**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Bankruptcy Judge
Sacramento, California

**March 27, 2025 at 10:30 a.m.**

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**1. 24-21639-E-7** **ABEL DOMINGUEZ AND VERONICA MUNOZ**
**Alonzo Gradford**

**MOTION TO SET ASIDE**
**1-14-25 [45]**

**DEBTORS DISMISSED: 05/10/24**

**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.

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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 all creditors and parties in interest on January 14, 2025. By the court's calculation, 72 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the Order compelling Debtor's attorney, ~~Alonzo J. Gradford, to pay sanctions in the amount of $1,000 (Order, Docket 26) is vacated.~~**

Debtor's attorney, Alonzo J. Gradford ("Movant") filed this Motion seeking relief from the Order compelling Movant to pay sanctions in the amount of $1,000. On April 30, 2024, the court issued an Order to Show Cause why debtor Abel Dominguez and Veronica Munoz had not filed the document Disclosure of Compensation of Attorney for Debtor in the case. Order, Docket 19. The hearing on that Order was held on June 5, 2024. Movant did not appear, and as such, the court issued sanctions in the amount of $1,000. Order, Docket 26.

Movant seeks to have the Order vacated, per Federal Rule of Civil Procedure 60(b), for excusable neglect. Movant states as facts in support of the requested relief:

1. After the petition was filed on April 24, 2024, my office experienced unforeseen staffing issues. We lost two staff members, and a third went on leave to study for the California Bar Exam. During this transition, the court's order to show cause was inadvertently overlooked, leading to the failure to file necessary documents.

2. The delay was due to a significant, unexpected reduction in staffing, which directly impacted on our ability to manage the case properly. This was an extraordinary circumstance that qualifies as excusable neglect. In addition, my 14-year-old son broke both of his legs in a freak accident on June 3, 2024, that required him to be rushed to the children's hospital in Oakland, Califomia for emergency surgery. He was then bed ridden for 8 weeks following his surgeries and required around the clock attention and care. My son's medical issues were an additional factor in consuming my time, resources, and ability to give this case the attention it rightly deserved.

Movant does not file a Declaration in support. At the hearing, **xxxxxxx**

**APPLICABLE LAW**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571

F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

**DISCUSSION**

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Movant has presented facts that justify vacating the dismissal. Movant experienced an office shortage as well as the medical emergency of his son that led him to overlook the initial Order to Show Cause. Moreover, Movant explains in the Motion that Debtor was not prejudiced by this case being dismissed and Debtor was able to resolve their issues outside of bankruptcy. The court finds there is excusable neglect in vacating the order for sanctions.

~~Therefore, in light of the foregoing, the Motion is granted, and the Order compelling Debtor's attorney, Alonzo J. Gradford, to pay sanctions in the amount of $1,000 (Order, Docket 26) is vacated.~~

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 Vacate filed by Debtor's attorney, Alonzo J. Gradford ("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 is granted, and the Order compelling Debtor's attorney, Alonz~~o J. Gradford, to pay sanctions in the amount of $1,000 (Order, Docket 26) is vacated due to excusable neglect.~~

**2. 24-25111-E-7 UST-1 — BRITTANY EDWARDS, Pro Se — MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B), 2-18-25 [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.

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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 (*pro se*), Chapter 7 Trustee, and all creditors and parties in interest on February 18, 2025. By the court's calculation, 37 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). 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 Dismiss is granted.**

Tracy Hope Davis, United States Trustee for Region 17 ("U.S. Trustee"), moves the court for an order dismissing Brittany Leann Edwards' ("Debtor") Chapter 7 case pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) and 707(b)(3)(B). U.S. Trustee argues:

> The case should be dismissed because the Debtor's case is facially presumptive with an estimated current monthly net income after expenses of $1,748.12 ($104,887.20 over 60 months), which exceeds 25% of the Debtor's nonpriority unsecured claims ($21,506.19) and also exceeds $15,150 under 11 U.S.C. § 707(b)(2)(A)(i). Thus, based on the Debtor's own calculation of current monthly income and having failed to assert any special circumstances or to otherwise rebut the presumption, the Debtor's case should be dismissed.

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)).
>
> 2)
>
> (A)
>
> (i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—
>
> (I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $9,075, whichever is greater; or
>
> (II) $15,150.

U.S. Trustee has presented the court with evidence, by Debtor's own numbers she provided after expenses, that the numbers exceed the limits allotted in 11 U.S.C. § 707(b)(2)(A). Debtor's current monthly income, after expenses, is $1,748.12. Statement of Financial Affairs at 8, Docket 1. Debtor then checked the box indicating a presumption of abuse arises based on this calculation. *Id.* Debtor has not claimed special circumstances or rebutted the presumption of abuse.

That being said, Debtor's Schedules I and J indicates a negative disposable monthly income amount of ($2,700.01). Schedule J at 28, Docket 1.

At the hearing, **xxxxxxx**

Therefore, the Motion to Dismiss 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 Dismiss filed by Tracy Hope Davis, United States Trustee for Region 17 ("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 granted, and the case is dismissed.

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|---|---|---|---|
| **3.** | **24-23715-E-7**<br>**BHS-2** | **SKY/JULENE SINCLAIR**<br>**Pauldeep Bains** | **MOTION TO SELL**<br>**2-24-25 [34]** |

**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).**
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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 February 24, 2025. By the court's calculation, 31 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 Loris L. Bakken, 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 Estate's 100% ownership interest in Blue NorCal, Inc. ("Property").

The proposed purchaser of the Property is Sky Palmer Sinclair and Julene Fawn Jensen Sinclair ("Debtor"), and the terms of the sale are:

> Trustee will sell the estate's interest in the Subject Property "as-is" and "where-is" with no warranties or guarantees, subject to the existing liens and encumbrances, if any, to the Debtors, Sky Palmer Sinclair and Julene Fawn Jensen Sinclair, for $10,000.00.

Mot. 2:6-9.

Debtor filed a Non-Opposition on March 14, 2025. Docket 39.

**Proposed Overbidding Procedures**

> (a) Overbidding shall start at $10,500.00, with the overbids in minimum $500.00 increments. The successful bidder, if not Sky Palmer Sinclair and Julene Fawn Jensen Sinclair, will be required to sign a Purchase and Sale Agreement with the same terms as Exhibit "A" to the Motion to Sell. Any and all costs of transfer, including, but not limited to Broker fees, would be the sole responsibility of the buyer.
>
> (b) To qualify as a bidder, the bidder must send to the Trustee at 2715 W. Kettleman Lane, Suite 203-334, Lodi, California 95242 or her attorney, at the address above, a Cashier's Check or a certified check for $5,500.00 (representing the $5,000.00 down payment plus the $500.00 initial overbid) made payable to "Loris L. Bakken, Ch. 7 Trustee - Sinclair" such that it is received by no later than 5 p.m. on March 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.

Mot. 2:16-3:2.

The court finds the proposed overbidding instructions to be reasonable and adopts them for purposes of this Motion.

**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 estate is avoiding any cost of sale by selling the Property back to the Debtor, and the Estate will be realizing a return for creditors.

**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 because the Debtor is purchasing back the Property for themselves. Mot. 3:15-16.

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 Loris L. Bakken, 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 Loris L. Bakken, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sky Palmer Sinclair and Julene Fawn Jensen Sinclair ("Debtor"), the Estate's 100% ownership interest in Blue NorCal, Inc. ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $10,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 37, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. 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.

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| **4.** | **24-90615-E-11**<br>**RLL-3** | **JEA2, LLC**<br>**Anthony Asebedo** | **CONTINUED APPROVAL OF DISCLOSURE STATEMENT**<br>**1-13-25 [41]** |

**Item 4 thru 5**

**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.

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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, all creditors and parties in interest, and Office of the United States Trustee on January 23, 2025. By the court's calculation, 63 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement 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 Approve Disclosure Statement is granted.**

**REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: October 17, 2024.

Background: JEA2, LLC, Debtor in Possession, is a California limited liability company. Jeffrey E. Arambel ("Arambel") is the sole member in and manager of the Debtor. Arambel was then and continues to be the owner of various undeveloped real properties Stanislaus County, California where he has been a farmer and real estate developer for approximately forty years. Disclosure Statement 3:13-15.

To facilitate a loan of $5,500,000, the Debtor was formed in April 2017 at the request of SBN V Ag I, LLC ("Summit"), which about one year earlier had loaned funds to Arambel. Under the 2016 loan documents between Arambel and Summit, Arambel's existing obligation to U.S. Bank was retired and amounts were used to fund farming operations and for some debt servicing. The financing also involved Summit's acquisition of certain existing deeds of trust against Arambel's properties and had other terms as well. *Id.* at 3:16-19.

By 2022, the Debtor had not paid its obligation to Summit. As a consequence, Summit had recorded notices of default affecting the Real Property titled to the Debtor and several of Arambel's real properties as well. On April 19, 2022, the Debtor filed a voluntary petition under chapter 12 of the Code, initiating Case No. 22-90128-E-12 in the Court. This had the effect of staying Summit's scheduled trustee's sale of the Real Property. In April 2023, however, the Debtor requested and obtained dismissal of the chapter 12 case, after a dispute arose with the chapter 12 trustee and Summit as to whether the Debtor's wood-harvesting operations qualified the Debtor as a family farmer eligible for relief under chapter 12. The dismissal terminated the automatic stay of bankruptcy that until then prevented foreclosure of the Real Property. *Id.* at 4:21-24.

