* at 2:15-21.

It appears that the evidence supporting this statement are unauthenticated exhibits which appear to be an online service which states what it concludes are the "primary owners" of the properties.

2. Substantially all of the alleged facts set forth in the Objection, including Debtors' plans with respect to the lease of land to Deaver Ranch, Inc. and moving the Vineyards Tasting Room to the Flower Farm property, are irrelevant to Debtors' Motion which relates only to their individual use of cash collateral of AgWest Farm Credit, PCA ("AgWest"). As the Objection

> acknowledges, the secured claims of Prudential in Debtors' personal property have been subordinated to the claims of AgWest. The Motion, and the proposed budget, demonstrate that the Deavers and the Flower Farm continue to operate with a positive cash flow. *Id.* at 3:4-10.

On this point, while it is the Agwest cash collateral, that secures the loan, if the cash collateral is used and not replaced, then that diminishes value in the other collateral for junior lienholders.

> 3. The Deavers are negotiating with their secured creditors and are taking steps to consolidate assets and resources. Their continued use of cash collateral in their individual case is both necessary and beneficial to the estate and their secured creditors. *Id.* at 3:10-13.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. 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

Prudential objects on various grounds, but the tenor of the Opposition sounds in Debtor in Possession squandering estate assets and failing to successfully reorganize. As Debtor in Possession has noted, the requested use of cash collateral only relates to AgWest's cash collateral. The secured claims of Prudential in Debtors' personal property have been subordinated to the claims of AgWest.

The cash collateral is derived from payments from Deaver Vineyards, Debtors' social security income, and income from the sheep, goats, and cows, all of which are AgWest's collateral. Prudential's Opposition misses these points and fails to show how the requested expenses are not reasonable as the case moves forward. Debtor in Possession is operating in an overall positive cash flow as it attempts to reorganize, and the expenses appear reasonable to the court.

At the hearing, **xxxxxxx**

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 12. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period March 1, 2025, through May 31, 2025. 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 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 is granted, pursuant to this order, for the period March 1, 2025, through May 31, 2025, and the cash collateral may be used to pay the expenses as outlined in the budgets attached in support of the Motion as~~

~~Exhibits 1 and 2, Docket 326, granting Debtor in Possession a variance of 10% 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 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.

6. 24-23905-E-12 GG-9 — DEAVER RANCH, INC., A CALIFORNIA CORPORATION — MOTION TO USE CASH COLLATERAL 2-13-25 [335]
David Goodrich

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 February 13, 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.~~

Debtors in Possession Deaver Ranch, Inc. ("Deaver") and Shenandoah Investment Properties, Inc. ("SIP") move for an order approving the use of cash collateral. Deaver Ranch is a California certified sustainable vineyard located in Amador County, California. Deaver Ranch leases land, grows wine grapes, and sells its grape crop seasonally to wineries. It also owns cows and sheep that are used primarily for weed control. The bulk of Deaver Ranch's revenue is generated from the sale of grapes during the last quarter of each year. Mot. 3:10-14.

SIP sells approximately 2,500 - 3,000 cases of wine annually, primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members. Its assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels and tumblers. SIP operates under the tradename "Deaver Vineyards." *Id.* at 3:15-19.

Deaver Ranch and SIP have filed proposed budgets as exhibits in support of the Motion. Docket 340. The proposed budgets contemplate usual and customary expenses associated with operating these businesses, including expenses of insurance, payroll, taxes, utilities, equipment, and maintenance fees. The budgets are from March through May of 2025. Deaver Ranch will end the period at negative cash flow of

($17,676). Ex. 1 at 4, Docket 340. Meanwhile, SIP will end the cash collateral period with a positive cash flow of $45,996. *Id.* at 5.

PRUDENTIAL'S OPPOSITION

The Prudential Insurance Company of America ("Prudential") filed an Opposition on February 21, 2025. Docket 360. Prudential opposes on the following grounds:

1. The Motion and these cases reflect that: (i) during this case, Deaver Ranch was unable to sell the majority of the grape crop (over 500 tons) and the crop was largely left to rot in the fields, all at substantial losses to the applicable estates, the prior authorized use of cash collateral and the applicable secured creditors who obtained replacement liens. Opp'n at 3:5-10.

2. Debtor in Possession and the related entities are going through business model overhauls, including where Debtor in Possession intends to take over the vineyard and cultivation duties from Deaver Ranch. However, Debtor in Possession has no resources to do so. Moreover, there do no appear to be funds for SIP to relocate and abandon its current premises, as is proposed. *Id.* at 3:10-23.

3. There are large amount of unpaid rents and other obligations due and owing in the case. *Id.* at 4:1-3.

4. Since the filing of these cases, the Deavers have been hemorrhaging cash and consuming assets, including cash, with little visible evidence of continued viability or viable economic success all to the prejudice of the creditors. *Id.* at 4:4-6.

5. The Motion reflects and confirms that during the pendency of this case, the Deavers' economic situation has gone from bad to worse--at or near economic collapse. *Id.* at 4:20-22.

6. It is not explained how Deaver Ranch can operate at a large loss through most of the year. *Id.* at 4:23-5:1.

AGWEST OPPOSITION

Agwest Farm Credit, PCA filed its opposition to this Motion for further use of cash collateral. Dckt. 381. The Agwest Opposition states the following grounds (as summarized by the court) for denial of the present Motion:

1. The Deaver Ranch is a "dead" operation, having no contracts for either its 2024 or 2025 grape crop. *Id.*; at 2:12-14.

2. For Shenandoah, the Debtor in Possession is selling off its existing wine inventory, with no new wine being produced. *Id.*; at 2:15-18.

3. The 2024 crop was not sold, but left to rot on the vine. *Id*.; at 2:24-25.

4. Shenandoah has spent $70,000 of cash collateral in the continue operation of the wine sale, with no new inventory being created. This has resulted in a ($70,000) diminution of the collateral. The "adequate protection" to be provided to creditors from the continued operation has failed. *Id*.; at 3:3-9.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. 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

Prudential again opposes on the grounds that these budgets do not reflect the actual financial situation of the related entities, the Debtors have been hemorrhaging cash and merely surviving off of cash collateral, and there is no reasonable hope of reorganization. Prudential ends its Opposition with the statement that "These cases should not continue. Opp'n at 5:10-15.

Agwest echos this opposition, identifying a ($70,000) loss of collateral from the prior use of cash collateral.

It is true that Deaver Ranch will end this period at a loss. In explaining how Deaver Ranch can continue as Debtor in Possession while operating at a loss, at the hearing, **xxxxxxx.**

The moving papers also indicate that Deaver ranch relies on a sale of grapes for its income which typically comes in the late fall. Such an income scheme is not atypical of what the courts sees in Chapter 12 cases where the farming operation produces a crop for sale.

Meanwhile, it appears SIP is reporting that it can be profitable throughout the year, generating thousands through its business. Ex. 1 at 5, Docket 340. SIP ends the month of March with $27,153 cash on hand and it's the cash collateral period of May with $45,996 cash on hand. Such numbers are encouraging and show there is cash flow and hope for reorganization, contrary to the arguments of Prudential.

~~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 12. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period March 1, 2025, through May 31, 2025. 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 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 is granted, pursuant to this order, for the period March 1, 2025, through May 31, 2025, and the cash collateral may be used to pay the expenses as outlined in the budgets attached in support of the Motion as Exhibit 1, Docket 340, granting Debtor in Possession a variance of 10% 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 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.

7. 24-23905-E-12 CAE-1 — DEAVER RANCH, INC., A CALIFORNIA CORPORATION — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-30-24 [1]

Debtor's Atty: David M. Goodrich

Notes:

Set by order of the court filed 1/23/25 [Dckt 284]. The Parties informing the Judge that there were conflicts with the 3/5/25 date.

The Status Conference is xxxxxxx

FEBRUARY 27, 2025 STATUS CONFERENCE

Updated Status Reports have been filed by the Debtors in Possession in these jointly administered cases. The court provides a summary of the three Status Reports as follows.

Kenneth and Mary Deaver Case

Kenneth and Mary Deaver filed their Updated Status Report on February 12, 2025. Dckt. 334. The Chapter 12 Plan has been filed, but not yet set for hearing. The Debtor in Possession reports that that Plan needs to be amended before moving forward to confirmation.

AgWest has conducted discovery, with the Debtor in Possession producing the documents.

The Debtor in Possession has contemplated filing a motion to value all of the collateral subject to the asserted security interests. That has not yet been done due to various events, including settlement discussions, in the Case.

With respect to the Adversary Proceeding seeking a determination that it's debt is nondischargeable pursuant to 11 U.S.C. § 534(a)(2), (4), and (6), Debtors have filed an answer. The initial status conference in that Adversary Proceeding has been continued to March27, 2025, pursuant to the joint request of the Parties.

There are Objections filed by AgWest to exemptions claimed by the Debtors that are being prosecuted.

Prudential has filed a Motion to dismiss the Chapter 12 Bankruptcy case, asserting that the Debtors do not qualify for relief under Chapter 12. Discovery and preparation of the opposition are in process.

The Debtor in Possession are seeking to move the Deaver Ranch operation from the property of this Bankruptcy Estate, and for the Debtor in Possession to keep certain properties of Deaver Ranch. The Debtor in Possession will seek to reject any leases that exist with Deaver Ranch.

The Debtors have filed amended Schedules to list the value of the Flower Farm inventory and exemptions.

The Debtor in Possession states that substantial tax claims have been filed in the Deaver Ranch and Shenandoah cases, for with Kenneth and Mary Deaver may have personal liability.

Deaver Ranch and Shenandoah Investment Properties
Joint Updated Status Report

On February 11, 2025, Debtors in Possession Deaver Ranch and Shenandoah Investment Properties filed a joint Updated Status Report. The court summarizes the information as follows.

Deaver Ranch

Deaver Ranch states that it has a "certified sustainable vineyard, which is operated on property leased from Kenneth and Mary Deaver. Additionally, it owns cows and sheep that are used for weed control, with the bulk of the Deaver Ranch income being generated from the sale of grapes in the fourth quarter of the calendar year.

