



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

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

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

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

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

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on February 20, 2025 (Doc. #46), although the debtor has not filed and set for hearing on at least 35 days' notice a motion to confirm the modified plan as required by Local Rule of Practice 3015-1(d)(1).

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

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on February 20, 2025 (Doc. #46), although the debtor has not filed and set for hearing on at least 35 days' notice a motion to confirm the modified plan as required by Local Rule of Practice 3015-1(d)(1).

3. [24-13401](#)-A-13 **IN RE: CYNTHIA BERMUDEZ**
[LGT-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-27-2025 [[34](#)]

LILIAN TSANG/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on February 13, 2025, amending the claimed exemptions that are the subject of this objection. Doc. #43.

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

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

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

NO RULING.

5. [24-13217](#)-A-13 **IN RE: MARIBEL MEJIA**
[RSW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLIAMS & WILLIAMS INC.
FOR ROBERT S. WILLIAMS, DEBTORS ATTORNEY(S)
2-17-2025 [\[33\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Robert S. Williams ("Movant"), counsel for Maribel Mejia ("Debtor"), moves the court for an order permitting Movant's election of fees under LBR 2016-1(c) instead of LBR 2016-1(b). Doc. #33. Debtor filed her chapter 13 plan ("Plan") on November 3, 2024. Doc. #3. In Section 3.05 of the Plan, Movant failed to check a box to indicate how Movant will seek the court's approval regarding attorneys' fees. Id. Pursuant to LBR 2016-1(e), because no alternative was selected in the Plan with respect to payment of attorneys' fees, Movant must file and serve a motion to approve payment of attorneys' fees in accordance with 11 U.S.C. §§ 329 and 330, Federal Rules of Bankruptcy Procedure 2002, 2016 and 2017, and LBR 2016-1(b) instead of receiving payment of attorneys' fees by complying with LBR 2016-1(c). Id. According to Movant, Movant intended to check the box for payment of attorneys' fees by complying with LBR 2016-1(c) instead of selecting to file and serve a motion for fees and expenses pursuant to LBR 2016-1(b). Doc. #33; Decl. of Robert S. Williams, Doc. #35.

LBR 2016-1(e) provides that the debtor's counsel shall elect compensation under LBR 2016-1(b) or LBR 2016-1(c) in the first chapter 13 plan filed, i.e., chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first chapter 13 plan filed shall be deemed an election to seek compensation and expenses under LBR 2016-1(b). Except as provided in Federal Rule of Civil Procedure ("Rule") 60, made applicable to this case by Federal Rule of Bankruptcy Procedure 9024, that election, or failure to elect, is irrevocable. LBR 2016-1(e). Rule 60(b) provides relief of a party "from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." Rule 60(b) "shall be made within a reasonable time, and ... not more than one year after the judgment, order, or proceeding was entered or taken". United States v. Kellogg (In re West Tex. Mktg. Corp.), 12 F.3d 497, 503 (5th Cir. 1994). Relief to alter the election of counsel in Section 3.05 of the Plan can only be granted under Rule 60(b).

Here, Movant states his intention to seek compensation under LBR 2016-1(c) is shown in the Plan and Movant's Disclosure of Compensation. Doc. #1, 3. The Plan indicates that \$1,500.00 is to be paid as a retainer and \$6,500.00 is to be paid through the Plan. Doc. #3. In the Disclosure of Compensation statement, Movant lists his total attorney fees were \$7,500.00 with \$1,000.00 paid as a retainer. Doc. #1. It was a mistake of Movant to fail to check the correct box on the Plan to indicate compensation was sought under LBR 2016-1(c) at the time the Plan was prepared, and that mistake was not discovered when the Plan was signed or filed. Doc. #33; Williams Decl., Doc. #35. Based on the evidence before the court, the court finds that the motion was filed within a reasonable time and relief under Rule 60(b) can be granted.

Accordingly, pending opposition being raised at the hearing, this motion will be GRANTED.