By 2024, however, the Real Property had been annexed into the City of Patterson, opening the door to potential use as a warehouse or other industrial purposes, thereby increasing its value greatly as nearby properties similar to the Real Property became marketable and were sold for such uses. Summit, however, had not been paid in full, and thus it moved forward with its noticed trustee's sale of the Real Property, as well as several real properties that had been abandoned back to Arambel in his individual 2018 chapter 11 case. To preserve the value of the Real Property as industrial property, the Debtor filed its chapter 11 petition on the Petition Date; on the same date, Arambel filed his own voluntary chapter 11 petition, initiating Case No. 24-90618-E-11. *Id.* at 4:25-5:2.

On March 19, 2025, Debtor filed an Amended Disclosure Statement in reply to Summit's Opposition. Docket 77. Summit's Opposition filed on March 13, 2025, was limited and on the grounds that the original Disclosure Statement at Docket 41 did not contain adequate information as to the value of Debtor in Possession's various parcels of Property. Obj. 3:3-9, Docket 71. In response, the Amended Disclosure Statement provides for a valuation of the property in the amount of $40,500,000.00, as asserted in a written appraisal from William F Bambas, MAL, of Stockton, California. Am. Disclosure Statement 7:14-15. The court treats the Amended Disclosure Statement as a Reply to the Opposition, not actually requiring a separate hearing.

At the hearing, **xxxxxxx**

| **Creditor/Class** | **Treatment** | |
|---|---|---|
| Class 1: Priority Non-Tax Claims | **Claim Amount** | Unknown |
| | **Impairment** | Unimpaired, if any |
| | | |
| Class 2.1: Stanislaus County Tax Collector | **Claim Amount** | $56,405.71 |
| | **Impairment** | Impaired |
| | The Class 2.1 Allowed Secured Claim shall, no later than three years after the Effective Date, be paid in full from escrow for sale and/or refinancing of the Real Property, with any penalties, costs, fees, and interest, as applicable, to accrue at the statutory rate. | |

| | | |
|---|---|---|
| Class 2.2: SBN V Ag I, LLC, its assigns or successors | **Claim Amount** | $11,592,744.93 (disputed) |
| | **Impairment** | Impaired |
| | The Class 2.2 Allowed Secured Claim shall, no later than three (3) years after the Effective Date, be paid in full together with (i) interest on principal accruing at the non-default contract rate, from the Petition Date and (ii) attorneys' fees and costs incurred on or after the Petition Date as permitted in the loan documents between the Class 2.2 claimant and the Debtor in effect as of the Petition Date. The Class 2.2 Allowed Secured Claim shall be paid from escrow for sale and/or refinancing of the Real Property, and the Reorganized Debtor shall not be obligated otherwise to make ongoing payments. Confirmation of the Plan shall be deemed to rescind any Notice of Default and/or Notice of Trustee's Sale recorded against the Real Property or any portion thereof. Confirmation of the Plan, however, shall not otherwise impair the Class 2.2 claimant's security interest in property of the Debtor and shall not affect or diminish any of the Debtor's nonmonetary covenants and obligations under the applicable prepetition loan and security documents. | |
| Class 2.3: West Stanislaus Irrigation District | **Claim Amount** | $341,556.00 (disputed) |
| | **Impairment** | Impaired |
| | The Class 2.3 Allowed Secured Claim shall, no later than three (3) years after the Effective Date, be paid in full together with interest accruing at the statutory rate on principal thereafter from the Petition Date. The Class 2.3 Allowed Secured Claim shall be shall be paid from escrow for sale and/or refinancing of the Real Property. | |
| Class 2.4: : G&F Ag Service, Inc. | **Claim Amount** | $32,456.00 (disputed) |
| | **Impairment** | Impaired |
| | The Class 2.4 Allowed Secured Claim shall, no later than three (3) years after the Effective Date, be paid in full together with interest accruing at the statutory rate on principal thereafter from the Petition Date. The Class 2.4 Allowed Secured Claim shall be shall be paid from escrow for sale and/or refinancing of the Real Property. | |
| Class 2.5: County of Stanislaus (Rev. Recovery). | **Claim Amount** | $4,050.00 |
| | **Impairment** | Impaired |

| | | |
|---|---|---|
| | The Class 2.5 Allowed Secured Claim shall, no later than three (3) years after the Effective Date, be paid in full together with interest accruing at the statutory rate on principal thereafter from the Petition Date. The Class 2.5 Allowed Secured Claim shall be shall be paid from escrow for sale and/or refinancing of the Real Property. | |
| Class 3: General Unsecured Claims | **Claim Amount** | Approximately $8,347 |
| | **Impairment** | Impaired |
| | Class 3 allowed unsecured claims shall, no later than three (3) years after the Effective Date, be paid in full with simple interest at the rate of four percent (4%) per year from and after the Effective Date until payment. Class 3 claims are impaired. | |
| Class 4: Equity Interest Holders | **Claim Amount** | |
| | **Impairment** | Unimpaired |
| | The Class 4 equity security holder will retain his interest in the Debtor as same existed immediately before the Petition Date, as an interest in the Reorganized Debtor as of the Confirmation Date. | |

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__Y__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

__N__Identity of the accountant and process used

__Y__Future management of Debtor

__Y__The Plan is attached

*In re A. C. Williams Co.*, 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

**APPLICABLE LAW**

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

**DISCUSSION**

In this case, the court finds that adequate information has been provided to parties for purposes of being informed when voting on the Plan. Debtor in Possession has clearly laid out the status of operations, the means of implementing the Plan, and how creditors will be treated. Debtor in Possession has offered language in the Amended Disclosure Statement to more accurately value the parcels of real property in the case, responding to Summit's opposition.

At the hearing, **xxxxxxx**

The Disclosure Statement is approved. The court shall issue an order approving the Disclosure Statement, which shall also set the following dates and deadlines:

A. JEA2, LLC, Debtor in Possession, the "Plan Proponent," shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before **xxxxxxx**.

B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxxxx**.

C. The Ballot Tabulation Summary, evidence in support of confirmation, and Responses to objections to confirmation, if any, shall be filed and served on or before **xxxxxxx**.

D. The Confirmation Hearing shall be conducted at 11:30 a.m. on **xxxxxxx**.

**5. 24-90615-E-11 RLL-5** | **JEA2, LLC** **Anthony Asebedo** | **CONTINUED MOTION TO USE CASH COLLATERAL** **1-29-25 [53]**

**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.

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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 creditors and parties in interest on January 29, 2025. By the court's calculation, 57 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 ~~is granted, and the~~ hearing is continued to xxxxxxx.**

JEA2, LLC ("Debtor in Possession") moves for an order approving the use of cash collateral generated in the form of rent payments that Debtor in Possession receives from lessee Tom and Matt Maring, T&M Farms. Debtor in Possession requests the use of cash collateral to pay property taxes, LLC taxes, insurance, and professional fees. Cash collateral Budget, Ex. C, Docket 56.

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.

**APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to

persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

(b)(2) Hearing

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

**DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period February of 2025 through December of 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 JEA2, 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 February of 2025 through December of 2025, and the cash collateral may be used to pay the expenses described in the Cash Collateral Budget, Exhibit C, Docket 56, 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. 24-90618-E-11 COR-1** **JEFFERY ARAMBEL** **Chris Kuhner** **CONTINUED AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY 2-27-25 [84]**

**SBN V AG I LLC VS.**

**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.

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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, creditors and parties in interest, and Office of the United States Trustee on February 27, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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, opposition was stated..

**The Motion for Relief from the Automatic Stay is xxxxxxx.**

Secured Creditor SBN V Ag I LLC ("Movant") files this amended motion and seeks relief from the automatic stay with respect to Jeffery Edward Arambel's ("Debtor in Possession") following parcels of real property:

| Property APN | Common Name[1] | Value |
|---|---|---|
| 021-022-027 | Judy Gail Ranch | $2,100,000 |
| 021-022-028 | | |
| 021-012-024 | Begun Ranch | $1,665,000 |
| 021-012-025 | | |
| 021-012-026 | | |
| 021-012-027 | | |
| 021-012-028 | | |
| 021-012-029 | | |
| 021-012-033 | | |
| 021-012-034 | | |
| 021-024-013 | | |
| 021-021-004 | Lismer Ranch | $1,200,000 |
| 021-021-005 | | |
| 021-021-006 | | |
| 021-022-001 | | |
| 021-022-051 | | |
| 021-022-052 | | |
| 021-007-002 | Carlile Ranch | $160,000 |
| 021-022-055 | 601 Rogers Rd. | $270,000 |
| 021-096-011 | Rogers Ranch Contiguous | $70,000 |

("Properties"). Mot. 6:4-16, Docket 84. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4).

Movant states this Motion does not seek to lift the automatic stay of the property commonly referred to as "Almond 154", which is property that does not secure Lender's loans to this Debtor, but rather are exclusively encumbered in favor of Debtor's wholly owned company, JEA2, LLC. The APN's for the Almond 154 property are 021-023-028, 021-023-033, 021-023-032 and 021-023-029. *Id.* at 3:16-20.

Movant alleges, as cause for relief pursuant to 11 U.S.C. § 362(d)(1), that relief is warranted because:

> (i) these properties were abandoned to the Debtor for the specific purpose of permitting SBN V to proceed to foreclose thereon,
>
> (ii) permitting the Debtor to place these properties out of reach pursuant to the automatic stay of the Second Bankruptcy would moot the portions of the Confirmation Order and the Abandonment Order permitting SBN V to foreclose on the Arambel Real Properties and
>
> (iii) the Debtor has not proven that it can provide sufficient adequate protection for SBN V's secured collateral.

Mot. 14:10-22.

Movant also alleges that this second case has been filed in bad faith , being nothing more than an attempt to halt Movant from collecting and recovering its real property. This is Debtor in Possession's fourth bankruptcy in nearly six years. *Id.* at 16:3-20.