The Deaver Ranch business continues to be operated in this Bankruptcy Case. The Internal Revenue Service has filed a proof of claim asserting a ($379,349) priority claim and a ($357,104.75) general unsecured claim. The California Franchise Tax Board has filed a claim asserting a ($15,616.37) priority claim and a ($1,127.14) general unsecured claim.

The Deaver Ranch Plan was premised on assumption that did not include having to pay such priority tax obligations. Now, the Debtor in Possession is having to investigate these claims further. It may be that based on such claims the case may be converted to one under Chapter 7 or dismissed.

Motions to value secured claims have been put on hold in light of the substantial tax claims filed.

With respect to motions for relief from the stay, the Deaver Ranch Debtor in Possession is negotiating with the Kenneth and Mary Deaver Debtors in Possession to allow them to evict Deaver Ranch from the property, as well as to assert rights in the Deaver Ranch assets. Such eviction would remove Deaver Ranch from the vineyards where the grapes are grown that Deaver Ranch sells. [Fn.1.]

FN. 1. This raises an "interesting" questions for Kenneth and Mary Deaver, as Debtors in Possession, the other Debtors in Possession, and the court. Kenneth Deaver is the president/CEO of Deaver Ranch, Inc. and Mary Deaver is the Secretary of Deaver Ranch, Inc., and they are the sole shareholders of Deaver Ranch, Inc. Statement of Financial Affairs, ¶ 28; Dckt. 1. Thus, it appears that they are "arm wrestling in from of a mirror" with themselves over whether the Deaver Ranch business should be shut down, assets of Deaver Ranch become assets of the Kenneth and Mary Deaver Bankruptcy Estate, and Deaver Ranch, Inc. should disappear from existence.

Shenandoah

Shenandoah reports that its business operation sells $2,500 to 3,000 cases of wine a year. Its assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels, and tumblers. The Debtor in Possession has continued to operate the wine club business. One change has been to move the tasting room to the Amador Flower Farm, property included in the Kenneth and Mary Deaver Bankruptcy Estate.

This move is stated to save Shenandoah substantial monies, by appearing to be given the property to be used rent free by the Kenneth and Mary Deaver Bankruptcy Estate. This is stated to provide a source of additional cash for the Shenandoah creditors.

The California Department of Tax and Fee Administration filed Amended Proof of Claim 18-2 asserting a ($184,085.09) priority claim. In the attachment to Amended Proof of Claim 18-2, these tax obligations are for the period of April 1, 2022 through August 29, 2024, consisting of ($179,346.08) for unpaid sales taxes and ($4,729.01) for unpaid Wine Grower/Direct Wine Shipper taxes (both of which include interest). The attachment also states that tax liens were filed with Amador County and the California Secretary of State in 2023 and 2024.

On Schedule E/F, the California Department of Tax and Fee Administration is listed as having a priority claim of only ($21,084.07). Dckt. 1 at 20. It appears that the principals of Shenandoah, which are Kenneth Deaver as president/CEO and Mary Deaver as secretary (Statement of Financial Affairs, Question 28; Dckt. 1 at 34), were unaware of Shenandoah owing multiple hundreds of thousands of dollars in unpaid sales taxes.

Shenandoah's main assets are its inventory of wine (bottled and in barrels). The value of this wine is well below the debts that encumber the inventory. Kenneth Deaver states that the wine inventory now has a value of only $80,000. Status Report, p. 5:23-28; Dckt. 331. However, on Schedule A/B the

Debtor stated that the bulk wine had a value of $84,126 and the bottled wine had a value of $605,176 when this Bankruptcy Case was filed. Sch. A/B, ¶¶ 20, 21; Dckt. 1.

The information on Schedule A/B is stated under penalty of perjury to be true and correct by Kenneth Deaver. Statement of Financial Affairs, Part 14; Dckt. 1 at 35. Thus, it appears that there has been a loss of ($610,000) in the value of the Bankruptcy Estate's wine inventory since this Case was filed.

At the jointly administered Status Conferences, **xxxxxxx**

8. 24-23909-E-12 CAE-1 — SHENANDOAH INVESTMENT PROPERTIES, INC., A CALIFORNIA CORPORATION — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-30-24 [1]

Debtor's Atty: David M. Goodrich

Notes:
Set by order of the court filed 1/23/25. The Parties informing the Judge that there were conflicts with the 3/5/25 date.

The Status Conference is xxxxxxx

FEBRUARY 27, 2025 STATUS CONFERENCE

Updated Status Reports have been filed by the Debtors in Possession in these jointly administered cases. The court provides a summary of the three Status Reports as follows.

Kenneth and Mary Deaver Case

Kenneth and Mary Deaver filed their Updated Status Report on February 12, 2025. Dckt. 334. The Chapter 12 Plan has been filed, but not yet set for hearing. The Debtor in Possession reports that Plan needs to be amended before moving forward to confirmation.

AgWest has conducted discovery, with the Debtor in Possession producing the documents.

The Debtor in Possession has contemplated filing a motion to value all of the collateral subject to the asserted security interests. That has not yet been done due to various events, including settlement discussions, in the Case.

With respect to the Adversary Proceeding seeking a determination that it's debt is nondischargeable pursuant to 11 U.S.C. § 534(a)(2), (4), and (6), Debtors have filed an answer. The initial status conference in that Adversary Proceeding has been continued to March27, 2025, pursuant to the joint request of the Parties.

There are Objections filed by AgWest to exemptions claimed by the Debtors that are being prosecuted.

Prudential has filed a Motion to dismiss the Chapter 12 Bankruptcy case, asserting that the Debtors do not qualify for relief under Chapter 12. Discovery and preparation of the opposition are in process.

The Debtor in Possession are seeking to move the Deaver Ranch operation from the property of this Bankruptcy Estate, and for the Debtor in Possession to keep certain properties of Deaver Ranch. The Debtor in Possession will seek to reject any leases that exist with Deaver Ranch.

The Debtors have filed amended Schedules to list the value of the Flower Farm inventory and exemptions.

The Debtor in Possession states that substantial tax claims have been filed in the Deaver Ranch and the Shenandoah cases, for with Kenneth and Mary Deaver may have personal liability.

Deaver Ranch and Shenandoah Investment Properties
Joint Updated Status Report

On February 11, 2025, Debtors in Possession Deaver Ranch and Shenandoah Investment Properties filed a joint Updated Status Report. The court summarizes the information as follows.

Deaver Ranch

Deaver Ranch states that it has a "certified sustainable vineyard, which is operated on property leased from Kenneth and Mary Deaver. Additionally, it owns cows and sheep that are used for weed control, with the bulk of the Deaver Ranch income being generated from the sale of grapes in the fourth quarter of the calendar year.

The Deaver Ranch business continues to be operated in this Bankruptcy Case. The Internal Revenue Service has filed a proof of claim asserting a ($379,349) priority claim and a ($357,104.75) general unsecured claim. The California Franchise Tax Board has filed a claim asserting a ($15,616.37) priority claim and a ($1,127.14) general unsecured claim.

The Deaver Ranch Plan was premised on assumption that did not include having to pay such priority tax obligations. Now, the Debtor in Possession is having to investigate these claims further. It may be that based on such claims the case may be converted to one under Chapter 7 or dismissed.

Motions to value secured claims have been put on hold in light of the substantial tax claims filed.

With respect to motions for relief from the stay, the Deaver Ranch Debtor in Possession is negotiating with the Kenneth and Mary Deaver Debtors in Possession to allow them to evict Deaver Ranch

from the property, as well as to assert rights in the Deaver Ranch assets. Such eviction would remove Deaver Ranch from the vineyards where the grapes are grown that Deaver Ranch sells. [Fn.1.]

FN. 1. This raises an "interesting" questions for Kenneth and Mary Deaver, as Debtors in Possession, the other Debtors in Possession, and the court. Kenneth Deaver is the president/CEO of Deaver Ranch, Inc. and Mary Deaver is the Secretary of Deaver Ranch, Inc., and they are the sole shareholders of Deaver Ranch, Inc. Statement of Financial Affairs, ¶ 28; Dckt. 1. Thus, it appears that they are "arm wrestling in from of a mirror" with themselves over whether the Deaver Ranch business should be shut down, assets of Deaver Ranch become assets of the Kenneth and Mary Deaver Bankruptcy Estate, and Deaver Ranch, Inc. should disappear from existence.

Shenandoah

Shenandoah reports that its business operation sells $2,500 to 3,000 cases of wine a year. Its assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels, and tumblers. The Debtor in Possession has continued to operate the wine club business. One change has been to move the tasting room to the Amador Flower Farm, property included in the Kenneth and Mary Deaver Bankruptcy Estate.

This move is stated to save Shenandoah substantial monies, by appearing to be given the property to be used rent free by the Kenneth and Mary Deaver Bankruptcy Estate. This is stated to provide a source of additional cash for the Shenandoah creditors.

The California Department of Tax and Fee Administration filed Amended Proof of Claim 18-2 asserting a ($184,085.09) priority claim. In the attachment to Amended Proof of Claim 18-2, these tax obligations are for the period of April 1, 2022 through August 29, 2024, consisting of ($179,346.08) for unpaid sales taxes and ($4,729.01) for unpaid Wine Grower/Direct Wine Shipper taxes (both of which include interest). The attachment also states that tax liens were filed with Amador County and the California Secretary of State in 2023 and 2024.

On Schedule E/F, the California Department of Tax and Fee Administration is listed as having a priority claim of only ($21,084.07). Dckt. 1 at 20. It appears that the principals of Shenandoah, which are Kenneth Deaver as president/CEO and Mary Deaver as secretary (Statement of Financial Affairs, Question 28; Dckt. 1 at 34), were unaware of Shenandoah owing multiple hundreds of thousands of dollars in unpaid sales taxes.