6. [21-12222](#)-A-13 **IN RE: JAMES/CARLA MOORE**
[RSW-2](#)

MOTION TO INCUR DEBT
2-13-2025 [\[48\]](#)

CARLA MOORE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the Moving Party files amended schedules prior to the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion if the moving party files amended schedules prior to the hearing. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Carla Jane Moore ("Joint Debtor"), the joint debtor with debtor James Albert Moore, Jr. ("Debtor") in this chapter 13 case, moves the court for an order authorizing Joint Debtor to incur new debt. Doc. #48. Debtor passed away on June 23, 2022, and Joint Debtor was substituted in as the successor for Debtor on March 28, 2023. Id. Joint Debtor desires to purchase a vehicle because Joint Debtor is concerned that her current car will not last long and Joint Debtor needs a vehicle to get to and from work. Decl. of Carla Moore, Doc. #50. Joint Debtor is looking to purchase a 2023 Kia Forte for a total cost of \$19,000.00. Moore Decl., Doc. #50. Joint Debtor will finance the purchase for 72 months at 14% for a monthly payment of \$400.00. Id. Joint Debtor states that she can afford both the payment for the new vehicle and her current chapter 13 plan payment because her budget has changed. Id. While Joint Debtor's declaration filed in support of the motion indicates that Joint Debtor will be filing an amended budget with the court to show Joint Debtor will be able to afford the monthly car payments and monthly plan payments, those amended schedules have not yet been filed with the court. Id.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion if Joint Debtor files amended schedules prior to the hearing showing that Joint Debtor can afford both the payment for the new vehicle and her current chapter 13 plan payment. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Joint Debtor is not current on her chapter 13 plan payments or that the chapter 13 plan is in default. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Joint Debtor. The only security for the new debt will be the motor vehicle to be purchased by Joint Debtor. However, Joint Debtor has not filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living expenses, and the new debt.

Accordingly, subject to Joint Debtor filing amended schedules prior to the hearing and pending opposition being raised at the hearing, this motion will be GRANTED. Joint Debtor is authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

7. [23-11029](#)-A-13 **IN RE: JITMA MANGOIG**
[LGT-1](#)

MOTION TO DISMISS CASE
1-29-2025 [\[56\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to April 3, 2025 at 9:00 a.m.

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

The trustee's motion to dismiss will be continued to April 3, 2025 at 9:00 a.m. to be heard with the debtor's motion to confirm modified plan (RSW-1).
Doc. ##77-83, 87-88.

8. [24-11342](#)-A-13 **IN RE: MIGUEL/MARIA DE LEON**
[RSW-2](#)

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

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

NO RULING.

9. [24-11342](#)-A-13 **IN RE: MIGUEL/MARIA DE LEON**
[RSW-4](#)

MOTION FOR COMPENSATION FOR ROBERT S. WILLIAMS, DEBTORS ATTORNEY(S)
2-17-2025 [[60](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Robert S. Williams ("Movant"), counsel for Miguel De Leon and Maria De Leon (together, "Debtors"), moves the court for an order permitting Movant's election of fees under LBR 2016-1(c) instead of LBR 2016-1(b). Doc. #60. Debtors' chapter 13 plan ("Plan") was confirmed on August 13, 2024. Doc. ##3, 15. Movant substituted in as current counsel on December 5, 2024. Order, Doc. #31. A modified plan (Modified Plan") was filed on December 4, 2024 in which Movant elects attorneys' fees to be paid pursuant to LBR 2016-1(c). Doc. ##23-28.

However, in Section 3.05 of the chapter 13 plan filed by Debtor's former counsel, Debtors' former counsel elected to file and serve a motion to approve payment of attorneys' fees in accordance with 11 U.S.C. §§ 329 and 330, Federal Rules of Bankruptcy Procedure 2002, 2016 and 2017, and LBR 2016-1(b). Doc. #3. Movant requests the court grant Movant's request for payment of attorneys' fees by complying with LBR 2016-1(c) instead of filing and serving a motion for fees

and expenses pursuant to LBR 2016-1(b) as previously selected by Debtor's former counsel. Doc. #60.