Pursuant to 11 U.S.C. § 362(d)(2), Movant argues Debtor in Possession has no equity in the Properties and they are not necessary for an effective reorganization of the Debtor's liabilities. The Abandonment Order in the related bankruptcy case at Docket 1448 confirms Debtor in Possession has no equity in the Property. Movant asserts the Properties are not necessary for an effective reorganization as the Debtor has already shown the inability to market and sell the Arambel Real Properties. Mot. 14:6-28.

Finally, Movant alleges this case was filed as part of a scheme to delay or hinder Movant's ability to foreclose on the Properties, so relief should be granted pursuant to 11 U.S.C. § 362(d)(4). Movant alleges:

> [I]t is uncontested that the Arambel Real Properties were subject to the Reorganizing Debtor's estate in the Initial Bankruptcy. These same properties were abandoned by that estate to permit Movant to foreclose thereon. However before Movant could complete this process, the Second Bankruptcy was filed. Incredibly, the Second Bankruptcy was filed before the Initial Bankruptcy concluded. As is clear from the Debtor's brazen filing of this Second Bankruptcy, the Debtor will stop at nothing to prevent Movant from foreclosing on the Arambel Real Properties.

*Id.* at 15:9-22.

Movant submits the Declarations of Al Khoshbin and Brian Schloss in support. Docket 87, 88. Mr. Koshbin, director of BBG, Inc., d/b/a BBG Real Estate Services, provided valuations for the Judy Gail Ranch and the 601 Rogers Rd. Property. Mr. Koshbin values the Judy Gail Ranch at $2,100,000 and the 601 Rogers Rd. Property as $270,000. Decl. ¶¶ 3-4, Docket 87. The valuation reports are included as attached Exhibits 9 and 10, Docket 89.

Mr. Schloss, the COO for Movant, testifies as to the facts alleged in the Motion. Decl., Docket 88.

**JEA2, LLC's Reply**

JEA2, LLC filed a Reply on March 13, 2025. JEA2, LLC requests Movant provide Debtor in Possession with an accounting to properly credit Debtor in Possession with payments made so that relief is appropriately limited. Reply 2:4-10, Docket 92.

**Debtor in Possession's Opposition**

Debtor in Possession filed an Opposition to the Motion on March 13, 2025. Docket 93. Debtor in Possession states:

1. Movant's appraisals of the Judy Gail Ranch and the 601 Rogers Rd. Property significantly undervalue the properties based on fundamental error in the assumptions contained in the Khoshbin Appraisals. Specifically, the Khoshbin Appraisals both assume that the Judy Gail Property and the 601 Rogers Road Property do not have access points necessary to be marketed and sold as industrial properties and therefore must be sold as agricultural properties, significantly damping down the value of both properties. In contrast, the Debtors appraiser. William Bambas of W.F. Bambas Appraisal Company ("Bambas") values the Judy Gail Property at $27,500,000 and the 601 Rogers Road Property at $3,430,000 based on comparable sales of industrial properties. *Id.* at 2:12-3:1.

2. The broker's opinion of value of set forth in the declaration of Sullivan Grosz of Begun Ranch ($1,665,000), Lismer Ranch ($1,200,000), Carlile Ranch ($160,000) and Roger Road Contigious ($70,000) (collectively "Ranch Properties") also under value these agricultural land properties. The Debtor disputes these values and contends they are undervalued by a few million of dollars. *Id.* at 3:2-6.

3. Summit ignores the other available assets that it has security interest in, specifically the Debtor's 100% ownership interest in JEA2, LLC. JEA2, LLC owns real property valued at $40,500,000. *Id.* at 3:8-10.

4. Debtor will be able to establish through admissible, competent evidence that the assets in this Bankruptcy Case are more than sufficient to not only

provide adequate protection for Summit but to reorganize and pay Summit and all creditors in this case in full. *Id.* at 3:14-16.

5. Summit has failed to timely provide the Debtor with an accounting of any payments and/or credits on the various loans with the Debtor. *Id.* at 3:19-20.

6. The value of available collateral securing Summit's secured claims totals $71,685,000, and as Summit has asserted a total secured claim in the amount of $33,118,425 in the above collateral, there is an equity cushion of $38,566,575. *Id.* at 5:22-6:4.

7. The court should hold an evidentiary hearing to determine the value of the assets. *Id.* at 7:14-15.

**Movant's Response**

Movant filed a Response to Debtor in Possession's Opposition on March 20, 2025. Docket 104. Movant states:

1. The court should not ignore the long history of delay from this very same Debtor regarding his efforts to market and sell his real properties. "Cause" for relief from the automatic stay is a flexible standard, taking into account all of the facts and circumstances of the property. *Id.* at 2:8-11.

2. Lender respectfully submits that seven years of delay and serial bankruptcy filings are ample cause alone to lift the automatic stay. The Debtor has proven time and again that he is unwilling or unable to sell his properties, and the only reason that any properties were sold in his first case was because the plan administrator took over the sale process. *Id.* at 2:22-26.

3. Debtor's speculative values are questionable. As to the Begun Ranch property, the Lismer Ranch property, the Carlile Ranch property, and the Rogers Ranch Contiguous properties, the Debtor has only offered unauthenticated appraisals that are more than a decade old. *Id.* at 3:1-4.

4. The appraisals Debtor has filed are not appraisals of the property based upon their current condition – rather, they are premised on a hypothetical condition that is not present today of properties that are actually appropriately accessible, developed and entitled for something more than agricultural use. *Id.* at 3:11-14.

5. Debtor has provided no evidence to contradict the calculations of the Lender's secured claims. The Lender not only timely filed a proof of claim, which has not been challenged, but the Lender's secured claims were previously allowed and the Debtor released all challenges to the claims in his first case. *Id.* at 2:22-25.

6. Even the appraisal itself admits regarding the Judy Gail Ranch that there is "no existing public road access" to the property, but speculates that access may be achieved "across the Delta Mendota Canal." *Id.* at 5:9-11.

7. Debtor's own appraisal regarding the 601 Rogers Rd. Property acknowledges that there is "no existing public road access" to the property, and that the only access to the property is "via dirt road". *Id.* at 6:17-19.

8. The remainder of the appraisals are over a decade old and unauthenticated and should be striken from the record.

Movant files the following evidentiary objections:

1. Objection to Exhibits C, D, and E at Docket 97, which are appraisals of the Begun Ranch, Lismer Ranch, and Carlile Ranch properties, respectively. The Objections are based on failure to authenticate, lacks foundation, and hearsay. Obj. 2:7-25, Docket 105.

    a. The court sustains this objection, there being no testimony to authenticate Exhibits C, D, and E at Docket 97 in the record. Fed. R. Evid. 901.

2. Objection to paragraphs 4, 5, and 6 of Jeffrey Arambel's Declaration at Docket 96, based on the testimony lacking foundation, being speculative, being argumentative, and being an improper opinion. Obj. 3:5-4:17.

    a. The Objection to paragraphs 4, 5, and 6 of Jeffrey Arambel's Declaration is overruled. The court finds the testimony is relevant and is a proper account of Mr. Arambel's first-hand knowledge of the facts surrounding the properties. Fed. R. Evid. 402; 602.

These evidentiary objections are more in the nature of impeachment of the witness, who is the owner of the properties, and who provides his statements of the condition of the properties. Movant is free to assert any shortcomings with respect to the testimony, which ultimately go to determining the credibility of the declarant. Merely because a statement is made during a trial/hearing (whether orally or in a declaration) does not mean what is said is "gospel." Further, testimony as in paragraph 5 in which Mr. Arambel, as the owner of the Property, is testimony as to the location of the property, which may raise a factual issue. However, the court does not take such as expert testimony – just factual.

With respect to the Objection to paragraph 6, it is just Mr. Arambel's perspective of what occurred in the prior Bankruptcy Case, not evidence of the substance of what occurred. It is more in the nature of legal argument, which his counsel should be making, as opposed to conclusory testimony by the Debtor.

**DISCUSSION**

On Amended Schedule A/B, Dckt. 44, the Debtor states the following values for the properties at issue and on Amended Schedule D, Dckt. 25, the following claims (identified by Claim number paragraph on Schedule D) secured by such properties:

| **Properties Identified on the Amended Motion for Relief, Dckt. 84** | **Amended Schedule A/B; Dckt. 91** | **Amended Schedule D; Dckt. 25** |
|---|---|---|
| Judy Gail Ranch | $28,586,250 | Movant Claim ¶ 2.2. ($15,515,282) |
| | | |
| Begun Ranch | $3,360,000 | Movant Claim ¶ 2.4. ($ Unknown) |
| | | |
| Lismer Ranch | $2,400,000 | Movant Claim ¶ 2.3. ($12,792,327) |
| | | |
| Carlile Ranch | $640,000 | Movant Claim ¶ 2.4. ($15,515,282) (? If same as 2.2) |
| | | |
| Business Park - Adjacent Property | $2,956,635 | Movant Claim ¶ 2.6 ($4,753,460) - Debtor states $0.00 Value of Collateral |
| | | |
| Property Adjacent to Home Ranch, Debtor listed as Parcel 29 | $1,290,000 | Movant Claim ¶ 2.8 ($11,233,935) |
| | | |
| Rogers Ranch Contiguous | $500,000 | |
| | ========== | |
| Total Value of Properties as Stated on Amended Schedules A/B | $40,236,659 | |
| | | |

In Debtor's Opposition, filed on March 13, 2025, the asserted values of the properties in the Bankruptcy Estate in this Case are computed to be $71,685,000, which includes Debtor in Possession's interest in JAE2, LLC, which is valued at $26,000,000. Opposition; p. 5:6-27; Dckt. 96. It is stated that

the JAE2, LLC estate assets are subject to the liens of Movant. While argued in the Opposition that the value of the 100% interest in JAE2 has a value of $26,000,000, Mr. Arambel does not provide any testimony in his Declaration filed in opposition. Dckt. 96.