Shenandoah's main assets are its inventory of wine (bottled and in barrels). The value of this wine is well below the debts that encumber the inventory. Kenneth Deaver states that the wine inventory now has a value of only $80,000. Status Report, p. 5:23-28; Dckt. 331. However, on Schedule A/B the Debtor stated that the bulk wine had a value of $84,126 and the bottled wine had a value of $605,176 when this Bankruptcy Case was filed. Sch. A/B, ¶¶ 20, 21; Dckt. 1.

The information on Schedule A/B is stated under penalty of perjury to be true and correct by Kenneth Deaver. Statement of Financial Affairs, Part 14; Dckt. 1 at 35. Thus, it appears that there has been a loss of ($610,000) in the value of the Bankruptcy Estate's wine inventory since this Case was filed.

At the jointly administered Status Conferences, **XXXXXXX**

9. 24-23923-E-12 CAE-1 KENNETH/MARY DEAVER CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-30-24 [1]

Debtors' Atty: Martha A. Warriner; Andy C. Warshaw

Notes:
Set by order of the court filed 1/23/25. The Parties informing the Judge that there were conflicts with the 3/5/25 date.

The Status Conference is xxxxxxx

FEBRUARY 27, 2025 STATUS CONFERENCE

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The Debtor in Possession are seeking to move the Deaver Ranch operation from the property of this Bankruptcy Estate, and for the Debtor in Possession to keep certain properties of Deaver Ranch. The Debtor in Possession will seek to reject any leases that exist with Deaver Ranch.

The Debtors have filed amended Schedules to list the value of the Flower Farm inventory and exemptions.

The Debtor in Possession states that substantial tax claims have been filed in the Deaver Ranch and Shenandoah cases, for with Kenneth and Mary Deaver may have personal liability.

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The information on Schedule A/B is stated under penalty of perjury to be true and correct by Kenneth Deaver. Statement of Financial Affairs, Part 14; Dckt. 1 at 35. Thus, it appears that there has been a loss of ($610,000) in the value of the Bankruptcy Estate's wine inventory since this Case was filed.

At the jointly administered Status Conferences, **xxxxxxx**

10. 24-24610-E-7 RHS-1 | **ROSE MCNULTY** | **Pro Se** | **MOTION TO DELAY DISCHARGE, MOTION TO EXTEND DEADLINE TO FILE A REAFFIRMATION AGREEMENT 1-30-25 [28]**

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 court issued the Order setting this hearing on January 31, 2025, setting the hearing for February 27, 2025. Dckt. 30.

The Motion to Delay Discharge and to Extend Deadline to File a Reaffirmation Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Delay Discharge and to Extend Deadline to File a Reaffirmation Agreement is xxxxxxx.

On October 15, 2024, Rose McNulty, Debtor, commenced this voluntary Chapter 7 Case. Petition; Dckt. 1. The Debtor has filed a Motion to Delay Entry of Discharge and Extend Deadline for Filing Reaffirmation Agreement. Dckt. 28. Debtor reports that she has contacted the Creditor, Capital One, to reaffirm the debt, but that Creditor has identified the vehicle as a "total loss" and that it would not proceed with a reaffirmation. *Id*. Debtor reports that this "total loss" is in error and she continues to attempt to communicate with Creditor to correct this error and enter into an reaffirmation agreement.

The court set this hearing and extended the deadline to file a Reaffirmation Agreement to February 27, 2025. Docket 30. A review of the Docket on February 24, 2025 reveals nothing new has been filed with the court. At the hearing, xxxxxxx

The court shall issue an Order substantially in the following form:

> Upon review of the Motion, the files in this Bankruptcy Case, and good cause appearing;

IT IS ORDERED that the Motion to Delay Entry of Discharge and to Extend Deadline for filing of a reaffirmation agreement is **xxxxxxx**.

11. 24-25625-E-7 **DARLENE CHAMBERS**
Mark Nelson

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-14-25 [12]

NO APPEARANCES ARE REQUIRED FOR THIS MATTER UNLESS A PARTY OBJECTS

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 16, 2025. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Peter L. Fear ("Trustee"), seeks dismissal of the case on the grounds that Darlene Lynette Chambers ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:00 p.m. on March 13, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 10, 2025. Dckt. 15. Debtor's attorney states that he actually was summoned for jury duty on the original date of the 341 Meeting. As such, he and his client were unable to coordinate properly to successfully attend. However, Debtor assures the court that she will be in attendance at the March13, 2025 341 Hearing date.

DISCUSSION

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

However, Debtor has explained the reason for her absence and states she will be in attendance at the continued Meeting.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Peter L. Fear ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including May 12, 2025.

12. 24-22531-E-11 CAE-1 **R & A ENTERPRISES, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-10-24 [1]**

Item 12 thru 13

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 1/23/25. The Debtor/Debtor in Possession reporting that the parties have agreed to the basic terms of the Plan, which will provide for cure or payment in full within one year.

Operating Report filed: 2/10/25

The Status Conference is xxxxxxx

FEBRUARY 27, 2025 STATUS CONFERENCE

At the Status Conference, xxxxxxx

JANUARY 23, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the parties have agreed to the basic terms of the Plan, which will provide for cure or payment in full within one year.

Counsel for Creditor Patriot Bank reported that the Debtor has been making the monthly adequate protection payments as required under the cash collateral order.

The Status Conference is continued to 10:30 a.m. on February 27, 2025.

NOVEMBER 13, 2024 STATUS CONFERENCE

On October 31, 2024, the Debtor/Debtor in Possession filed its updated Status Report. Dckt. 70. It reports that the Debtor/Debtor in Possession and Patriot Bank have continued in their negotiations, and the Debtor/Debtor in Possession anticipates filing an Amended Plan shortly. Status Report, p. 2:14-17; Dckt. 70.

At the Status Conference, counsel for the Debtor/Debtor in Possession stated that they are continuing to work on a stipulated order for the use of cash collateral.

Counsel for Patriot Bank reported that he has received a proposed budget for November and December 2024 and January 2025. The Parties can Stipulate to the further use of cash collateral.

The Subchapter V Trustee reported that the case is moving forward, with the Debtor/Debtor in Possession's accounting process being improved.

At the joint request of the Parties appearing, the Status Conference is continued to 10:30 a.m. on January 23, 2025.

SEPTEMBER 18, 2024 STATUS CONFERENCE

Pursuant to a Stipulation between the Debtor/Debtor in Possession, the Subchapter V Trustee and Patriot Bank, N.A., the confirmation hearing has been continued to 10:30 a.m. on October 3, 2024. Order; Dckt. 46. The court has entered its order authorizing the use of cash collateral through October 31, 2024.

The U.S. Trustee reports that the 341 Meeting has now been concluded. Sept. 6, 2024 Docket Entry Report.

The Status Conference is continued to 2:00 p.m. on November 13, 2024.

AUGUST 1, 2024 STATUS CONFERENCE

The Debtor commenced this voluntary Subchapter V Case on June 10, 2024. The court has entered an Interim Order authorizing the use of cash collateral through and including September 30, 2024. Order; Dckt. 37.

The Subchapter V Plan was filed on June 17, 2024, and the confirmation hearing is set for August 22, 2024. The deadline for filing Oppositions to Confirmation is August 8, 2024.

The Debtor/Debtor in Possession filed a Status Conference Report on July 18, 2024. Dckt. 39. In it the Debtor/Debtor in Possession summarizes the economic events which let up to the filing of the current Bankruptcy Case.

It is further stated that while the liquidation value for the automated carwash business and property is $3,700,000, the Debtor/Debtor in Possession asserts that its operating value is much higher. The Debtor/Debtor in Possession does not anticipate filing any motions to value the secured claims of creditors.

The main creditor in this Bankruptcy is Patriot Bank, which has a secured claim which is asserted by the Bank to be in excess of $3,750,000 (Opposition to Motion to Use Cash Collateral, ¶ A.2.; Dckt. 25) and the Debtor/Debtor in Possession is working with the Bank to achieve a consensual Plan.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that a stipulation has been reached for further used of cash collateral.

A Motion requesting relief from U.S. Trustee approved banks requirement in light of there not being any such banks in Yreka that will open an account for the Debtor in Possession.

The Status Conference is continued to 2:00 p.m. on September 18, 2024.

13. 24-22531-E-11 RLC-1 | **R & A ENTERPRISES, LLC Stephen Reynolds** | **CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR REPLACEMENT LIENS , MOTION FOR ORDER APPROVING DIP BUDGET 6-12-24 [14]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. Fed. R. Bankr. P. 4001(b)(2) (requiring fourteen days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Authority to Use Cash Collateral and Grant Replacement Liens is xxxxxxx.

February 27, 2025 Hearing

The court continued the hearing as the Parties reported that they were still working on the final terms for a stipulated further use of cash collateral.

Supplemental Pleadings, if any, in support of the further use of cash collateral if there is not a stipulation with Creditor for such use were to be filed and served on or before February 18, 2025. Opposition pleadings shall be filed and served on or before February 24, 2025.

A review of the Docket on February 24, 2025 reveals nothing further has been filed with the court. At the hearing, xxxxxxx

REVIEW OF THE MOTION

R & A Enterprises, LLC ("Debtor/Debtor in Possession") moves for an order approving the use of cash collateral. Debtor in Possession is a Limited Liability Company that has built and opened a car wash business in Yreka, California, called Splash and Dash Car Wash ("Car Wash"). Debtor obtained an SBA guaranteed loan from Patriot Bank, N.A. ("Creditor"), and used the proceeds to build the Car Wash and begin operations in 2022.

Creditor is secured by the real property commonly known as 1902 Fort Jones Rd., Yreka California 96097, all assets and personal property owned or acquired by Debtor in Possession, and for which John J. Richter has given his personal guarantee.

Debtor/Debtor in Possession requests the use of cash collateral to continue operations of the car wash and to administer and preserve the value of the Estate. Mot. 3:21-24, Docket 14.