LBR 2016-1(e) provides that the debtor's counsel shall elect compensation under LBR 2016-1(b) or LBR 2016-1(c) in the first chapter 13 plan filed, i.e., chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first chapter 13 plan filed shall be deemed an election to seek compensation and expenses under LBR 2016-1(b). Except as provided in Federal Rule of Civil Procedure ("Rule") 60, made applicable to this case by Federal Rule of Bankruptcy Procedure 9024, that election, or failure to elect, is irrevocable. LBR 2016-1(e). Rule 60(b) provides relief of a party "from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." Rule 60(b) "shall be made within a reasonable time, and ... not more than one year after the judgment, order, or proceeding was entered or taken". United States v. Kellogg (In re West Tex. Mktg. Corp.), 12 F.3d 497, 503 (5th Cir. 1994). Relief to alter the election of the debtors' counsel in Section 3.05 of the Plan can only be granted under Rule 60(b).

Here, Movant has filed a first modified plan to show that Movant received no retainer and seeks to be paid compensation in the amount of \$7,500.00 pursuant to LBR 2016-1(c). Plan, Doc. #27; Decl. of Robert S. Williams, Doc. #62. Debtors' former counsel has advised that Debtors' former counsel will not be seeking fees in addition to the retainer Debtors' former counsel received prepetition. Doc. #60; Williams Decl., Doc. #62. Movant notes that Movant is charging less in attorneys' fees, and Debtors will save \$5,000.00 compared to if prior counsel was awarded the full \$15,000.00 in attorneys' fees requested in the original plan. Doc. #60. Charging less attorneys' fees means Debtors will be more likely to be able to make all plan payments and is in Debtors' best interest. Doc. #60. Based on the evidence before the court, the court finds that the motion was filed within a reasonable time and relief under Rule 60(b) can be granted.

Accordingly, pending opposition being raised at the hearing, this motion will be GRANTED.

10. [24-11564](#)-A-13 **IN RE: JALAIN BEEMS**
[APD-3](#)

MOTION TO CONFIRM PLAN
2-3-2025 [\[74\]](#)

JALAIN BEEMS/MV
ANTHONY DIEHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on February 3, 2025, with a hearing date set for March 6, 2025. Because Local Rule of Practice ("LBR") 3015-1(d)(1) requires the motion to be served at least 35 days prior to the hearing date and the motion was set for hearing on less than 35 days' notice, the motion was not served properly.

Further, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on February 3, 2025 using a Clerk's Matrix of Creditors that was generated October 2, 2024. Doc. #79. Accordingly, service of notice of the motion does not comply LBR 7005-1(d).

11. [24-11564](#)-A-13 **IN RE: JALAIN BEEMS**
[LGT-2](#)

MOTION TO DISMISS CASE
1-17-2025 [[66](#)]

ANTHONY DIEHL/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to dismiss on February 26, 2025. Doc. #93.

12. [18-12667](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[LGT-3](#)

MOTION TO DISMISS CASE
1-29-2025 [[120](#)]

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

NO RULING.

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

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

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to plan on March 5, 2025. Doc. #60.

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

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

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to dismiss on March 5, 2025. Doc. #62.

15. [24-13289](#)-A-13 **IN RE: JORGE PERALES**
[LGT-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-10-2025 [\[39\]](#)

LILIAN TSANG/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on February 5, 2025, amending the claimed exemptions that are the subject of this objection. Doc. #51.

16. [24-12192](#)-A-13 **IN RE: ROBERT SARGENT**
[LGT-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-27-2025 [\[41\]](#)

LILIAN TSANG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to debtor's claim of exemptions on February 11, 2025. Doc. #50.

17. [24-13595](#)-A-13 **IN RE: MARTIN VERA AND ILIANA FLORES**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-24-2025 [\[12\]](#)

LILIAN TSANG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation on February 27, 2025. Doc. #21.

18. [25-10397](#)-A-13 **IN RE: BONNIE BUCKMASTER**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-19-2025 [\[8\]](#)

BONNIE BUCKMASTER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Stay extended until March 31, 2025, and hearing continued
to March 27, 2025 at 9:30 a.m. to permit the debtor to
supplement the record.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and continue the hearing on this motion to permit the debtor to file supplemental pleadings in support of this motion. If opposition is presented at the hearing, the court will consider the opposition in light of the proposed continuance.