The court notes that on Amended Schedule A/B at filed on February 27, 2025; Docket 91; Mr. Arambel states under penalty of perjury that the 100% interest in JAE2, LLC has a value of "unknown." It is not clear how, under penalty of perjury Mr. Arambel stated that the value of the 100% interest in JAE2, LLC was "unknown," but a mere fourteen days later Mr. Arambel and his counsel in this case can state (subject to the certifications arising pursuant to Federal Rule of Bankruptcy Procedure 9011) that the value of the 100% in JAE2, LLC is known to be $26,000,000.

Proof of Claim 16-1 filed by Movant states its secured claim to be to be ($38,078,006.00). POC 16-1.

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

According to Movant, this court's Order abandoning certain real properties back to Debtor in Possession in the related case, case no. 18-90029 at Docket 1448, was for the purpose of allowing Movant to foreclose on the Properties, and this amounts to cause for relief. The court disagrees. Nothing in the court's abandonment order prohibits Debtor in Possession from filing another case and being protected by the automatic stay there.

Movant also states that cause exists for relief as Debtor in Possession has not shown he can provide adequate protection. On this point, the court agrees. The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). When taking Debtor in Possession's valuation of $71,685,000 as the correct value of assets securing Movant, there would be sufficient equity to provide adequate protection under the 20% standard. However, Debtor in Possession has valued the interest in the LLC as unknown on is Schedules A/B, and the value of the various properties would not otherwise provide enough of an equity cushion to provide adequate protection. Debtor in Possession has not otherwise shown he intends to make adequate protection payments on Movant's secured obligations pending a sale. The court has never allowed a Debtor in Possession to sit on their hands pending some future speculative sale while secured obligations continue to grow.

Bad Faith

Regarding the bad faith allegation, in the Motion to Dismiss context, 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.

The court would note that bankruptcy court's have found that a "desire for orderly liquidation of assets" is not a reason that would support a bad faith filing, but is a "legitimate reason[] to file bankruptcy." *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

As is recognized by all Parties in Interest, Mr. Arambel has been utilizing the extraordinary relief available under the Bankruptcy Code for a number of years. He filed his prior bankruptcy case, No. 18-90029, on January 17, 2018 – almost six years prior to filing his current Bankruptcy Case on October 17, 2024.

In Case 18-90029 ("Prior Case"), after a bumpy start, Mr. Arambel and creditors became focused on the prosecution of that Case as required under Federal Law, the Bankruptcy Code. On September 15, 2019, Mr. Arambel and his counsel obtain an Order Confirming the Chapter 11 Plan in the Prior Case. 18-90029; Dckt. 970. The Confirmed Plan, notwithstanding the appointment of a Plan Administrator to address concerns of creditors, Mr. Arambel was given broad duties and authority under the Confirmed Plan as the Reorganizing Debtor. *Id*.; Confirmed Plan, ¶¶ 7.4.1, 7.44; Dckt. 860. The Confirmed Plan includes a provision for terminating the duties and authorities of the Reorganizing Debtor for cause. *Id*.

On November 23, 2020, the Plan Administrator under the Confirmed Plan filed a Notice of Termination of Duties of the Reorganizing Debtor in Connection With the Plan Assets. *Id*.; Dckt. 1299. This was preceded by a Motion for Mr. Arambel's bankruptcy counsel to withdraw from further representation of Mr. Arambel. *Id*.; Dckt. 1262. Respecting the attorney-client privilege, Mr. Arambel's counsel cited to "irreconcilable differences" between Mr. Arambel and his counsel with respect to the Prior Case. Neither the Notice of Termination or the Motion to Withdraw were opposed by Mr. Arambel.

The court is confident that Mr. Arambel has discussed with his current counsel the events that led to his termination as the Reorganizing Debtor in the Prior Case.

**11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective [reorganization / rehabilitation]. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

In this case, Debtor asserts there is equity in the Properties and filed Amended Schedules to reflect as much. Debtor in Possession has requested an evidentiary hearing to show there is equity and to determine the amount of the secured obligation. The parties valuations are extremely far apart, depending in part on whether the Judy Gail Ranch and the 601 Rogers Road Property can be sold as industrial properties that have road access to them or are merely agricultural land.

At the hearing, **xxxxxxx**

**11 U.S.C. § 362(d)(4)**
**Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

With respect to the elements, the court concludes that the filing of the current Chapter 11 case in the Eastern District of California was not part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases. As reported by Debtor in Possession, the cases of JAE2 do not affect the Properties of this Estate.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

The Motion is **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 for Relief from the Automatic Stay filed by Secured Creditor SBN V Ag I LLC ("Movant") having been presented to the court, Movant requesting a continuance to file an amended motion, the Parties agreeing to a continuance, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief From the Stay is **xxxxxxx**.

**7. 22-22625-E-7 DB-2** | **JASON/CHRISTINE EATMON** **Bruce Dwiggins** | **OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 2 2-25-25 [154]**

**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).**

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the IRS, Chapter 7 Trustee, Debtor's attorney, Debtor, and Office of the United States Trustee on February 25, 2025. By the court's calculation, 30 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 2-2 of the Internal Revenue service ("IRS") is sustained.**

Creditors Daniel Lockwood and Roseanne Lockwood ("Objector") request that the court disallow the claim of the Internal revenue Service ("IRS"), Proof of Claim No. 2-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $339,514.23 with $284,899.90 claimed as priority under 11 U.S.C. § 507(a). Objector asserts that the IRS is not entitled to claim that amount as priority, with the majority of that amount owed not fitting within the statutory limits of 11 U.S.C. § 507(a)(8).

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as

a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

11 U.S.C. § 507(a)(8) states:

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

. . .

(8)Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A)a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i)for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii)assessed within 240 days before the date of the filing of the petition, exclusive of—

(I)any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II)any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii)other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case. . .

The Ninth Circuit recognizes 11 U.S.C. § 507(a)(8)(A)(i)-(iii) as separate and distinct options through which the IRS may achieve priority status. *In re Pacific Atlantic Trading Co.*, 64 F.3d 1292, 1302 (9th Cir. 1995).

In this case, the IRS has assessed the following amounts it is owed:

1. $132,129.00 in unpaid taxes in 2016, with accrued interest totaling $34,700.11;

2. $38,542.00 in unpaid taxes in 2017, with accrued interest totaling $8,194.77;

3. $57,245.00 in unpaid taxes in 2018, with accrued interest totaling $8,596.47;

4. $5,171.00 in unpaid taxes in 2021, with accrued interest totaling $121.55.

Attachment 4, POC 2-2.

As Objector has noted, under 11 U.S.C. § 507(a)(8)(A)(i), if the tax return for the particular tax is due within three years before the petition date, the tax will be entitled to priority and is excepted from discharge under section 523(a). The petition was filed on October 14, 2022. Therefore, taxes owed for the years 2016, 2017, and 2018 cannot be entitled to priority status under this subsection. Only taxes and interest in the amount of $5,292.55 may be entitled to priority under 11 U.S.C. § 507(a)(8)(A)(i).

11 U.S.C. § 507(a)(8)(A)(ii) looks to the date the taxes were assessed. Courts have held "[t]he tax is assessed generally when the IRS follows the appropriate procedures and the tax debt is final." *In re Solomon*, Case No. 2:21-bk-02622-DPC, 2023 WL 7136337 at *3 (D. Ariz. October 30, 2023). According to the attachment to Proof of Claim 2-2, the taxes for the year 2021 were assessed on November 14, 2022. The taxes for years 2016-2018 do not have an assessed date.

At the hearing, **xxxxxxx**

Finally, under 11 U.S.C. § 507(a)(8)(A)(iii), taxes are entitled to priority if they are assessable after the petition date under applicable law or by agreement. There is an exception to this rule, however, if the tax is of a kind specified in 11 U.S.C. § 523(a)(1)(B) or (a)(1)(C). 11 U.S.C. § 523(a)(1) states:

> (a)A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> (1)for a tax or a customs duty—
>
> . . .
>
> (B)with respect to which a return, or equivalent report or notice, if required—
>
> (i)was not filed or given; or
>
> (ii)was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
>
> (C)with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax. . .

Here, the record reflects Debtor did not file tax returns for the years 2016, 2017, 2018, or 2022. Therefore, the debt is not dischargeable under 11 U.S.C. § 523(a)(1)(B)(i), meaning the debt fits within the exception to 11 U.S.C. § 507(a)(8)(A)(iii). The tax claims cannot be priority under 11 U.S.C. § 507(a)(8)(A)(iii), either.

Based on the evidence before the court, IRS' claim 2-2 is disallowed as priority in the amount of $279,407.35. The IRS is only entitled to priority status of its claim in the amount of $5,292.55. The

remainder of its claim must be treated as a general unsecured claim. The Objection to the Proof of Claim 2-2 is sustained.

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 Objection to Claim of the Internal Revenue Service ("IRS"), filed in this case by Daniel Lockwood and Roseanne Lockwood ("Objector"), 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 Objection to Proof of Claim Number 2-2 of Creditor is sustained and Proof of Claim 2-2 of the IRS is disallowed as priority in the amount of $279,407.35. The IRS is only entitled to priority status of its claim in the amount of $5,292.55. The remainder of its claim must be treated as a general unsecured claim in the amount of $334,221.68.

**8. 24-22531-E-11 CAE-1** **R & A ENTERPRISES, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-10-24 [1]**

**Item 8 thru 9**

**SUBCHAPTER V**

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 2/27/25. The Debtor/Debtor in Possession and counsel for Creditor reporting that they are finalizing terms for a Plan and requested a short continuance of the status conference.