Debtor/Debtor in Possession proposes to use cash collateral for the following expenses:

Proforma for Express Carwash		Splash & Dash Car Wash				YEAR 1	2024					
		PAID CARS	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	
			MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	
Tremor	$12.00	70.00%	5432	5900	6500	7100	6700	6000	5500	5000	5500	
Seismic Wash	$16.00	10.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500	
Richter Scale Wash	$20.00	20.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500	
Tremor Wash Revenue	paid washes		$45,628.80	$49,560.00	$54,600.00	$59,640.00	$56,280.00	$50,400.00	$46,200.00	$42,000.00	$46,200.00	
Seismic Wave Revenue	paid washes		$8,691.20	$9,920.00	$10,880.00	$11,520.00	$10,400.00	$9,440.00	$8,000.00	$8,000.00	$8,800.00	
Richter Scale Wash Revenue	paid washes		$21,728.00	$24,800.00	$27,200.00	$28,800.00	$26,000.00	$23,600.00	$20,000.00	$20,000.00	$22,000.00	
MONTHLY UNLIMITED	$35.00	RELOADS	$19,250.00	$21,000.00	$22,750.00	$24,500.00	$25,375.00	$24,500.00	$24,500.00	$24,500.00	$24,500.00	
tire shine	$5.00/CAR		$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	
Total Gross Monthly Revenue			**$95,573.00**	**$105,555.00**	**$115,705.00**	**$124,735.00**	**$118,330.00**	**$108,215.00**	**$98,975.00**	**$94,775.00**	**$101,775.00**	**$668,113.00**
CREDIT CARD FEE	**3% of Gross Revenue**		**$2,867.19**	**$3,166.65**	**$3,471.15**	**$3,742.05**	**$3,549.90**	**$3,246.45**	**$2,969.25**	**$2,843.25**	**$3,053.25**	**$20,043.39**
Total Gross Revenue			**$92,705.81**	**$102,388.35**	**$112,233.85**	**$120,992.95**	**$114,780.10**	**$104,968.55**	**$96,005.75**	**$91,931.75**	**$98,721.75**	**$648,069.61**
Expenses												**TOTAL EXP.**
Manager /Per Month #1			$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$54,000.00
Employees			$12,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$108,000.00
PAYROLL TAX			$3,500.00	$3,500.00	$3,500.00	$3,500.00	$3,500.00	$3,500.00	$3,500.00	$3,500.00	$3,500.00	$31,500.00
Electric			$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$72,000.00
Water			$1,200.00	$1,200.00	$1,200.00	$1,200.00	$1,200.00	$1,200.00	$1,200.00	$1,200.00	$1,200.00	$10,800.00
Chemical			$3,802.40	$4,130.00	$4,550.00	$4,970.00	$4,690.00	$4,200.00	$3,850.00	$3,500.00	$3,850.00	$37,542.40
Liabiltiy Ins.			$2,416.00	$2,416.00	$2,416.00	$2,416.00	$2,416.00	$2,416.00	$2,416.00	$2,416.00	$2,416.00	$21,744.00
DRB support for POS/equipment			$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$13,500.00
Real Property Tax (Estimated@1.5% of land & Bldg.)			$3,750.00	$3,750.00	$3,750.00	$3,750.00	$3,750.00	$3,750.00	$3,750.00	$3,750.00	$3,750.00	$33,750.00
Advertising			$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$9,000.00
Phone and Internet			$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$4,500.00
Maintenance			$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$4,500.00
SECURITY CAMERA			$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$275.00	$2,475.00
Legal and Accounting			$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00	$4,500.00
Claims			$300.00	$300.00	$300.00	$300.00	$300.00	$300.00	$300.00	$300.00	$300.00	$2,700.00
Trash Pickup			$600.00	$600.00	$600.00	$600.00	$600.00	$600.00	$600.00	$600.00	$600.00	$5,400.00
Company paid fuel			$1,750.00	$1,750.00	$1,750.00	$1,750.00	$1,750.00	$1,750.00	$1,750.00	$1,750.00	$1,750.00	$15,750.00
Owners Company car insurance			$550.00	$550.00	$550.00	$550.00	$550.00	$550.00	$550.00	$550.00	$550.00	$4,950.00
MANAGEMENT FEE(ARNESEN)			$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$22,500.00
RICHTER LOAN INTEREST			$0.00	$0.00	$0.00	$0.00	$4,800.00	$4,800.00	$4,800.00	$4,800.00	$4,800.00	$24,000.00
Misc.			$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$1,500.00	$13,500.00
Total Monthly Expenses			**$47,593.40**	**$46,171.00**	**$46,591.00**	**$47,011.00**	**$46,731.00**	**$46,241.00**	**$45,891.00**	**$45,541.00**	**$45,891.00**	**$280,338.40**
Monthly Gross Revenue			**$92,705.81**	**$102,388.35**	**$112,233.85**	**$120,992.95**	**$114,780.10**	**$104,968.55**	**$96,005.75**	**$91,931.75**	**$98,721.75**	**$648,069.61**
Monthly Gross Profit			**$45,112.41**	**$56,217.35**	**$65,642.85**	**$73,981.95**	**$68,049.10**	**$58,727.55**	**$50,114.75**	**$46,390.75**	**$52,830.75**	**$367,731.21**
BANK PAYMENT YEAR 1			**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$32,000.00**	**$192,000.00**
Monthly Net			**$13,112.41**	**$24,217.35**	**$33,642.85**	**$41,981.95**	**$36,049.10**	**$26,727.55**	**$18,114.75**	**$14,390.75**	**$20,830.75**	**$175,731.21**
												1

Exhibit, Docket 17. Creditor would be paid $32,000 per month during 2024 as adequate protection under this proposed budget.

Debtor/Debtor in Possession submits the Declaration of its attorney, Stephen M. Reynolds, in support. Decl., Docket 16. Mr. Reynold's testimony authenticates the budget and states the $32,000 monthly payment is roughly the contract amount. *Id.* at ¶ 2.

CREDITOR'S OPPOSITION

Creditor submitted an Opposition on June 28, 2024. Docket 25. Creditor states that it has accelerated the loan, and the balance owing is in excess of $3,750,000. Opp'n ¶ 2, Docket 25. Creditor argues there is no evidence showing that its interest is adequately protected. Mr. Reynolds Declaration in support of the Motion is "not based on personal knowledge, lacks foundation, and is inadmissible." *Id.* at ¶ 3.

Creditor states, if the loan were not accelerated, its monthly payment would be $34,372.77, not $32,000. Creditor argues the car wash machinery and equipment has limited life and Debtor/Debtor in Possession's use decreases the value. *Id.* at ¶ 5. Debtor/Debtor in Possession has failed to show its proposed payments adequately protect Creditor.

Finally, Credit requests if Debtor/Debtor in Possession is authorized to use cash collateral, it be on an interim basis and no budget is approved until Creditor consents or Debtor/Debtor in Possession provides evidence and a showing in support of a proposed budget. *Id.* at 6:13-19.

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/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 Debtor/Debtor in Possession to continue and operate the business as it produces value for the Estate. Creditor will also receive a substantial monthly adequate protection payment in the amount of $32,000, which the court finds sufficiently protects Creditor's interest in this interim period.

However, Creditor requests evidence and a showing that the proposed budget offers sufficient adequate protection payments to preserve its interest.

As Creditor points out, the testimony in support of the Debtor/Debtor in Possession's Motion is Debtor/Debtor in Possession's counsel, who testifies that:

- ★ The Debtor/Debtor in Possession His client has told him
- ★ That the Debtor/Debtor in Possession has prepare a budget
- ★ That the Debtor/Debtor in Possession says that the budget information is accurate
- ★ That counsel heard the Debtor/Debtor in Possession say that the budget has been prepared accurately

  and

- ★ That counsel testifies that he personally heard the Debtor/Debtor in Possession say the forgoing.

Declaration; Dckt. 16.

No responsible representative of the Debtor/Debtor in Possession has come forward to testify as to the financial information concerning the Debtor/Debtor in Possession, who is the fiduciary of the Bankruptcy Estate operating this business that is property of the Bankruptcy Estate. 11 U.S.C. § 541(a).

The Bankruptcy Petition is signed by John Richter as the "Managing Member" of the Debtor Limited Liability Company. Dckt. 1 at p. 4. Mr. Richter is identified as the only managing member.

Mr. Richter not providing testimony, as the responsible representative of the Debtor, caused the court some concerning. This led to the court checking the California Secretary of State's website for R & A Enterprise, LLC's registration to do business in California. The court's inquiry resulted in finding an entity named R & A Enterprises, LLC registered with the State of California, with its agent listed as Ara Tien and its principal and mailing address of 25648 Moore Lane, Stevenson Ranch, California. Stevenson Ranch, California is in Los Angeles County.

A LEXIS public records search turned up an entity named R & A Enterprises, LLC being registered in Nevada. The manager is identified as John Richter, who is listed as the manager for the Debtor in this Case. Foreign entities are required to register See Cal. Corp. Code §§ 17708.01 *et seq.* California Corporation Code § 17708.02 provides for a foreign limited liability company to obtain a certificate or registration to transact business in California.

At the hearing, the court addressed with the Parties the issues relating to the use of cash collateral. The Subchapter V Trustee stated that he supported the requested use of Cash Collateral.

The Debtor/Debtor in Possession stated that it agreed to increase the monthly adequate protection payment to creditor Patriot Bank, N.A. to $34,372.77.

The Motion is granted, and Debtor/Debtor in Possession is authorized to use the cash collateral for the period May, 2024, through September 30, 2024, including required monthly adequate protection payments of $34,372.77 to Creditor Patriot Bank, N.A., with the adequate protection payments applied to its secured claim in this case. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor/Debtor in Possession. All surplus cash collateral from the Car Wash is to be held in a cash collateral account and accounted for separately by Debtor/Debtor in Possession.

The court grants this Motion on and interim basis and continues the hearing to 11:30 a.m. on August 22, 2024, for Debtor/Debtor in Possession to file any Supplements to the Motion to extend authorization. That Supplement, if any, is due by August 15, 2024, with any opposition to be presented orally at the continued hearing.