Debtor Bonnie Jean Buckmaster ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #8.

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 23-12510 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on November 9, 2023 and dismissed on November 18, 2024. Decl. of Bonnie Buckmaster, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on February 13, 2025. Petition,

Doc. #1. As a result of the court's order continuing the hearing, the automatic stay will terminate in the present case on March 15, 2025.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises. In the Prior Case, a notice of default and intent to dismiss case was served based on Debtor's default in plan payments in the Prior Case. Prior Case, Case No. 23-12510, Doc. #30. The Prior Case was dismissed by an order after Debtor failed to cure the plan default within 30 days. See Case No. 23-12510, Doc. ##33-34. Debtor states that she failed to cure the default in plan payments in the Prior Case due to unexpected expenses, which caused Debtor to fall behind on her plan payments, but that situation has changed. Buckmaster Decl., Doc. #10.

In support of this motion to extend the automatic stay, Debtor declares that she has tightened up on her spending and has gotten rid of all non-essential bills. Buckmaster Decl., Doc. #10. Further, Debtor states she is motivated to succeed in completing a chapter 13 plan in order to save her home and, without an extension of the automatic stay, Debtor fears the secured lender may foreclose on Debtor's home. Id. Debtor filed a proposed plan on February 13, 2025. Doc. #3. Debtor's Schedules I and J filed in this case list monthly income of \$6,522.75 and expenses of \$3,502.00, resulting in monthly net income of \$3,020.75 of which Debtor proposes to apply \$2,007.00 to plan payments in this case. Schedules I and J, Doc. #1; Plan, Doc. #3. Thus, Debtor's schedules show approximately \$1,000.00 per month in net income beyond the amount needed for Debtor's proposed plan payments.

Comparing Debtor's current proposed plan with the confirmed plan in the Prior Case, it appears that Debtor's monthly plan payments will be approximately the same amount (\$2,007.00 in current case and \$2,014.00 in Prior Case). Doc. #3; Prior Case, Case No. 23-12510, Doc. #7. Further, it appears that Debtor's net monthly income has decreased when comparing the net monthly income in the Prior Case with the net monthly income in the current case based on Debtor's filed schedules (\$3,020.75 in current case and \$3,487.00 in Prior Case). Doc. #1; Prior Case, Case No. 23-12510, Doc. #1. In the Prior Case, Debtor had \$1,473.00 in net monthly income over the amount of Debtor's chapter 13 plan payments and

still could not make the required monthly plan payments. Prior Case, Case No. 23-12510, Doc. #30. In the current case, Debtor has only \$1,013.75 net monthly income over the amount of Debtor's proposed chapter 13 plan payments.

The court finds that Debtor has not met her burden of rebutting the presumption by clear and convincing evidence that this case was not filed in good faith because the pleadings filed with the motion fail to explain what the "unexpected expenses" were that caused Debtor not to make her plan payments in the Prior Case and what has changed such that Debtor believes that she will be able to maintain her chapter 13 plan payments in this case when Debtor had more excess income in the Prior Case and was not able to maintain her plan payments. Rather than allow the stay under § 362(a) to terminate pursuant to 11 U.S.C. § 362(c)(3)(C), the court is inclined to extend the automatic stay for a limited time to permit Debtor to supplement her motion and rebut the presumption by clear and convincing evidence that this chapter 13 case is not filed in good faith.

Debtor's case "is presumptively filed not in good faith." 11 U.S.C. § 362(c)(3)(C). For the reasons discussed above, Debtor has not rebutted this presumption by clear and convincing evidence in the pleadings currently filed with the motion. The court will extend the automatic stay until March 31, 2025 and will continue the hearing on this motion to March 27, 2025 at 9:30 a.m. Debtor shall file pleadings to supplement her motion to extend the stay no later than March 20, 2025. If Debtor does not timely file any supplemental pleadings, a further extension of the automatic stay will be denied without a further hearing.