Operating Reports filed: 3/6/25

[RLC-6] Application to Approve Employment of Realtor filed 3/21/25 [Dckt 92]

**The Status Conference is xxxxxxx**

**MARCH 27, 2025 STATUS CONFERENCE**

On March 21, 2025, a Motion to Employ Real Estate Broker was filed, the Debtor in Possession seeking to sell the Bankruptcy Estate's operating car wash and real property. Motion; Dckt. 92. In the Motion, R & A Enterprises, LLC is identified as the Debtor and the Debtor in Possession in this Subchapter V Case, which is accurate. However, the Motion then creates a defined term for the Debtor and Debtor in Possession,

that term being "Debtor." Congress has statutorily defined term of "Debtor," which means "The term 'debtor' means person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13). Thus, by choosing the statutorily defined term "Debtor," the Motion may be read to say that the "mere" Debtor would be administering property of the Bankruptcy Estate.

Congress provides in 11 U.S.C. § 1182 statutory definitions for the terms "Debtor" and "Debtor in Possession:"

> § 1182. Definitions
>
> > In this subchapter [11 USCS §§ 1181 et seq.]:
> >
> > (1) Debtor. The term "debtor" means a small business debtor.
> >
> > (2) Debtor in possession. The term "debtor in possession" means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

As with a "normal" Chapter 11 case, Congress provides for the Subchapter V debtor to also serve in the role of a "debtor in possession," which then allows the "debtor in possession" to have the rights, powers, and duties (including having fiduciary duties) to administer property of the bankruptcy estate.

> § 1184. Rights and powers of a debtor in possession
>
> > Subject to such limitations or conditions as the court may prescribe, **a debtor in possession shall have all the rights**, other than the right to compensation under section 330 of this title, **and powers, and shall perform all functions and duties**, except the duties specified in paragraphs (2), (3), and (4) of section 1106(a) [file schedules if the debtor has not and investigate the acts/conduct/assets of the debtor, and file a report thereon] of this, **of a trustee serving in a case** under this chapter, **including operating the business of the debtor**.

It is only in the capacity of the "debtor in possession" that a Subchapter V debtor may administer property of this Bankruptcy Estate. This Motion expressly requests that the "Debtor" employ the Broker.

Filed as an Exhibit in support of the Motion is a contract titled "Exclusive Right to Represent Owner For Sale or Lease of Real Property (Non-Residential). Dckt. 94. The Parties to the contract are:

A. "Splash & Dash Car Wash (Glenn Arnesen & John Richter)" and

B. "Crossroad Ventures Group, Inc.

Contract, ¶ 1.1; Dckt. 94. R & A Enterprises, LLC, as Debtor in Possession, is not named as a party to the contract. "Splash & Dah Car Wash" is listed as another name that the Debtor has used in the 8 years prior to filing bankruptcy. Petition, ¶ 2; Dckt. 1.

In ¶ 2.2 it states that the Property shall not be advertised for sale in Siskiyou County. Dckt. 94. The Car Wash is located in Yreka, California, which is the county seat of Siskiyou County, California. (The court

taking judicial notice of this fact generally know and easily verified by the City and County records available online.) The Declaration of Jim Esway, a Real Estate Broker associated with Crossroad Ventures Group, Inc. does not provide any explanation why the Property would not be listed in the County in which it is located. Dckt. 93.

On the signature page the section for the Owner who is hiring the Real Estate Broker states that the "Owner" is "Splash & Dash Car Wash (Glenn Arnesen & John Richter)." Dckt. 94 at p. 5. From this, it would appear that "Splash & Dash Car Wash is a "mere" partnership in which Glenn Arnesen & John Richter are the general partners. Then, the Contract is signed by "Glenn Arnesen" and "John Richter" individually, without any reference to them being managing member, general partner, or representative (such as an officer, employee, or agent) of "Splash & Dash Car Wash."

In Paragraph 8 of the Contract there appears to be a blatantly false representation by "Splash & Dash Care Wash (Glenn Arnesen & John Richter)," in which they state:

> 8. OWNER'S REPRESENTATIONS.
>
> Owner represents and warrants that:
>
> (a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;
>
> (b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;
>
> (c) **Neither Owner nor the Property is the subject of a bankruptcy,** insolvency, probate or conservatorship **proceeding**;
>
> (d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;
>
> (e) **There are no effective, valid or enforceable** option rights, rights of first refusal, rights of first offer or any other **restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction**, except as **disclosed in writing pursuant to Paragraph 3.2(b)**.
>
> (f) That as of the date of this Agreement the asking sales price is not less than the total of all monetary encumbrances on the Property.

Contract, ¶ 8; Dckt. 94 (emphasis added) . Paragraph 3.2(b) provides that copies of any documents that imposes restrictions and limitation of the "Owner's" ability to sell must be attached to the Contract. *Id*. No such documents are attached and no reference is made to the Property being under the control of the Debtor in

Possession, being subject to court approval, and subject to overbids being presented in court at the hearing to approve a sale of the Property.

The Bankruptcy Petition and Amended Petition are signed by John Richter as the "Managing Manager" of the Debtor. Dckts. 1 at 4; and 38 at 4. On the Amended Statement of Financial Affairs the members and persons in control of the Debtor are listed as:

A. John J. Richter.....Managing Member, and

B. Linda Richter.....Member.

Amd Stmt Fin Affairs; Dckt. 57 at 14.

It is not clear who Glenn Arnesen is and why he is signing contracts relating to property of the Bankruptcy Estate in this Bankruptcy Case. The court notes that the Monthly Operating Reports are signed by a Glenn D. Arnesen, but no position (such as accountant, bookkeeper, or such) is stated as to why Glenn D. Arnesen is signing the Monthly Operating Reports. Dckt. 91.

In reviewing the above, the court begins to question whether the Debtor and its Responsible Representative can fulfill their fiduciary duties and obligations for the Debtor in Possession in this Bankruptcy Case or whether the time has come for a Chapter 11 Trustee to take over the administration and sale of property of the Bankruptcy Estate.

At the Status Conference, counsel for the Debtor in Possession constructively addressed this situation, **xxxxxxx**

**FEBRUARY 27, 2025 STATUS CONFERENCE**

At the Status Conference, counsel for the Debtor/Debtor in Possession and counsel for Creditor reported that they are finalizing terms for a Plan and requested a short continuance of the Status Conference.

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

**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.

**9. 24-22531-E-11 RLC-1**

**R & A ENTERPRISES, LLC**
**Stephen Reynolds**

**CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ORDER GRANTING 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.

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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, including the granting of replacement liens, is xxxxxxx.**

**March 27, 2025 Hearing**

The court continued the hearing as the Parties agreed to extend the use of Cash Collateral through March 31, 2025, with the amounts to be the same as provided for the Month of February 2025, pursuant to this court's prior order pending a Stipulation of the Parties.

As of the court's review of the Docket on March 24, 2025, nothing new has been filed with the court relating to the use of cash collateral. There is a Motion to Employ on file to hire a broker to sell the business. Docket 92.

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 and Creditor agree to authorized the used of Cash Collateral through and including March 31, 2025, in the same amounts as authorized for the Month of February 2025, on the same terms and conditions as authorized by the court for the prior order for the use of cash collateral.

The Motion for Authority to Use Cash Collateral, including the granting of replacement liens, is granted for the period through March 31, 2025. The Cash Collateral to be used is for the same amounts as provided for February 2025 in this court's prior order.

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

**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, counsel for Creditor and counsel for Debtor agreed to extend the use of cash collateral through March 31, 2025.

At the hearing the Debtor/Debtor in Possession and Creditor agreed to extend the use of Cash Collateral through March 31, 2025, with the amounts to be the same as provided for the Month of February 2025, pursuant to this court's prior order.

The Motion for Authority to Use Cash Collateral, including the granting of replacement liens, is granted for the period through March 31, 2025. The Cash Collateral to be used is for the same amounts as provided for February 2025 in this court's prior order (See Stipulation; Dckt. 76).

The hearing on the Motion for Authority to Use Cash Collateral Liens is continued to 10:30 a.m on March 27, 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**.

**10. 24-24147-E-11 UST-1** | **RAYANI HOLDINGS, LLC** **Stephen Reynolds** | **MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **1-30-25 [54]**

**Items 1 and 2 on the 11:30 calendar**

**THIS MATTER WILL BE HEARD ON THE COURT'S 11:30 a.m. CALENDAR IN CONJUNCTION WITH THE STATUS CONFERENCE AND THE MOTION TO APPROVE DISCLOSURE STATEMENT**

**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.

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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's Attorney, and all creditors and parties in interest on January 30, 2025. By the court's calculation, 56 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). 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 Dismiss Case is xxxxxxx.**

The United States Trustee, Tracy Davis ("U.S. Trustee"), seeks dismissal of the case on the basis that:

1. Rayani Holdings, LLC ("Debtor in Possession") has failed to file monthly operating reports for September 2024, October 2024, November 2024, and December 2024. Mot. 2:1-3, Docket 54.

2. Dismissal is a more appropriate remedy because it appears that there are only three unsecured claims, which total less than $10,000. *Id.* at 2:4-5.

U.S. Trustee submitted the Declaration of Laurie Brugger to authenticate the facts alleged in the Motion. Decl., Docket 56.

**Debtor in Possession's Opposition**

Debtor in Possession filed an Opposition on March 13, 2025. Docket 69. Debtor in Possession informs the court that the operating reports have since been filed, and that this case is moving forward. The case is not languishing, Debtor in Possession having engaged a broker to sell the single asset in the case.

**U.S. Trustee's Reply**

The U.S. Trustee filed a Reply to the Opposition on March 19, 2025. Docket 71. U.S. Trustee notes that the operating reports now having been filed are extremely late, the operating reports for September 2024, October 2024, and November 2024 each being filed on February 4, 2025. Thus, these reports were approximately 113 days late, 82 days late, and 50 days late, respectively.