The court grants Creditor Patriot Bank, N.A. a replacement lien in post-petition acquired assets of the same kind that are subject to its prepetition lien, to the extent that Creditor's collateral is reduced by the cash collateral used.

October 3, 2024 Hearing

The court continued the hearing on this Motion pursuant to the parties Stipulation (Docket 44), having granted use of cash collateral through October 31, 2024. Order, Docket 46.

At the hearing, the parties advised the court that they are still working on final terms for a stipulated use of cash collateral. They requested that the court extend the authorization for use through and including November 30, 2024, on the existing terms, and continue the hearing.

The Motion for Authority to Use Cash Collateral and Grant Replacement Liens is granted on an Interim basis, on the existing terms, through and including November 30, 2024.

The hearing on the Motion is continued to 2:00 p.m. on November 13, 2024 (Specially Set day and Time).

November 13, 2024 Hearing

The court continued this hearing on this specially set day and time to allow parties to continue working on a stipulation for the use of cash collateral. The court granted the use of cash collateral on an interim basis through November 30, 2024, in the mean time. Order, Docket 68.

Nothing new has been filed with the court under this Docket Control Number as of November 7, 2024.

At the hearing, the Parties agreed to extend the use of Cash Collateral through January 2025.

The hearing is continued to 10:30 a.m. on January 23, 2025.

January 23, 2025 Hearing

The court continued the hearing o this Motion, having granted authority to use cash collateral on an interim basis through February 28, 2025. Order, Docket 77.

No further pleadings have been filed for the further use of cash collateral.

The Parties reported that they are still working on the final terms for a stipulated further use of cash collateral.

The hearing on the Motion for Authority to Use Cash Collateral and Grant Replacement Liens is continued to 10:30 a.m. February 27, 2025.

Supplemental Pleadings, if any, in support of the further use of cash collateral if there is not a stipulation with Creditor for such use shall be filed and served on or before February 18, 2025. Opposition pleadings shall be filed and served on or before February 24, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Use of Cash Collateral filed by the Debtor/Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, the reports of the respective counsel, and good cause appearing,

IT IS ORDERED that the Motion for Authority to Use Cash Collateral and Grant Replacement Liens is **xxxxxxx**.

14. 23-23834-E-7 DNL-19 | **ANTONETTE TIN** **Peter Macaluso** | **MOTION TO SELL FREE AND CLEAR OF LIENS** **2-6-25 [294]**

Item 14 thru 15

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties in interest, and Office of the United States Trustee on February 6, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Sell Property is xxxxxxx .

The Bankruptcy Code permits Nikki Farris, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 8983 Richborough Way, Elk Grove, California 95624 ("Property").

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

A. Purchase price of $620,000,

B. 5.5% broker's commission,

C. 2% closing costs, and

D. The first Deed of Trust of Wilmington Savings Fund in the amount of $293,167.83 paid in full.

Mot. 3:26-4:5.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of SolarCity ("Creditor"). Creditor's claim is based on a Notice of an Independent Solar Energy Producer Contract ("Notice of Producer Contract"), recorded in Sacramento County, recorded document number 20150729 page 0985. Creditor has not filed a Proof of Claim.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant seeks relief pursuant to 11 U.S.C. § 363(f)(4), asserting that the lien, if any, is subject to *bona fide* dispute. Movant states that:

> SolarCity is not entitled to any interest in the property. The Notice of Producer Contract clearly states that it does not constitute a "title defect, lien, or encumbrance" on the Subject Property. The Trustee is not aware if the system has been deactivated or if it is currently producing any energy. Therefore, any interest in any of the sales proceeds of the Subject Property by SolarCity is in bona fide dispute and subsection (f)(4) applies.

Mot. 4:23-5:2.

While this document states that it is not a "title defect, lien or encumbrance against the real property," it does clearly state that:

> This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that is located on the real property. The independent solar energy producer provides electrical service to the current owner of this real property through a long-term contract for electric service. The independent solar energy producer is required to provide a copy of the contract to a prospective buyer of the real property within ten (10) days of the receipt of a written request from the current owner of this real property.
>
> **This recorded notice does not constitute a title defect, lien or encumbrance against the real property.**
> . . .
> The Power Purchase Agreement (PPA) contract is for the purchase of electricity from a solar energy system. The term of the contract is 20 years (240 full calendar months) from interconnection of the solar energy system, and is estimated to commence on 01/29/2015 and expire on 01/29/2035 . If the **current owner's rights and obligations under the contract** between the independent solar energy producer and the current owner **are transferred to a new owner of the real property, with the consent of the independent solar energy producer, the new owner will then assume those rights and obligations**. Those rights and obligations, both payment and performance, are stated in the contract. If the current owner's **rights and obligations under the contract are not transferred to a new owner**, whether or not the contract is terminated, **the new owner will not have the right to possess or use the solar energy system.**

Exhibit B; Dckt. 296, at 34-35 (emphasis font and bold added).

The Motion does not clearly state whether the seller's rights and obligation under the Production Agreement are being assigned to the Buyer, or whether the Buyer will not have the right to possess or use the solar energy system.

It appears that the solar system on the house is owned by SolarCity and that the Seller (here the Trustee) does not have the ability to unilaterally transfer it to a buyer of the home. It is not clear from the Sales Agreement whether the Buyer thinks that they are purchasing the solar system as part of this sale, or whether the Buyer has assumed the rights and obligation under the SolarCity Contract with the "owner" when the Notice was recorded July 29, 2015.

It is also not addressed as to what obligations the Bankruptcy Estate may have arising from a failure to have the SolarCity Contract assumed and assigned. Will the Bankruptcy Estate be liable for all of the future monthly power fees due under that Contract? The Notice states that the Contract expires on January 29, 2035 - ten years from this proposed sale. If the power service fee is $225 a month, even

if there was not an annual fee increase (currently commonly around 3%), ten years of $225 a month payments totals $27,000. Is this an amount that has to be paid out of the sales proceeds?

Also, if not assumed, then can SolarCity come onto the Property and remove the solar system?

At the hearing, counsel for the Trustee reported, **xxxxxxx**

With respect to conducting a sale free and clear of an interest in the property, Collier's Treatise states on the subject:

> A sale may proceed free and clear of liens or interests if they are in bona fide dispute. The trustee has the burden of demonstrating that a bona fide dispute exists. To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt. The court is not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists.

3 COLLIER ON BANKRUPTCY ¶363.06[5].

Here, the court has reviewed the Notice of Producer Contract at Exhibit B, Docket 296. Indeed, the language on that document states: "This recorded notice does not constitute a title defect, lien or encumbrance on the real Property." *Id.* On its face, there does not appear to be a "dispute" as to a lien or interest in the Property which can be the subject to 11 U.S.C. § 363(f)(4) relief.

Additionally, it is unclear of what "interest" the court would be ordering the sale to be free and clear of. The court cannot order that SolarCity's ownership of the solar system is removed from the solar system owned by SolarCity and the Trustee can then sell SolarCity's property to the Buyer.

The Debtor did not list owning a solar system on Amended Schedule A/B. Dckt. 84.

At the hearing, **xxxxxxx**

DISCUSSION

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

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Trustee will realize funds of $280,332.17 after paying costs associated with the sale and liens. This is a substantial return for the Estate.~~

~~Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately $34,100. As part of the sale in the best interest of the Estate, the court permits~~

~~Movant to pay the broker an amount not more than 5.5 percent commission to be paid to Reed Block Realty.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so the sale can move forward immediately. Mot. 5:15-20.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Nikki Farris, the chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion is granted, and Nikki Farris, the chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(4) to Ying Llu or nominee ("Buyer"), the Property commonly known as 8983 Richborough Way, Elk Grove, CA 95624 ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $620,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 296, and as further provided in this Order.~~
>
> ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~
>
> ~~C. The Property is sold free and clear of the lien of SolarCity, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(4), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds, after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~
>
> ~~D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The 5.5 percent commission shall be paid to the Chapter 7 Trustee's broker, Reed Block Realty.

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

15. 23-23834-E-7 DNL-20 | **ANTONETTE TIN** / **Peter Macaluso** | **MOTION TO SELL FREE AND CLEAR OF LIENS** **2-6-25 [299]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties in interest, and Office of the United States Trustee on February 6, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Nikki Farris, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 865 Royal Green Ave. Sacramento, CA 95831 ("Property").

The proposed purchaser of the Property is the Michael J. Harrington Living Trust ("Buyer"), and the terms of the sale are:

A. Purchase price of $730,000,

B. 5.5% broker's commission,

C. 2% closing costs, and

D. The first Deed of Trust of Roundpoint Mortgage in the amount of $317,000 paid in full.

Mot. 4:3-10.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch. Trustee asserts he makes this request out of an abundance of caution because pursuant to the Settlement Agreement the court approved on December 20, 2024, the Property was turned over to the Trustee free and clear of all interests.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant again seeks relief pursuant to 11 U.S.C. § 363(f)(4). Collier's Treatise states on the subject:

> A sale may proceed free and clear of liens or interests if they are in bona fide dispute. The trustee has the burden of demonstrating that a bona fide dispute exists. To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt. The court is

> not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists.

3 COLLIER ON BANKRUPTCY ¶363.06[5]. Here, Trustee seeks a sale free and clear based on the Compromise approved by the court. The relevant language of the Compromise states:

> Excepting only the rights and obligations created by this Settlement Agreement and the Judgments, and in consideration of the provisions thereof, [**Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch] hereby release and forever discharge the Bankruptcy Estate, Trustee** and each of their respective beneficiaries, representatives, executors, administrators, trusts, attorneys, insurers, predecessors, successors and assignees, individually, and collectively, from any and all actions, causes of action, obligations, costs, expenses, attorney fees, damages, losses, claims, debts, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, including without limitation all: (a) claims related to Proof of Claim No. 2-1; **and (b) claims of interest, including claims of exemption, in and to the Trustee Properties.**

Docket 254 at 3 (emphasis added). The court approved this Stipulation by Order Dated December 20, 2024. Docket 275. This language in the approved Compromise clearly states that any interests of Antonette Tin, Exequiel Allan Fernando, or Erlinda B. Lynch of any claims of interest each of the settling parties may have had.