1. [24-11733](#)-A-7 **IN RE: HARJIT SINGH AND JASPREET KAUR**
[RSW-3](#)

MOTION TO AVOID LIEN OF BALBOA CAPITAL CORPORATION
2-5-2025 [\[39\]](#)

JASPREET KAUR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Balboa Capital Corporation, a California Corporation ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone. See Doc. #43. Moreover, service of the notice of hearing and moving papers on Creditor's counsel that filed the abstract of judgment does not satisfy Rule 7004. Doc. #43. A review of the docket shows no attorney has appeared on behalf of Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(b)(3).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

2. [24-11733](#)-A-7 **IN RE: HARJIT SINGH AND JASPREET KAUR**
[RSW-4](#)

MOTION TO AVOID LIEN OF PEARL BETA FUNDING, LLC
2-5-2025 [\[44\]](#)

JASPREET KAUR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Pearl Beta Funding, LLC ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone. See Doc. #48. Moreover, service of the notice of hearing and moving papers on Creditor's counsel that filed the abstract of judgment does not satisfy Rule 7004. Doc. #48. A review of the docket shows no attorney has appeared on behalf of Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(b)(3).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

3. [24-13746](#)-A-7 **IN RE: ROWELDO MALAPIT**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2025 [\[13\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
JOSEPH PEARL/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2020 Chevrolet Equinox, VIN: 3GNAXKEV7LL257641 ("Vehicle"). Doc. #13.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear

definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,355.85. Decl. of Phillip Ford, Doc. #16. The Vehicle was recovered by Movant pre-petition on December 28, 2024. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least five pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and Movant has possession of the Vehicle.

4. 24-13155-A-7 **IN RE: ALFONSO MEJIA SANCHEZ AND ADRIANA TORRES-MEJIA**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2025 [\[14\]](#)

CAPITAL ONE AUTO FINANCE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Capital One Auto Finance, a division of Capital One, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Alfa Romeo Giulia Sport Sedan 4D, VIN: ZARFAMAN0K7621943 ("Vehicle"). Doc. #14.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,399.84. Decl. of Yvette Hutchison, Doc. #18. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$18,932.00 and the debtors owe \$28,694.33. Hutchison Decl., Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least five pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

5. [24-12899](#)-A-7 **IN RE: BRIAN HAIR**
[CVH-1](#)

OBJECTION TO HOMESTEAD EXEMPTION
1-10-2025 [\[35\]](#)

GIBI TRUCKING LLC/MV
JENNY DOLING/ATTY. FOR DBT.
CHRISTOPHER HAWKINS/ATTY. FOR MV.
CONT'D TO 4/9/25 PER ECF ORDER #53

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

DISPOSITION: Continued to April 9, 2025 at 1:30 p.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the objection to homestead exemption to April 9, 2025 at 1:30 p.m. The court issued an order continuing the matter on February 10, 2025. Doc. #53.

1. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[WJH-26](#)

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND
MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR KEWEL K. MUNGER
2-21-2025 [\[327\]](#)

KEWEL MUNGER/MV
RILEY WALTER/ATTY. FOR DBT.
OST 2/20/25

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On February 20, 2025, the court granted the debtor's ex parte application for an order shortening time to hear the debtor's motion to extend the exclusive time period to file his chapter 11 plan and solicit acceptances of the plan pursuant to 11 U.S.C. § 1121(d). Doc. #326. This motion was set for hearing on March 6, 2025 at 10:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Because the exclusive time period for Kewel K. Munger dba Munger Investments ("DIP") to file his chapter 11 plan expired prior to this motion being filed, there can be no extension of the exclusivity period pursuant to 11 U.S.C. § 1121(d)(1), and the motion is denied.

Kewel K. Munger dba Munger Investments ("DIP") moves the court pursuant to 11 U.S.C. § 1121(d) to (i) extend the exclusive time period for DIP to file his chapter 11 plan approximately 90 days to June 15, 2025, and (ii) extend the exclusive period for DIP to solicit acceptances of the plan for approximately 90 days to August 15, 2025. Doc. #327. DIP's exclusive time period to file his chapter 11 plan currently expired on January 15, 2025. 11 U.S.C. § 1121(b), (c)(2).