Moreover, aside from the report for February 2025, the DIP has filed its monthly operating reports on the wrong form. Specifically, the DIP has utilized Official Form 425C, which is applicable in small business cases and Subchapter V cases. See Fed. R. Bankr. P. 2015(a)(6), (b). This case is not a small business case or a Subchapter V case. U.S. Trustee recommends dismissal.

**APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

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.
>
> And under 11 U.S.C. § 1112(b)(1)(4)(F), the court may grant conversion or dismissal:
>
> (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;

Collier's Treatise states on the subject:

> Congress added to the enumerated causes under section 1112(b)(4) the failure by the debtor to timely file or report information as required by other provisions of the Bankruptcy Code. By adding this provision, Congress has provided the statutory remedy for such failure where the remedy is not expressed within the Code provision setting forth the required reporting. For example, where a small business debtor fails to timely file the documents required to be appended to the petition pursuant to section 1116(1),104a such failure constitutes a failure to report. Similarly, section 1188(c) requires debtors proceeding under subchapter V to file a report of the debtor's efforts to obtain a consensual plan at least 14 days before the status

> conference scheduled by the court under section 1188(a). The failure to timely file this report constitutes cause. Nevertheless, by providing that the failure to report or file must be unexcused in order to constitute cause for dismissal or conversion, the statute provides to the court discretion in determining whether such cause has been established. "By inference the court, therefore, has the ability and some discretion to determine what is an 'excused' or 'unexcused' failure to 'timely file' the designated documents." Where the debtor subsequently cured the deficient filing and provided a good explanation for the delinquency in filing the documents required by section 1116(1), the court found that the failure to file or report was "excused."

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][f].

**DISCUSSION**
**Monthly Operating Reports**

Debtor in Possession failed to timely file the required monthly operating reports for the months of September 2024, October 2024, November 2024, and December 2024. Debtor in Possession has attempted to remedy that error, filing the monthly operating reports to become current on the filings. However, as the U.S. Trustee points out, the operating reports are extremely tardy and not filed on the correct forms. Debtor in Possession informs the court that although the operating reports were late, stating that this case is not languishing and is constructively moving forward toward a confirmed plan.

Looking at the Docket, nothing further has been filed with respect to the proposed Disclosure Statement. On October 20, 2024, the court entered an order authorizing the employment of Kidder Mathews as the realtor for the sale of the 8.85 acre Lincoln, California property. Dckt. 29.

The court does not see a motion to approve the sale of property of the Bankruptcy Estate, notwithstanding the Debtor in Possession having employed a Realtor four months ago.

On Amended Schedule A/B, the Debtor lists the following assets:

A. Checking Account.....$ 27,277.28

B. 8,5 Acres in Lincoln, CA.....$7,500,000.00

Dckt. 1. Debtor has no other assets.

Dating back to the November 13, 2024 Status Conference, the court was advised by counsel for the Debtor in Possession that the Property is being actively marketed and the Plan will be for the prompt liquidation of the Property. See Civil Minutes; Dckt. 66.

At the hearing, **xxxxxxx**

~~Therefore, the Motion is denied without prejudice.~~

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 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 is **XXXXXXX**.

**11. 25-20053-E-11 TBG-2 | MOORE HOLDINGS, LLC Stephan Brown | MOTION TO USE CASH COLLATERAL 3-4-25 [35]**

**Item 11 thru 13**

**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 in Possession, all creditors and parties in interest, and Office of the United States Trustee on March 4, 2025. By the court's calculation, 23 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.**

Moore Holdings, LLC ("Debtor in Possession") moves for an order approving the use of cash collateral in the forms of rents collected from 2151 Professional Dr., Roseville, CA 95661 ("Property"). Debtor in Possession requests the use of cash collateral to fund maintenance and repairs of the Property, insurance costs, utilities, landscaping, and professional fees. *See* Ex. A., Docket 37. The court would note that the Exhibit is improperly attached to the Declaration. "Motions, notices, objections, responses, replies,

declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankr. R. 9004-2(c)(1).

Debtor in Possession proposes that the cash collateral be approved with a 20% variance in each category and that remaining funds be retained by Debtor in Possession.

**APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

**DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the rental real property and to reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period of February of 2025 through July of 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 Moore Holdings, 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 February of 2025 through July of 2025, and the cash collateral may be used to pay the expenses detailed in Exhibit A, Docket 37. Debtor in Possession is granted 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.

**12. 25-20053-E-11 TBG-3** | **MOORE HOLDINGS, LLC** **Stephan Brown** | **MOTION TO EMPLOY RE/MAX GOLD AS BROKER(S)** **3-6-25 [41]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, all creditors and parties in interest, and Office of the United States Trustee on March 6, 2025. By the court's calculation, 21 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.**

Moore Holdings, LLC ("Debtor in Possession") seeks to employ RE/MAX Gold dba Remax Commercial as real estate broker ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market for lease and sale the bankruptcy estate's interest in certain real property located at 2151 Professional Drive., Roseville, CA 95661 ("Property").

Debtor in Possession argues that Broker's appointment and retention is necessary to facilitate liquidation of the Property and produce the highest and best return to the bankruptcy estate. Mot. 2:20-21.

Josie Jerde, a realtor of RE/MAX Gold dba Remax Commercial, testifies that he will act as the real estate agent/broker for Moore Holdings, LLC as Debtor in Possession, in connection with the marketing, leasing and sale of the Debtor in Possession's interest in the Property. Decl. ¶ 4, Docket 43. Mr. Jerde 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 ¶ 6.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ RE/MAX Gold dba Remax Commercial as real estate broker for the Chapter 11 Estate on the terms and conditions set forth in the Commercial Listing Agreement filed as Exhibit A, Dckt. 44. 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 Moore Holdings, 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 March 27, 2025, and Debtor in Possession is authorized to employ RE/MAX Gold dba Remax Commercial as real estate broker ("Broker") for Debtor in Possession on the terms and conditions as set forth in the Commercial Listing Agreement filed as Exhibit A, Dckt. 44.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

**13. 25-20053-E-11 UST-1** | **MOORE HOLDINGS, LLC** **Stephan Brown** | **MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE** **2-19-25 [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.

---

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's Attorney, and all creditors and parties in interest on February 19, 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). 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 Convert or Dismiss Case is xxxxxxx.**

The United States Trustee, Tracy Davis ("U.S. Trustee"), seeks dismissal of the case on the basis that:

1. Moore Holdings, LLC ("Debtor in Possession") has failed to provide evidence to the U.S. Trustee that the Debtor in Possession has appropriate insurance coverage for its real property Mot. 1:25-27, Docket 15.

2. Although the Debtor in Possession's lender appears to have obtained force-placed insurance, the property coverage amount is far less than the scheduled value of the Debtor in Possession's real property ($1,953,480 vs. $3,500,000). Further, the force-placed insurance policy does not appear to provide the Debtor in Possession with liability coverage. *Id.* at 2:1-4.

U.S. Trustee submitted the Declaration of Carla K. Cordero to authenticate the facts alleged in the Motion. Decl., Docket 17.

Creditor Poppy Bank ("Creditor") filed a Joinder tot he Motion on February 27, 2025. Docket 23. Creditor states in addition to the insurance issue, additional causes warrant dismissal, including unauthorized use of cash collateral combined with gross mismanagement, as well as diminution of the value of the estate. *Id.* at 2:11-12.

Creditor argues, after filing bankruptcy on January 7, 2025, Debtor continued its operations and expenditures without an order to use cash collateral. *Id.* at 5:2-3. The court would note that the hearing on the cash collateral is being heard in conjunction with this Motion.

At the hearing, **xxxxxxx**

Creditor also argues Debtor owes over $48,000 in taxes and is about one year behind in making mortgage payments. Debtor's tax burden will continue to increase, diminishing the estate, if Debtor continues to make no payments. *Id.* at 6:17-19. Creditor moves for dismissal pursuant to 11 U.S.C. § 1112(b)(4)(D) based on Debtor in Possession's gross mismanagement of the Estate that is resulting in substantial harm to creditors.

**Debtor in Possession's Opposition**

Debtor in Possession filed Oppositions to the Trustee's Motion and Creditor's Joinder on March 13, 2025. Dockets 48, 52. Debtor in Possession informs the court that it has obtained non-force placed insurance for the Real Property which covers property loss and liability and has taken significant remedial steps to address any prior deficiencies. Opp'n at 2:5-7, Docket 48. Debtor promptly provided proof of this improved coverage to the UST on March 13, 2025, with Policy No.: CPV0086147. The insurance carrier is currently in the process of adding the UST to the policy for notices purposes. *Id.* at 4:7-10.

Debtor in Possession explains the delay in obtaining non-force placed insurance as insurance premiums have increased in the wake of wild fires. *Id.* at 4:11-16. Debtor in Possession further argues it has complied with U.S. Trustee's requests, including appearing at the 341 Meeting and providing U.S. Trustee with evidence of insurance.

In the Opposition to Creditor's Joinder, Debtor in Possession points out it has filed a Motion to Use Cash Collateral and Debtor in Possession carefully segregates rental income, diligently tracks its expenditures, and relies on its members to perform essential managerial and operational tasks. Opp'n 2:10-12, Docket 52. Debtor in Possession also states it will execute a new agreement with a new tenant for suite 104 this month, which is reflected in the amended 6-month budget plan, will provide an extra $2,199.65 each month, and will cure and exceed any "improper usage" alleged by Creditor under 11 U.S.C. § 1112(b)(4)(D). *Id.* at 3:8-11.

Debtor in Possession argues dismissal is not in the best interests of creditors as the confirmed Plan ending in liquidation of the real Property will result in creditors being paid 100%. Debtor in Possession's real property is valued at approximately $3.5 million versus $2 million in secured debt, leaving significant equity.