The Trustee states that this request is made out of an "abundance of caution." Motion, p. 5:4-11; Dckt. 299. It appears that the Trustee has a belief that the Settlement entered into with the forging persons is of questionable effect and the court's order authorizing such Settlement is of no force and effect.

Additionally, the Trustee does not identify any interests being asserted by Antonette Tin, Exequiel Allan Fernando, or Erlinda B. Lynch are asserting which are in *bona fide* dispute. 11 U.S.C. § 362(f)(4) requires that:

1. A property of the bankruptcy estate free and clear of an interest of another person, only if specified conditions are met.

2. Such interest is in *bona fide* dispute.

The plain language of the statue appears to require that there must be an identifiable interest of a third-party in the property being sold, and that such identifiable interest must be in *bona fide* dispute. If there is no such "identifiable interest," the court is unsure as to how an order can be issued granting the sale to be free and clear of an "unidentifiable interest."

Also, in making this request is the Trustee "admitting" that a "normal" § 363(b) sale is not free and clear of unidentified interests, and that the Bankruptcy Code overrides California recording statue and duty to investigate laws concerning the sale of property? In requesting such "precautionary order," it appears that such conclusion could be drawn.

~~Trustee has demonstrated there is an objective basis to dispute the validity of any liens of Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch, if asserted. Therefore, this part of the relief is granted, and the Property is sold free and clear of any potential liens of Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch pursuant to 11 U.S.C. § 363(f)(4).~~

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Trustee will realize funds of $358,250.00 after paying costs associated with the sale and liens. This is a substantial return for the Estate.

Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately $40,150.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5.5 percent commission to be paid to Reed Block Realty.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so the sale can move forward immediately. Mot. 6:1-5.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Nikki Farris, the chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** ~~that the Motion is granted, and Nikki Farris, the chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(4) to the Michael J. Harrington Living Trust or nominee ("Buyer"), the Property commonly known as 865 Royal Green Ave. Sacramento, CA 95831 ("Property"), on the following terms:~~

A. The Property shall be sold to Buyer for $730,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 301, and as further provided in this Order.

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

C. The Property is sold free and clear of the potential liens of Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch, pursuant to 11 U.S.C. § 363(f)(4), with the liens, if any, of such creditors attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds, after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

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

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The 5.5 percent commission shall be paid to the Chapter 7 Trustee's broker, Reed Block Realty.

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

16.	**24-25235-E-7**	**RICHARD/JOSEPHINE WEISTER**	**MOTION TO DISMISS CASE PURSUANT**
	GDC-1	**Catherine King**	**TO 11 U.S.C. SECTION 707(B) 2-12-25 [12]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on xxxx, 202x. By the court's calculation, xx days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Dismiss is granted, and the case is dismissed.

Debtor Richard Dawson Weister and Josephine Freda Weister ("Debtor") move this court for an Order dismissing their own case pursuant to 11 U.S.C. § 707(b)(1). Debtor informs the court:

1. On the date of the debtors 341 trustee's meeting of creditors, December 19, 2024, the debtor, Richard Weister had a severe fall and was admitted to the hospital with a broken hip. Because of serious complications the debtors were unable to attend the meeting of creditors, nor the continued meeting date.

2. It is in the best interest of the debtor for him to finish rehabilitation and convalescence. There is no prejudice against creditors, nor any parties in interest dismissing this case. Should it be needed, the Debtors may file a new Chapter 7 at a later date.

Mot. 1:24-2:3.

DISCUSSION

11 U.S.C. § 707(b) states:

(b)

(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

However, it is more likely that Debtor is moving for dismissal under 11 U.S.C. § 707(a), the provision governing dismissal for cause. That section of the code states:

(a)The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

The court finds dismissal of this case at the debtor's own request is proper for cause, Debtor being unable to prosecute the case due to a medical emergency. Therefore, the Motion is granted pursuant to 11 U.S.C. § 707(a)(1). The court does not find dismissal proper pursuant to 11 U.S.C. § 707(b)(1), there being no evidence that granting relief would be an abuse of Chapter 7 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 to Dismiss the Chapter 13 case filed by Debtor Richard Dawson Weister and Josephine Freda Weister ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

17.	**24-25743-E-7** **NF-1**	**DONALD JOHNSON** **Nikki Farris**	**CONTINUED 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.

February 27, 2025 Hearing

The court continued the hearing on this Motion as Debtor filed the Abstract of Judgment in support of the Motion without the recorder information visible on the Abstract. As of February 24, 2025, no there has been no supplement to the record.

It is concerning to the court that neither the Debtor nor Debtor's counsel has responded to the opportunity to provide the simple necessary document, a copy of the recorded abstract of judgment. By their inaction, it appears that the Debtors want to forfeit their right to avoid this judicial lien, and instead have it haunt them for decades, such as would occur if the court were to deny this Motion.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

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).

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).

However, because the court does not have a copy of the Recorded Abstract of Judgment which shows the recording information, the court cannot issue an order avoiding such judicial lien.

The hearing is continued to 10:00 a.m. on February 27, 2024, to allow counsel for Debtor the opportunity to provide the required information.

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 Motion to Avoid the Judicial Lien of CACV of Colorado, LLC is **xxxxxxx**.

18. 24-24268-E-7 BHS-2	**ERIC GOGGANS Matthew DeCaminada**	**MOTION TO SELL 1-30-25 [21]**

Item 18 thru 19

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors and parties in interest, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Ethan J. Birnberg, the Chapter 7 Trustee, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's 100% ownership interest Model Airplane Kits identified on line 8 in Schedule A/B ("Property").

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

A. Purchase price is $8,500;

B. The sale is "as-is" and "where-is;"

C. The Property is sold subject to existing liens or encumbrances, if any.

Proposed Overbidding Instructions

(a) Overbidding shall start at $8,800.00, with the overbids in minimum $300.00 increments. The successful bidder, if not Buyer, will be required to sign a Purchase and Sale Agreement with the same terms as Exhibit "1" to the Motion to Sell.

(b) To qualify as a bidder, the bidder must send to the Trustee at 40200 Truckee Airport Road, Suite 1, Truckee, CA 96161 or his attorney, at the address above, a Cashier's Check or a certified check for $8,800.00 (representing the $8,500.00 down payment plus the $300.00 initial overbid) made payable to "Ethan J. Birnberg, Chapter 7 Trustee, In re Eric Paul Goggans" such that it is received by no later than noon on February 24, 2025. This Cashier's or certified check shall serve as a non-refundable deposit if the overbid is successful.

(c) The successful overbidder must deliver to the Trustee a Cashier's or certified check for the overbid amount within 10 days of Court approval of the sale and also take possession of the Subject Property by removing Subject Property from the current storage unit located at 7 427 Roseville Road, Sacramento, California 95842 within 10 days of the entry of the order of the Court approving the sale and payment in full of the purchase price.

Mot. 2:14-3:1.

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

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate as the Estate will realize a return for creditors in the case.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as these are boxed model airplanes and are not necessary for the Debtor. Mot. 3:14-15.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Ethan J. Birnberg, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Ethan J. Birnberg, the Chapter 7 Trustee, ("Movant") is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tyler DeVine or nominee ("Buyer"), the Estate's 100% ownership interest Model Airplane Kits identified on line 8 in Schedule A/B ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $8,500, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 24, and as further provided in this Order.

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

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

19. 24-24268-E-7 BHS-1 | **ERIC GOGGANS** Matthew DeCaminada | **MOTION TO EMPLOY BARRY H. SPITZER AS ATTORNEY(S)** **1-30-25 [16]**

Final Ruling

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Ethan J. Birnberg ("Trustee") seeks to employ Barry H. Spitzer ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Mot. 2:4-5, Dckt. 16. Trustee seeks the employment of Counsel to assist in preparing a Motion for Order Authorizing the Sale of Personal Property. *Id.* at 1-3.

Trustee argues that Counsel's appointment and retention is necessary to assist on legal matters related to the Debtor's estate. Mot. 2:1-3, Dckt. 16.

Barry H. Spitzer, an attorney of the Law Office of Barry H. Spitzer, testifies that he was requested by the Trustee to represent him in preparing a motion and other legal matters related to the estate. Decl. 2:3-8, Dckt. 19. Barry H. Spitzer testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at 21-24.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Barry H. Spitzer as Counsel for the Chapter 7 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Ethan J. Birnberg ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective February 27, 2025, and Trustee is authorized to employ Barry H. Spitzer as Counsel for Trustee on the terms and conditions as set forth in the Motion to Employ filed as Dckt. 16.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

20. 24-24573-E-7 KMT-2 | **PHILLIP KATTENHORN** **Richard Hall** | **MOTION TO APPROVE STIPULATED AGREEMENT** **1-30-25 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors and parties in interest, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Approval of Stipulation is granted.

The Chapter 7 Trustee in the Kattenhorn Bankruptcy Case, Ethan J. Birnberg ("Trustee Birnberg "), requests that the court approve a Stipulation with Nikki B. Farris, the Chapter 7 Trustee in the Mary Jean Kattenhorn ("Trustee Farris") Case, No. 22-21649. The Stipulation provides that, in full satisfaction of each bankruptcy estate's interest in the proceeds resulting the sale of certain real properties known as Assessor Parcel Nos. 052-020-023 and 052-020-050 (collectively "Lots"), the proceeds resulting from the sale of the Lots shall be distributed fifty percent (50%) to Trustee Farris and fifty percent (50%) to Trustee Birnberg, for their respective Bankruptcy Estates.