Any request to extend the 120-day exclusive period to file a plan must be made before 120-day exclusive period has expired. 11 U.S.C. § 1121(d). "There can be no extension after the period has expired." 7 COLLIER ON BANKRUPTCY ¶ 1121.06[1] (Richard Levin & Henry J. Sommer eds., 16th ed.); In re Cramer, 105 B.R. 433, 434 (Bankr. W.D. Tenn. 1989). Here, DIP's exclusive time period to file his chapter 11 plan currently expired on January 15, 2025, and the motion to extend that period was filed on February 21, 2025. Doc. #327. Because DIP's motion was not filed prior to the expiration of the 120-day exclusive period to file a plan, the court cannot further extend the time.

Accordingly, the motion will be DENIED.

2. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

3. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[JM-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2025 [[549](#)]

JOHN DEERE CONSTRUCTION AND FORESTRY COMPANY/MV
D. GARDNER/ATTY. FOR DBT.
DONALD DUNNING/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

4. [25-10074](#)-A-12 **IN RE: CAPITAL FARMS, INC**
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL
1-13-2025 [[6](#)]

CAPITAL FARMS, INC/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through March 26, 2025.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral ("Interim Order"). Doc. #79. The motion was heard initially on January 16, 2025, and again on January 22, 2025 and February 12, 2025, and was granted on an interim basis on January 22, 2025 and February 12, 2025. See Doc. ##54, 74. A further hearing on use of cash collateral was set for March 6, 2025. Interim Order, Doc. #79. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before February 20, 2025. Id.

On February 20, 2025, the debtor filed a supplemental budget for use of cash collateral from March 6, 2025 through March 26, 2025. Ex. A, Doc. #85. Because the request authorizing continued use of cash collateral was set on less than 28 days' notice, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court

intends to enter the respondents' defaults and grant continued use of cash collateral on an interim basis through March 26, 2025. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Capital Farms, Inc. ("DIP" or "Debtor"), moves the court for an interim order authorizing Debtor to use the cash collateral of Tech Ag Financial Group, Inc. and Rabo AgriFinance LLA (together, "Lenders") for the period March 6, 2025 through March 26, 2025 subject to a proposed budget. Ex. A, Doc. #85. Debtor asserts Lenders hold duly perfected security interests in nearly all of Debtor's cash collateral. Motion, Doc. #6; Stip., Doc. #77.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Bankruptcy Code § 1205(b) requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral.

DIP moves the court for an interim order authorizing DIP to use cash collateral through March 26, 2025, consistent with the budget filed as Ex. A, Doc. #85. DIP seeks authority to use cash collateral from Debtor's 2024 almond crop in the total amount of \$291,696.99 for that period. Ex. A, Doc. #85.

DIP operates several almond farms on leased property. DIP seeks court authorization to use cash collateral from its 2024 almond crop, including payments on crop insurance, to pay expenses needed to grow its 2025 almond crop. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien on incoming cash collateral to the extent cash collateral actually used. Motion, Doc. #6; Stip., Doc. #77. The evidence filed in support of the motion shows that the projected value of future payments for the 2024 crop for the period March 6, 2025 through March 26, 2025 will be sufficient to support DIP's use of cash collateral.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a further interim basis through March 26, 2025, consistent with the budget attached as Exhibit A to Doc. #85. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and date to file and serve supplemental pleadings.

MOTION TO EMPLOY FIDUCIARY MANAGEMENT TECHNOLOGIES, INC. AS CHIEF
RESTRUCTURING OFFICER
2-25-2025 [\[88\]](#)

CAPITAL FARMS, INC/MV
PETER FEAR/ATTY. FOR DBT.
OST 2/25/25

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

On February 25, 2025, the court granted the debtor's ex parte application for an order shortening time to hear the debtor's motion to employ a chief restructuring officer pursuant to 11 U.S.C. § 363(b). Doc. #94. This motion was set for hearing on March 6, 2025 at 10:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Capital Farms, Inc. ("DIP" or "Debtor"), debtor and debtor-in-possession herein moves pursuant to 11 U.S.C. § 363(b) for authorization to employ Scott Sackett as Chief Restructuring Officer ("CRO") in this bankruptcy case. Doc. #88.