**U.S. Trustee's Reply**

The U.S. Trustee filed a Reply to the Opposition on March 19, 2025. Docket 64. U.S. Trustee states the insurance information filed with the Opposition appears to be only a quote for insurance coverage, and os there is still no evidence that the Property is insured. *Id.* at 2:3-4. U.S. Trustee recommends dismissal.

**APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

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.

And under 11 U.S.C. § 1112(b)(1)(4)(C) and (H), the court may grant conversion or dismissal for a:

> (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public. . .
>
> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any). . .

Collier's Treatise states on the subject:

> The types of insurance that may be necessary to protect the estate and the public, depending on the debtor's business, may include all or some combination of fire and extended liability insurance, general liability insurance, worker's compensation and unemployment insurance, employee health insurance, malpractice insurance, product liability insurance and liquor or dramshop insurance. The United States trustee, who is charged with responsibility for supervising chapter 11 cases, also requires the debtor to maintain appropriate insurance coverage. "The dollar amount of the insurance coverage must be sufficient to cover the fair market value of the estate's property. . ."
>
> The United States trustee is charged with, inter alia, monitoring plans and disclosure statements, verifying reports and schedules, reporting possible criminal activity and supervising the progress of cases under chapter 11 and may gather information from the debtor regarding operations in order to perform these duties. In small business cases, the United States trustee may require extensive access to the debtor's operations and business records in order to comply with the requirements of the

> office. The failure to comply with these requests, if the requests are reasonable, constitutes cause to convert or dismiss the case. However, a delayed response by the debtor is not always viewed as "cause" to dismiss or convert a case.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][C] & [H].

**DISCUSSION**

Debtor in Possession states it has acquired insurance and provided the documentation to the U.S. Trustee to verify proof of coverage. It is undisputed Debtor in Possession is required to maintain proper insurance coverage of its premises while operating under Chapter 11 as this type of rental property inherently poses a risk to the public. It is also undisputed Debtor in Possession must comply with U.S. Trustee's demands in providing documentation of insurance. Debtor in Possession argues it has complied with these requirements; however, U.S. Trustee notes that the documentation provided appears to be an insurance quote and not verification of an actual policy. Indeed, Exhibit B titled "Commercial General Liability and Property Insurance Coverage Policy" is labeled as a "PACKAGE QUOTATION." Ex. B at 6, Docket 49. Debtor in Possession must provide proof of insurance for this case to move forward.

Debtor in Possession has provided some insight into the delay in getting the insurance coverage in place. Specifically, Debtor in Possession claims insurance companies are not readily offering coverage in wake of the recent California wildfires.

With these problems before the court, the court would note Debtor in Possession has taken steps to rectify the shortcomings in this case, including by having a Motion to Use Cash Collateral being heard. Debtor in Possession has also filed its Motion to Employ a Broker to market and to sell the Property. The Plan would result in payment in full with there being substantial equity in the Property available for creditors.

> At the hearing, **XXXXXXX**
>
> ~~Therefore, the Motion is denied without prejudice.~~

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 United States Trustee, Tracy Davis, 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 **XXXXXXX**.

**14. 24-21956-E-7 KMT-3** | **MICHAEL MOXLEY** **Patricia Wilson** | **MOTION TO APPROVE SALE AGREEMENT WITH THE DEBTOR , AND/OR MOTION TO EMPLOY TMC AUCTION INC. AS AUCTIONEER(S) , MOTION FOR COMPENSATION FOR TMC AUCTIONS INC., AUCTIONEER(S) 3-6-25 [30]**

**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 that have filed claims, and Office of the United States Trustee on March 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, to Employ, and for Authorization to Pay 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 to Sell, to Employ, and for Authorization to Pay Professional Fees is granted.**

The Bankruptcy Code permits Nikki B. 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 following assets of the Estate:

> (a) walnut equipment ("Walnut Equipment"); (b) a 2001 Ford Excursion with 350,000 miles ("Ford Excursion"); (c) a 2007 Forest River 25' Travel Trailer ("Travel Trailer"); (d) a 1979 Bluffer 20' Runabout ("Bluffer Boat"); and (e) a 1978 12' Game Fisher Runabout ("Game Fisher Boat").

(collectively, "Personal Property"). The Motion also seeks to employ Lonny Papp of TMC Auction, Inc. ("Auctioneer") to for authorization to compensate Auctioneer for a flat fee of $600 pursuant to Local

Bankruptcy Rule 9014-1(d)(5)(B). The Local Rules explicitly permit this type of Motion to be brought under Local Bankruptcy Rule 9014-1(d)(5)(B)(iii) and the requested relief in the same Motion is proper.

The proposed purchaser of the Property is Michael Gordon Moxley ("Debtor"), and the terms of the sale are:

1. Purchase of the Personal Property. The Debtor shall purchase and the Trustee shall sell the bankruptcy estate's interest in the Personal Property for $13,300.00, payable as follows: (a) $3,300 on or before January 15, 2025; and (b) $2,000 per month beginning on February 15, 2025.

2. *Payment Date and Grace Period*. Each of the Monthly Payments shall be made no later than the 15th day of each month beginning in February 2025. Payments shall be made to the Trustee by wire, personal check, cashier's check, or money order to:

   Estate of Moxley
   c/o Nikki Farris, Trustee
   2607 Forest Ave., Suite 120
   Chico, CA 95928

3. Prepayment. Nothing in this Agreement shall be construed as preventing the Debtor from prepaying the entire amount due and owing under the Agreement.

4. As Is Sale. The sale of the Personal Property is as is, where is, and subject to all liens and encumbrances. The sale is based on the Debtor's own investigation, and the Trustee is making no representations or warranties with respect to the Personal Property.

5. Allocation of Sale Price. The Sale Price is allocated as follows: (a) $4,000 for the Walnut Equipment; (b) $2,400 for the Ford Excursion; (c) $3,200 for the Travel Trailer; (d) $2,800 for the Bluffer Boat; and (e) $900 for the Game Fisher Boat.

6. Notice of Breach and Default. In the event the Debtor breaches any of the terms identified herein, including failing to timely make any payment (e.g. the Initial Payment or the Monthly Payments), the Trustee shall provide notice by email to the Debtor at patricia@bankruptcylawyerredding.com. If the breach is not cured within seven (7) calendar days of the email, the Debtor will be considered in default of this Agreement.

7. Remedy Upon Default. In the event of a default, the sale shall be void, all payments made by the Debtor may be retained by the Trustee for the benefit of the bankruptcy estate (as a result of the Debtor's Personal Property use), and the Trustee shall be authorized to sell the Personal Property under 11 U.S.C. section 363(b). Any proceeds from the sale of the Personal Property shall be property of the Debtor's bankruptcy estate.

Mot. 3:16-4:10, Docket 30.

**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. According to the Motion, Movant had the Auctioneer investigate and appraise the Personal Property. Based on the Auctioneer's investigation and appraisal, the Trustee negotiated a sale price with the Debtor that was at the appraised value for the Personal Property while also avoiding the typical fee of the Auctioneer which would have been upwards of 20% of the sale price. Mot. 4:21-25.

Mr. Papp submits his Declaration in support. Mr. Papp testifies neither he nor his firm hold any interests adverse to the Estate. Decl. ¶ 7, Docket 34. For his services, the Motion seeks to pay Mr. Papp a flat fee of $600. As part of this Motion, the court authorizes the Estate to employ Auctioneer and pay his fee of $600.

**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 because there is not any anticipated opposition to the Motion. *Id.* at 5:24.

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 permits Nikki B. 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 permits Nikki B. Farris, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael Gordon Moxley ("Debtor"), the following assets of the Estate:
>
> > (a) walnut equipment ("Walnut Equipment"); (b) a 2001 Ford Excursion with 350,000 miles ("Ford Excursion"); (c) a 2007 Forest

River 25' Travel Trailer ("Travel Trailer"); (d) a 1979 Bluffer 20' Runabout ("Bluffer Boat"); and (e) a 1978 12' Game Fisher Runabout ("Game Fisher Boat").

The sale is authorized on the following terms:

A. The Property shall be sold to Debtor for $13,300.00, payable as follows: (a) $3,300 on or before January 15, 2025; and (b) $2,000 per month beginning on February 15, 2025. The sale is made on the terms and conditions set forth in the Sale Agreement, Exhibit A, Dckt. 32, and as further provided in this Order.

B. The court authorizes the employment of Lonny Papp of TMC Auction, Inc. as Auctioneer for the Chapter 7 Estate, and compensation as provided in this Order.

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

D. The Chapter 7 Trustee is authorized to pay the Auctioneer's fee of $600 to Lonny Papp of TMC Auction, Inc.

**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. 24-24573-E-7 BLL-1** | **PHILLIP KATTENHORN** **Richard Hall** | **MOTION TO AVOID LIEN OF BMO HARRIS BANK N.A.** **2-10-25 [38]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on February 10, 2025. By the court's calculation, 45 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 xxxxxxx.**

This Motion requests an order avoiding the judicial lien of BMO Bank, N.A. ("Creditor") against property of the debtor, Phillip Kattenhorn ("Debtor") commonly known as 3905 Cedar Mist Lane, Auburn, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $333,402.82. Exhibit D, Dckt. 41. An abstract of judgment was recorded with Placer County on July 1, 2023, that encumbers the Property. *Id.*

**CREDITOR'S OPPOSITION**

Creditor filed an Opposition on March 12, 2025. Docket 48. Creditor is asserting that Debtor is not entitled to claim a homestead exemption in the Property for the following reasons:

1. California law defines "homestead" as the principal dwelling (1) in which the judgment debtor or judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Opp'n 3:26-3:3.