STIPULATION

Trustee Farris and Trustee Birnberg stipulate to an order evenly splitting proceeds of a sale of land resulting from a marriage dissolution between debtor in this case, Phillip Kattenhorn ("Debtor"),

and his ex-spouse, Mary Jean Kattenhorn. The Stipulation states (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Exhibit A, Dckt. 31):

> A. P. Kattenhorn and M. Kattenhorn were husband and wife.
>
> B. On or about June 29, 2021, a petition for dissolution of P. Kattenhorn and M. Kattenhorn's marriage was filed in the County of Placer as Case No. S-DR-0060655 (“Family Law Case”).
>
> C. Among the assets to be divided between P. Kattenhorn and M. Kattenhorn in the Family Law Case were certain real properties known as Assessor Parcel Nos. 052-020-023 and 052-020-050.
>
> D. On or about October 1, 2021, the court in the Family Law Case entered Findings and Order After Hearing determining as follows: (a) M. Kattenhorn was authorized to control and manage the Lots and to facilitate placing the Lots on the market for sale; (b) P. Kattenhorn was to cooperate with the marketing and sale of the Lots; (c) upon the sale of the Lots, the net proceeds from the sale (after certain costs and fees) were to be deposited into a client trust account through Strasser Law Corporation, counsel for M. Kattenhorn in the Family Law Case, pending further order or written agreement by the parties regarding further distribution.
>
> E. The Lots were sold and approximately $85,000 is on deposit with the Strasser Law Corporation as the net proceeds (“Lot Proceeds”).
>
> F. The Family Law Case was closed by Judgment on or about June 6, 2023.
>
> G. On or about June 30, 2022, M. Kattenhorn commenced Eastern District of California Bankruptcy Case No. 22-21649 by the filing of a voluntary Chapter 7 petition. Trustee Farris is the duly appointed Chapter 7 trustee for the M. Kattenhorn estate.
>
> H. On or about October 11, 2024, P. Kattenhorn commenced Eastern District of California Bankruptcy Case No. 24-24573 by the filing of a voluntary Chapter 7 petition. Trustee Birnberg is the duly appointed Chapter 7 trustee for the P. Kattenhorn estate. Case No. 22-21649 and Case No. 24-24573 are collectively referred to as the "Bankruptcy Cases".
>
> I. The Lot Proceeds are an asset of the respective bankruptcy estates.
>
> J. In full satisfaction of each bankruptcy estate’s interest in the Lot Proceeds, the Lot Proceeds shall be distributed fifty percent (50%) to Trustee Farris and fifty percent (50%) to Trustee Birnberg. Each party agrees to that the Strasser Law Corporation or its assignee shall be directed to distribute the Lot Proceeds as provided herein.

DISCUSSION

Here, the respective bankruptcy estates are evenly splitting proceeds from the sale of the Lots. The court finds this to be a fair distribution.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation filed by Chapter 7 Trustee, Ethan J. Birnberg ("Trustee Birnberg ") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Stipulation is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dckt. 31). The terms of the Stipulation include, without limitation, that in full satisfaction of each bankruptcy estate's interest in the proceeds from the sale of Lots APN Nos. 052-020-023 and 052-020-050 (the "Lot Proceeds"), the Lot Proceeds shall be distributed fifty percent (50%) to Trustee Farris and fifty percent (50%) to Trustee Birnberg. Each party agrees that the Strasser Law Corporation, which is holding the Lot Proceeds in its client trust account, or its assignee, shall be directed to distribute the Lot Proceeds as in the Settlement Agreement.

21. 22-23379-E-7 GMR-4 | **ABDUL MUNIF** Gabriel Liberman | **MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE(S)** **1-26-25 [145]**

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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2025. By the court's calculation, 32 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).

Movant is three days short of the required notice period. In light of the amount of fees at issue and what appears to be an out of the ordinary clerical or computational error by the Trustee, the court shortens the notice period to the 32 days notice given.

The Motion for Allowance of Trustee 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Chapter 7 Trustee's fees is granted.

Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") for the Estate of Abdul Munif, makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 10, 2023, through February 27, 2025. Trustee seeks fees in the sum of $13,180.42 plus costs of $65.28 for a total of $13,245.70.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 administering assets of the Estate and realizing a return for creditors. Specifically, Trustee sold the real property commonly known as 464 Arcade Blvd, Sacramento CA in the amount of $261,000.00. After expenses and liens, the gross proceeds the estate received is $129,608.01. Decl. 2:4-5, Docket 147. Trustee administered additional assets as well. The administration of this case will result in approximately $21,433.70, plus interest of $2,022.07, to be paid to unsecured creditors. This represents a 100% payment to unsecured creditors who filed claims in the case. The additional surplus to be returned to the debtor is $43,391.52. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$9,550.00
3% of the balance of $0	$0
Calculated Total Compensation	**$15,300**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$13,180.42
Less Previously Paid	$0.00
Total First and Final Fees Requested	$13,180.42

COSTS REQUESTED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $65.28 pursuant to this application. The requested costs relate to mileage at $.67 per mile, copying at $.11 per page, and related postage charges. The costs requested are reasonable.

FEES & COSTS ALLOWED

The court finds that the requested fees and costs are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $13,180.42 and final costs in the amount of $65.28 are approved pursuant to 11 U.S.C. § 330 are 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.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$13,180.42
Costs and Expenses	$65.28

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 Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards, the Chapter 7 Trustee is allowed the following fees and expenses as trustee of the Estate:

Geoffrey Richards, the Chapter 7 Trustee

Fees in the amount of $13,180.42
Expenses in the amount of $65.28,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees 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.

FINAL RULINGS

22. 24-24493-E-11 AF-5 | **TOWN & COUNTRY WEST LLC** **Nancy Weng** | **MOTION TO EMPLOY COLLIERS INTERNATIONAL AS REALTOR(S) 1-30-25 [75]**

Final Ruling: No appearance at the February 27, 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 Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Town & Country West, LLC ("Debtor in Possession") seeks to employ David Herrera and Trevor Jackson of Collier's International ("Agents") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Agents to sell Debtor in Possession's real properties, 2961 Fulton Avenue, Sacramento, CA 95821 ("Fulton"), and 11354 White Rock Road, Rancho Cordova, CA 95742 ("White Rock"). *See generally* Mot., Dckt. 75.

Debtor in Possession argues that Agent's appointment and retention are necessary to sell the real properties because of their extensive experience. Mot. 2:11-20, Dckt. 75. According to Debtor in Possession, such employment will include, without limitation: providing listing services for the sale of the real properties, holding open houses, negotiations with prospective purchasers of the properties, and preparation of all necessary documents to effect the sale of the real properties. *Id.* at 21-26.

David Herrera and Trevor Jackson, brokers with Colliers International, testifies that they are employed to provide a competent and professional analysis of the Debtor's real properties and to market them for sale as soon as possible. Decl. 2:24-28, Dckt. 77. David Herrera and Trevor Jackson testifies

they and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. 3:5-9, Dckt. 77.

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 Agents, considering the declaration demonstrating that Agents do 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 David Herrera and Trevor Jackson as Agents for Debtor in Possession on the terms and conditions set forth in the Exclusive Right Agreement (Sale) filed as Exhibit A, Dckt. 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 Town & Country West, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective February 27, 2025, and Debtor in Possession is authorized to employ David Herrera and Trevor Jackson as Agents for Debtor in Possession on the terms and conditions as set forth in the Exclusive Right Agreement (Sale) filed as Exhibit A, Dckt. 79.
>
> **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 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.

23.	**24-24835-E-7** **BHS-4**	**DEJA VU SHOWGIRLS - SACRAMENTO, LLC** **Anthony Asebedo**	**MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES ATTORNEY(S)** **1-22-25 [44]**

Final Ruling: No appearance at the February 27, 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 Debtor, all creditors and parties in interest, and Office of the United States Trustee on January 22, 2025. By the court's calculation, 36 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).

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.

The Law Office of Barry H. Spitzer, the Attorney ("Applicant") for the Chapter 7 Trustee, Kimberly J. Husted, and the Estate of Deja Vu Showgirls - Sacramento, LLC ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 5, 2024, through January 22, 2025. The order of the court approving employment of Applicant was entered on November 8, 2024. Dckt. 10. Applicant requests fees in the amount of $7,695.00 and costs in the amount of $340.80.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney'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 attorney 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 an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "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 filing and having granted a Motion to Sell the Estate's interest in a vehicle, as well as other property of the Estate. The Estate has $47,127.63 of unencumbered monies to be administered as of the filing of the 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.

1. Reviewed the court file and Application for Employment;

2. Prepared a motion to sell;

3. Assisted Trustee in the sale of property was used in the operation of the adult entertainment business, including the purchase agreement and motion to sell;

4. Assisted Trustee in the sale of the estate's interest in a vehicle, including preparing a motion to sell and retain the Auctioneer; and

5. Court appearance.

Mot. 3:1-7.

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**
Barry H. Spitzer	16.20	$475.00	$7,695.00

Total Fees for Period of Application	$7,695.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $340.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Parking	----------	$4.00
Copying		$147.00
Postage		$189.80
Total Costs Requested in Application		$340.80

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 $7,695 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 $340.80 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	$7,695
Costs and Expenses	$340.80

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 The Law Office of Barry H. Spitzer, the Attorney ("Applicant") for the Chapter 7 Trustee, Kimberly J. Husted, and the Estate of Deja Vu Showgirls - Sacramento, LLC ("Client") 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 Law Office of Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

The Law Office of Barry H. Spitzer, Professional employed by the Chapter 7 Trustee

Fees	$7,695
Costs and Expenses	$340.80,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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.

24. 24-22846-E-11 ISMOIL KASIMOV

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-28-24 [1]

CAE-1

Item 24 thru 25

Final Ruling: No appearance at the February 27, 2025 Status Conference is required.

Debtor's Atty: David Foyil

Notes:
Continued from 1/22/25 to be conducted in conjunction with the hearing on the Motion to Dismiss.

[DEF-5] Application to Convert Chapter 11 Proceedings to Chapter 7 Case filed 2/13/25 [Dckt 141]; Order granting filed 2/18/25 [Dckt 145]

The Status Conference is concluded and removed from the Calendar.