Section 1203 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1203. Ordinarily, a professional person is employed by the estate pursuant to 11 U.S.C. § 327(a). In re Cal. Indep. Petroleum Ass'n, 2022 Bankr. LEXIS 135, *15 (Bankr. E.D. Cal. Jan. 18, 2022) (Jaime, J.). However, where the individual or entity to be employed is performing mechanical, nondiscretionary tasks for the bankruptcy estate, such persons are not "professional persons" within the meaning of 11 U.S.C. § 327(a). Id. The factors to consider in determining whether an individual or entity to be employed is considered to be a "professional person" are:

- (1) Whether the individual or entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor's reorganization;
- (2) Whether the individual or entity is involved in negotiating the terms of a plan of reorganization;
- (3) Whether the individual or entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
- (4) Whether the individual or entity is given discretion or autonomy to exercise professional judgment in some part of the administration of the debtor's estate;

- (5) The extent of the individual's or entity's involvement in the administration of the debtor's estate; and
- (6) Whether the individual's or entity's services involve some degree of special knowledge or skill, such that the employee can be considered a "professional" with in the ordinary meaning.

Id. at *17-18.

Here, the duties of the CRO will include the following:

- (1) assisting Debtor in preparing Debtor's budgets, forecasts, monthly operating reports and variance reports;
- (2) having access to all of Debtor's bank accounts, and reviewing and approving in advance all checks, wires or cash withdrawals;
- (3) reviewing and analyzing all existing agreements with the processors of Debtor's crops, and determining whether any such agreements should be modified or new agreements entered into;
- (4) periodically reviewing Debtor's expenditures throughout each month to ascertain that Debtor's expenditures conform with Debtor's cash collateral budget, and submitting a verification with each monthly operating reports that the expenditures for the past month did or did not conform with Debtor's cash collateral budget;
- (5) Within two weeks of retention, Mr. Sackett will report to DIP's secured lenders as to certain item details set forth in the cash collateral stipulation;
- (6) Within 60 days of retention, auditing the amount of almonds generated from Debtor's ranches for 2023 and 2024, the proceeds and advances received, and the use of the proceeds and advances, whether such almonds were delivered in the name of Debtor, United Farm LLC or H & J Management;
- (7) reviewing all labor expenditure information including worker identity, hours worked, wages and overhead charges;
- (8) reviewing chemical application formulations, amounts, costs and timing;
- (9) reviewing the chemical applications that took place in 2024 and prior to Mr. Sackett's employment in 2025;
- (10) providing on-site supervision of harvest operations, specifically including the loading of trailers and the generation of filed tickets and reviewing all hauling and hulling contracts and reports as well as all processor contracts;
- (11) reviewing any contracts for custom services;
- (12) reviewing all crop insurance policies, claims and payouts; and
- (13) being available to DIP's secured lenders from time to time to discuss inquiries from DIP's secured lenders and answer questions regarding cash collateral, use, budgeting, expenses, monthly operating reports, variance reports and forecasts.

Decl. of Shawn Gill, Doc. #93; Decl. of Scott Sackett, Doc. #91. Based on the listed duties of the CRO, the court finds that Mr. Sackett is not a "professional person" who needs to be employed pursuant to 11 U.S.C. § 327(a).

Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in possession may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b). The retention by the debtor in possession of an officer pursuant to 11 U.S.C. §§ 363(b) is an appropriate exercise of a debtor's business judgment. See, e.g., In re Nine W. Holdings, Inc., 588 B.R. 678, 692 (Bankr. S.D.N.Y. 2018) (chapter 11 debtor authorized to retain interim CEO pursuant to 11 U.S.C. §§ 363(b)); In re Express Grain Terminals, LLC, 2022 Bankr. LEXIS 188, *23-*31 (Bankr. N.D. Miss. Jan. 25, 2022) (chapter 11 debtor authorized to retain CRO on final basis pursuant to 11 U.S.C. §§ 363(b)). Under applicable case law, courts will approve a debtor in possession's proposed use of its assets under section 363(b) if such proposed use represents a sound business purpose on the part of the debtor. See, e.g., 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