2. Neither Debtor nor his spouse resided continuously in the Property; Debtor was not residing at the Property on the Petition Date and that he was essentially "homeless". Mary Kattenhorn is Debtor's ex-spouse, not current spouse, and so he cannot claim the homestead exemption by virtue of her continuously residing in the Property. *Id.* at 4:23-5:5.

3. The property is not community property. Judge Clement has issued a ruling, which is currently on appeal, finding that the Property is not community property as Debtor and Ms. Kattenhorn never entered into a valid transmutation agreement transmuting the nature of the Property to community Property after being married.

4. The court should limit the application of Cal. Code Civ. P. § 704.720(d) and find that Debtor cannot claim the homestead exemption under this subsection, either, in accordance with *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013). *Id.* at 5:15-24.

**DEBTOR'S REPLY**

Debtor filed a Reply to the Opposition on March 18, 2025. Docket 54. Debtor requests an evidentiary hearing to prove Debtor is entitled to claim his homestead exemption. Debtor states that:

1. The only argument before this court related to community property/interest is to the real property being community property/interest based on California law related to commingling and a Moore/Marsden calculation. *See In re Marriage of Moore*, 28 Cal.3d 366 (1980) and *Marriage of Marsden* 181 Cal. Rptr. 910 (1982). Reply 2:7-11.

2. Debtor plans to show that Phillip Kattenhorn could not and cannot live in his homestead due to a restraining order by the California Family Court by a personal restraining order and the standard Automatic Temporary Restraining Orders (ATRO's), California Family Code 2040(b), which are currently in place in the family law case. *Id.* at 2:15-19.

3. An evidentiary hearing in which testimony from both Phillip Kattenhorn and Mary Kattenhorn will establish the community was so intertwined that they cannot provide a tracing and have conceded to each other that their interests in property is community property and their behavior supports it as community property. *Id.* at 3:19-23.

**DISCUSSION**

For purposes of this Motion, the parties spend much time discussing the nature of the Property and whether it can be claimed as exempt as community property. However, the nature of the property does not appear to be the determinative factor in whether Debtor can claim the exemption in this case.

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

(b)

> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
>
> (3) Property listed in this paragraph is—
>
> > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption. A critical aspect to claiming the homestead exemption is where a given debtor is domiciled. In re Urban, 375 B.R. 882, 888 (B.A.P. 9th Cir. 2007) ("The state law that is applicable to the debtor is determined by where the debtor was domiciled for the 730 days (two years) immediately preceding the filing of bankruptcy.") (internal quotations omitted).

In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**.'" *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore, Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's]. . .
>
> Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].

> Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:
>
> > *current residence,*
> > *voting registration and voting practices,*
> > *location of personal and real property,*
> > *location of brokerage and bank accounts,*
> > *location of spouse and family,*
> > *membership in unions and other organizations,*
> > *place of employment or business,*
> > *driver's license and automobile registration, and*
> > *payment of taxes.*
>
> Wright & Miller, *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp*., 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); *Korn v. Korn*, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

> "'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at 750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

*Von Kennel Gaudin v. Remis*, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

"Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]

. . .

The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]

[16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).

[17] See 11 U.S.C. § 101.

[18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss*), 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S. 877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg*), 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

> [20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).
>
> . . .
>
> [26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06.

What has not been discussed before the court is when Debtor's ability in this case to claim his homestead in the Property expired, if ever. It is uncontroverted that Debtor resided at the Property since acquiring the Property in 2009 until the state court judge ordered Debtor to leave the premises on October 10, 2021. It may be that Debtor would still be residing at the Property absent such an order, his intent being to remain residing in the Property. It would seem that if the only thing preventing Debtor from remaining physically on the premises is the restraining order, then Debtor has not changed his domicile for purposes of claiming the exemption.

It is also uncontroverted that the Property has not yet been equitably divided between Debtor and Ms. Kattenhorn. Where Debtor may not have yet changed domiciles, it is not clear to the court, as Creditor suggests, Debtor is unable to claim a homestead exemption in the Property, regardless of the fact whether the Property is community property or not.

At the hearing, **XXXXXXX**

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 Phillip Kattenhorn ("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 is **XXXXXXX**.

**16. 24-22093-E-7 MOH-2** | **MICHAEL SILVA** / **Michael Hays** | **MOTION TO AVOID LIEN OF THE SAGRES COMPANY** / **2-26-25 [59]**

**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.

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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 Creditor and Creditor's attorney on March 3, 2025. By the court's calculation, 24 days' notice was provided. 28 days' notice is required.

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

The 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 the Sagres Company against property of the debtor, Michael A. Silva ("Debtor") commonly known as 25180 Taft St., Los Molinos, California ("Property"). The Judgment appears to have been assigned to Collect Access LLC, c/o Zee Law Group, P.C. ("Creditor"). Zee Law Group, P.C. was given notice of this Motion. Certificate of Notice, Docket 69.

A judgment was entered against Debtor in favor of the Sagres Company in the amount of $7,103.33. Exhibit, Dckt. 66. An abstract of judgment was recorded with Tehama County on August 5, 2004, that encumbers the Property. *Id.* The judgment was then assigned to Creditor and renewed on June 17, 2013, in the amount of $35,031.55. Ex., Docket 67. The renewed judgment was also recorded in Tehama County. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $225,000 as of the petition date. Am. Schedule A at 1, Docket 57. The unavoidable consensual liens that total $7,152 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 12, Docket 22. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $326,166 on Schedule C. Am. Schedule C at 7, Docket 57.

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 Michael A. Silva ("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 is granted and the judgment lien of Collect Access LLC, c/o Zee Law Group, P.C. ("Creditor"), California Superior Court for Tehama County Case No. 11899, recorded on May 26, 2016, Document No. 2016005362, with the Tehama County Recorder, against the real property commonly known as 25180 Taft St., Los Molinos, 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.~~

**17. 25-20593-E-7 3D INVESTMENT GROUP, LLC MOTION TO SET ASIDE**
**KMT-2 Cyrus Zal 3-13-25 [22]**
**DEBTOR DISMISSED: 03/03/25**

**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 and all creditors and parties in interest on March 13, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the order dismissing the case for failure to timely file documents (Dckt. 20) is vacated.**

3D Investment Group, LLC ("Debtor") filed the instant case on February 12, 2025. Docket 1. The case was automatically dismissed for a failure to file documents by February 26, 2025. Order, Docket 20.

On March 13, 2025, the Chapter 7 Trustee, Ethan J. Birnberg ("Trustee"), filed this instant Motion to Vacate, claiming that actually Debtor filed the required documents by February 26, 2025, but they were not entered on the Docket until the next day, February 27, 2025, and so the order was entered in error. Moreover, after investigating the documents, Trustee believes there is equity in the property for the benefit of creditors. Mot. 2:19-25.

The Debtor filed a statement supporting the Trustee's Motion. Dckt. 27.

**APPLICABLE LAW**

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

**DISCUSSION**

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Here, vacating the order dismissing the case is warranted for two reasons. First, the order was entered in error, Debtor actually timely filing the required documents by the deadline of February 26, 2025.

The only reason the case was dismissed was because the documents did not actually appears on the Docket until the day after the deadline on February 27, 2025.

Moreover, there are assets in the case that can likely be liquidated for the benefit of creditors. Therefore, the Motion is granted, and the order dismissing the case (Docket 20) is vacated.

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 Vacate filed by Chapter 7 Trustee, 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 is granted, and the order dismissing the case (Docket 20) is vacated.

# FINAL RULINGS

**18. 25-20517-E-7** **HERMINIO ALVAREZ**
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**2-19-25 [17]**

**DEBTOR DISMISSED: 02/24/25**

**Final Ruling:** No appearance at the March 27, 2025 Hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on February 21, 2025. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees.

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on February 24, 2025 (Docket 19), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

| | | |
|---|---|---|
| **19. 24-24722-E-7<br>ELS-1** | **GENEVRA HENDERSON<br>Eric Seyvertsen** | **MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC<br>2-3-25 [23]** |

**Item 19 thru 20**

**Final Ruling:** No appearance at the March 27, 2025 hearing is required.

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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 all creditors and parties in interest on February 6, 2025. By the court's calculation, 49 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 Cavalry SPV I, LLC ("Creditor") against property of the debtor, Genevra Anesta Henderson ("Debtor") commonly known as 5005 Jetty Drive, Stockton, CA 95206 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $27,164.74. Exhibit A, Dckt. 25. An abstract of judgment was recorded with San Joaquin County on October 13, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $646,194.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $361,180.00 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 $285,014.00 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 Genevra Anesta Henderson ("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 Cavalry SPV I, LLC, California Superior Court for San Joaquin County Case No. STK-CV-UOC-2020-10126, recorded on October 13, 2021, Document No. 2021-171768, with the San Joaquin County Recorder, against the real property commonly known as 5005 Jetty Drive, Stockton, CA 95206, 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.

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|---|---|---|
| **20. 24-24722-E-7**<br>**ELS-2** | **GENEVRA HENDERSON**<br>**Eric Seyvertsen** | **MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC**<br>**2-3-25 [26]** |

**Final Ruling:** No appearance at the March 27, 2025 hearing is required.

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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 all creditors and parties in interest on February 6, 2025. By the court's calculation, 49 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 Cavalry SPV I, LLC ("Creditor") against property of the debtor, Genevra Anesta Henderson ("Debtor") commonly known as 5005 Jetty Drive, Stockton, CA 95206 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $27,164.74. Exhibit A, Dckt. 28. An abstract of judgment was recorded with San Joaquin County on October 7, 2021, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $646,194.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $361,180.00 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 $285,014.00 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 Genevra Anesta Henderson ("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 Cavalry SPV I, LLC, California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2020-9606, recorded on October 7, 2021, Document No. 2021-168797, with the San Joaquin County Recorder, against the real property commonly known as 5005 Jetty Drive, Stockton, CA 95206, 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.