FEBRUARY 27, 2025 STATUS CONFERENCE

In response to the U.S. Trustee's Motion to Dismiss this Case, the Debtor requested that the case now be converted to one under Chapter 7. On February 19, 2025, the Debtor filed his Notice of Conversion to Chapter 7, electing to exercise his rights under 11 U.S.C. § 1112(a).

JANUARY 22, 2025 STATUS CONFERENCE

On January 14, 2025, the Debtor in Possession filed an updated Status Report. Dckt. 130. The U.S. Trustee has set for hearing an Amended Motion to Convert this Case to Chapter 7 or Dismissal. Dckt. 136.

The Status Conference is continued to 10:30 a.m. on February 27, 2025, to be conducted in conjunction with the hearing on the Motion to Convert or Dismiss this Bankruptcy Case.

SEPTEMBER 18, 2024 STATUS CONFERENCE

Debtor Ismoil Kasimov commenced this voluntary Chapter 11 case on June 28, 2024. At the September 12, 2024 hearing, the court announced its Ruling that relief from the stay is granted as to two vehicles which the Debtor in Possession stated would be used in the business. Civ. Min.; Dckt. 77.

At the Status Conference, counsel for the Debtor in Possession reported that documents are being produced for the U.S. Trustee. However, the court has granted relief from the automatic stay for two of the trucks that would be used in the operation of the business.

The Status Conference is continued to 2:00 p.m. on January 22, 2025, in light of the Debtor in Possession and his counsel reevaluating whether a plan can be prosecuted in this Bankruptcy Case

25. **24-22846-E-11 UST-1** | **ISMOIL KASIMOV** **David Foyil** | **AMENDED MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, AMENDED MOTION TO DISMISS CASE 1-22-25 [136]**

Final Ruling: No appearance at the February 27, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on January 22, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7 on February 18, 2025. Order, Docket 145.

Tracy Hope Davis of the Office of the United States Trustee ("U.S. Trustee") moves this court for an order dismissing this Chapter 11 case pursuant to 11 U.S.C. § 1112(b). Specifically, U.S. Trustee states:

1. Cause exists to dismiss the case pursuant to 11 U.S.C. § 1112(b)(4)(F) as Debtor in Possession Ismoil Kasimov has failed to file operating reports which have come due for the months of August, September, October, November and December of 2024. Mot. 3:14-25.

2. Relief from stay was granted as to Debtor's primary asset used to generate revenue in September of 2024, and since then, Debtor has done nothing to move along this case. *Id.* at 4:5-16.

3. Cause further exists for dismissal under 11 U.S.C. § 1112(b)(4)(A) as there has been a substantial or continuing loss to, or **diminution of, the bankruptcy estate, combined with an absence of a reasonable likelihood of rehabilitation.** *Id.* at 4:19-25.

4. Trustee recommends dismissal rather than conversion. *Id.* at 6:5-12.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 13, 2025. Docket 143. Debtor does not dispute U.S. Trustee's arguments, but requests conversion rather than dismissal to obtain some relief under the Code.

APPLICABLE LAW

The Bankruptcy Code Provides:

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

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

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;
> >
> > (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
> >
> > (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
> >
> > (E) failure to comply with an order of the court;
> >
> > (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
> >
> > (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
> >
> > (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
> >
> > (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
> >
> > (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

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

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

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

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

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

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

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

In this case, there are clear factual grounds for dismissal or conversion in the case. Specifically, Debtor in Possession has failed to file operating reports for the months of August, September, October, November and December of 2024. 11 U.S.C. § (b)(4)(F). However, the court has recently converted the case to one under Chapter 7. Order, Docket 145. Therefore, the Motion to Dismiss is denied without prejudice, and the case shall proceed in bankruptcy under Chapter 7.

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 Tracy Hope Davis of the Office of the United States Trustee ("U.S. Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7 on February 18, 2025. Order, Docket 145.

26. 24-24977-E-7 WSL-1 | **JESSE KERR** Raj Wadhwani | **MOTION TO AVOID LIEN OF BONK HOLDINGS, LLC** 1-21-25 [17]

Item 26 thru 29

Final Ruling: No appearance at the February 25, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2025. By the court's calculation, 37 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bonk Holdings, LLC ("Creditor") against property of the debtor, Jesse Leroy Kerr ("Debtor") commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534, California ("Property").

Creditor's Opposition

Creditor, in its opposition, claims Debtor's exemption on a personal residence is capped at $15,000.00 under 11 U.S.C. § 522(d)(1). Opp'n 1:24-28, Dckt. 44. Thus, according to Creditor, only $15,000.00 in equity is exempt from judgement creditor Bonk Holdings, LLC's judgement lien. Opp'n 2:1-2, Dckt. 44.

Debtor's Response

Debtor, however, claims that under 11 U.S.C. § 522(b), state exemptions apply rather than federal exemptions. Response 1:26-28, Dckt. 46. And under California exemptions, specifically C.C.P. § 704.730, debtors are entitled to exempt up to $699,421.00 of real property, which is capped by the median home value in the debtor's county. And according to Debtor, based off of the median home value in Solano County, Debtor may claim an exemption of up to $550,000.00. Response 2:5-9, Dckt. 46. Notably, Debtor claims the exemption was invoked up to $550,000 in his response to Creditor's Opposition, but Debtor lists the exemption amount as $585,000.00 in Schedule C of his petition. *Id.* at 8; Schedule C at 16, Docket 1.

DISCUSSION

The court finds Creditor's opposition is without merit. Debtor on Schedule C lists the exemption amount as $585,000.00 under California's Code Civ. P. § 704.730. Schedule C at 16, Docket 1. California has opted out of the Federal exemptions provided in 11 U.S.C. § 522(b)(2). See, Cal. C.C.P. § 703.130, which provides:

> § 703.130. Exemptions in bankruptcy
>
> Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

Debtor is entitled to claim California state law exemptions. The amount of the lien claimed by Creditor therefore impairs the exemption. Thus, despite Creditor's last ditch effort, Debtor's exemption is not limited to the amount of $15,000.00. Even if Debtor's exemption was $550,000.00, as claimed in Debtor's response, the judicial lien still would drastically impair the exemption.

Exemptions Claimed

On Schedule C Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the Property that is the subject of this Motion to Avoid Judicial Lien. Sch. C; Dckt. 1 at16. It appears that Creditor misread Schedule C, as no exemption is claimed pursuant to 11 U.S.C. § 522(d)(1).

A judgment was entered against Debtor in favor of Creditor in the amount of $6,267.59. Exhibit B, Dckt. 20. An abstract of judgment was recorded with Solano County on July 19, 2024, that encumbers the Property. *Id*.

Pursuant to Debtor's Exhibit D, the subject real property has an approximate value of $840,000.00. Exhibit D at 17, Docket 20. The unavoidable consensual liens that total $550,757.06 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $585,000.00 on Schedule C. Schedule C at 16, 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 Jesse Leroy Kerr ("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 Bonk Holdings, LLC, California Superior Court for Solano County, Case No. SC23-00420, recorded on July 19, 2024, Document No. 202400030686, with the Solano County Recorder, against the real property commonly known as 829 Emerald Bay Dr., Fairfield, California, 94534, 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.

27. 24-24977-E-7 WSL-2 | **JESSE KERR** | **Raj Wadhwani** | **MOTION TO AVOID LIEN OF NOSS INVESTMENTS** | **1-21-25 [22]**

Final Ruling: No appearance at the February 27, 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2025. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Noss Investments ("Creditor") against property of the debtor, Jesse Leroy Kerr ("Debtor") commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534, ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $124,977.13. Exhibit B, Dckt. 25. An abstract of judgment was recorded with Solano County on October 1, 2024, that encumbers the Property. *Id*.

Pursuant to Debtor's Exhibit D, the subject real property has an approximate value of $840,000.00. Exhibit D, Docket 30. The unavoidable consensual liens that total $550,757.06 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $585,000.00 on Schedule C. Schedule C at 17, 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 Jesse Leroy Kerr ("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 Noss Investments, California Superior Court for Solano County Case No. CU24-01557, recorded on October 1, 2024, Document No. 202400043123, with the Solano County Recorder, against the real property commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534, 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.

28. 24-24977-E-7 JESSE KERR
WSL-3 Raj Wadhwani

MOTION TO AVOID LIEN OF F STREET INVESTMENTS, LLC
1-21-25 [27]

Final Ruling: No appearance at the February 27, 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2025. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of F Street Investments, LLC ("Creditor") against property of the debtor, Jesse Leroy Kerr ("Debtor") commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,894,063.93. Exhibit B, Dckt. 30. An abstract of judgment was recorded with Solano County on October 2, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Exhibit D, the subject real property has an approximate value of $840,000.00. Exhibit D, Docket 30. The unavoidable consensual liens that total $550,757.06 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $585,000.00 on Schedule C. Schedule C at 16, 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 Jesse Leroy Kerr ("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 F Street Investments, LLC, California Superior Court for Solano County Case No. CU24-00425, recorded on October 2, 2024, Document No. 202400043428, with the Solano County Recorder, against the real property commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534, 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.

29. 24-24977-E-7 JESSE KERR **AMENDED MOTION TO AVOID LIEN OF F STREET INVESTMENTS, LLC**

WSL-4 Raj Wadhwani **1-22-25 [39]**

Final Ruling: No appearance at the February 27, 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of F Street Investments, LLC ("Creditor") against property of the debtor, Jesse Leroy Kerr ("Debtor") commonly known as829 Emerald Bay Dr., Fairfield, CA 94534 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $279,931.59. Exhibit B, Dckt. 35. An abstract of judgment was recorded with Solano County on October 2, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Exhibit D, the subject real property has an approximate value of $840,000.00. Exhibit D, Docket 35. The unavoidable consensual liens that total $550,757.06 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $585,000.00 on Schedule C. Schedule C at 16, 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 Jesse Leroy Kerr ("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 F Street Investments, LLC, California Superior Court for Solano County Case No. CU24-00384, recorded on October 2, 2024, Document No. 202400043430, with the Solano County Recorder, against the real property commonly known as 829 Emerald Bay Dr., Fairfield, CA 94534, 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.