Here, DIP's secured lenders believe that the oversight of a CRO would be helpful to ensure that all secured creditors are adequately protected for DIP's use of cash collateral. Gill Decl., Doc. #93. While not believing a CRO is necessary, DIP has agreed to the request of DIP's secured lenders to employ Mr. Sackett as a CRO for DIP. Id. Pre-petition, Mr. Sackett was appointed as a state court receiver with respect to some of Debtor's properties ("Receiver"). Sackett Decl., Doc. #91. Mr. Sackett has agreed to resign as Receiver, and Mr. Sackett's employment as CRO for DIP will not be effective until Mr. Sackett has resigned as Receiver. Id.

Pursuant to the proposed CRO employment agreement, Mr. Sackett has agreed to be compensated on an hourly basis for his work as CRO for DIP. Sackett Decl., Doc. #91. Mr. Sackett's hourly rate is \$300.00 per hour. Mr. Sackett's field agents have hourly rates of \$175.00 and his administrative staff have hourly rates of \$75.00. Id. In addition, Mr. Sackett has requested an allowance of up to \$2,500.00 per month for legal costs. Id. Mr. Sackett will send DIP periodic invoices for services rendered and charges and disbursements incurred, and DIP will pay subject to available funds in the cash collateral budget. Id. Mr. Sackett will receive a \$10,000.00 retainer to be paid from cash collateral. Id. DIP has agreed to immediately replenish the retainer upon receipt of invoices from Mr. Sackett. Id. Mr. Sackett's fees and costs will ultimately be subject to approval by this court, and any disallowed fees and costs may be subject to disgorgement. Id.

After review of the evidence, the court finds that the retention by DIP of Mr. Sackett as CRO under 11 U.S.C. §§ 363(b) is an appropriate exercise of DIP's business judgment.

Accordingly, pending opposition being raised at the hearing, the court is inclined to GRANT DIP's motion to employ Scott Sackett as CRO in this bankruptcy case pursuant to 11 U.S.C. §§ 363(b).

6. [25-10505](#)-A-11 **IN RE: WATTS CHOPPING**
[YW-2](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE
PROTECTION
3-4-2025 [\[21\]](#)

WATTS CHOPPING/MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

At the hearing, counsel for the debtor should be prepared to provide information to the court regarding the projected value of the accounts receivable that will be generated through the debtor's proposed use of the cash collateral of the Internal Revenue Service ("IRS").

Part of the adequate protection to be provided to the IRS for the debtor's use of the IRS' cash collateral is "giving replacement liens on post-petition assets of the like kind and priority to the IRS[.]" Motion, Doc. #21. According to the debtor's motion, the IRS has a pre-petition lien on the debtor's pre-petition bank accounts and accounts receivable. *Id.* While the proposed budget filed with the motion shows expected income to be received by the debtor for March through August 2025, neither the proposed budget nor the declarations filed with the motion set forth the estimated value of the post-petition accounts receivable the debtor expects to generate from using the IRS' cash collateral. Based on the evidence currently before the court, the court cannot evaluate the value of the replacement lien to be provided to the IRS in the debtor's post-petition accounts receivable as part of the adequate protection for the debtor's proposed use of the IRS' cash collateral.

11:00 AM

1. [24-12873](#)-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
[24-1065](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
12-31-2024 [[1](#)]

GRIFFIN RESOURCES, LLC V. CALIFORNIA DEPARTMENT OF
DONALD OLDAKER/ATTY. FOR PL.

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

DISPOSITION: Continued to March 19, 2025 at 3:00 p.m.

ORDER: The court will issue an order.

On February 19, 2025, the defendant filed a motion to dismiss this adversary proceeding and set that motion for hearing on March 19, 2025. Doc. ##13-17. Accordingly, this status conference will be continued to March 19, 2025 at 3:00 p.m.

2. [24-12899](#)-A-7 **IN RE: BRIAN HAIR**
[25-1001](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
1-23-2025 [[7](#)]

GIBI TRUCKING LLC V. HAIR

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on February 3, 2025. Doc. #9. Therefore, this order to show cause will be VACATED.