UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 4, 2024 at 10:30 a.m.

1.	**22-23379-E-7** **GMR-2**	**ABDUL MUNIF** **Gabriel Liberman**	**MOTION FOR ADMINISTRATIVE EXPENSES** **3-14-24 [118]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on March 14, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Geoffrey Richards ("Movant") requests payment of administrative expenses in the amount of $12,500, incurred during the taxable year 2023, for post-petition taxes that came due to the Internal Revenue Service ("IRS") while administering the estate of Abdul Munif ("Debtor").

DISCUSSION

Section 503(b)(1)(B) of the Bankruptcy Code states,

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—
>
> (1)
>
> . . .
>
> (B) any tax—
>
> (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
>
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

Movant explains that he "has employed a certified public accountant to prepare income tax returns on behalf of the bankruptcy estate to comply with state and federal authorities," who has estimated the federal income tax owed for 2023 will be $12,500. Motion, Docket 118 p. 2:11-15.

Movant having demonstrated that the expenses were necessary, the Motion is granted, and the Chapter 7 Trustee is authorized to pay the IRS its administrative expenses in the amount of $12,500.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by the Chapter 7 Trustee, Geoffrey Richards ("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 the Chapter 7 Trustee is authorized to pay the Internal Revenue Service its administrative expenses in the amount of $12,500 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1)(B).

2. **23-21407-E-7** **BELLA VIEW CAPITAL, LLC** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Peter Macaluso
2 thru 3 **2-29-24 [223]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, United states Trustee, and all creditors and parties in interest as stated on the Certificate of Service on February 29, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $13 due on February 7, 2024.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $13.

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

3. 23-21407-E-7 BELLA VIEW CAPITAL, LLC
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-29-24 [224]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, United states Trustee, and all creditors and parties in interest as stated on the Certificate of Service on February 29, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $13 due on February 7, 2024.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $13.

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

4. **23-23836-E-7** **ROBERT/THERESA OBREGON** **CONTINUED MOTION TO COMPEL**
RLC-1 **Stephen Reynolds** **ABANDONMENT**
1-29-24 [36]

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, Chapter 7 Trustee, attorneys of record who have appeared in the bankruptcy case, creditors and parties in interest, and Office of the United States Trustee on January 30, 2024. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is xxxxxxx.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Robert Obregon and Theresa Obregon ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property commonly known as 164 Costello Court, Folsom, Ca 95630 ("Real Property"), and "all scheduled assets of the Debtors" ("Other Property"), apart from the 2019 GMC Sierra which Debtor planned to purchase back from the estate. Motion, Docket 36 p. 1:19-24.

The Property has an asserted value of $801,500. Amended Schedule D, Docket 57 p. 12 line 2.6. Debtor's Amended Schedule D lists two creditors with claims that are secured by the Property: Nstar/Cooper with a secured claim in the amount of $157,070 (*Id.* at p. 11 line 2.4) and Wells Fargo Bank, N.A. in the amount of $475,572 (*Id.* at p. 11 line 2.4). Debtor claims an exemption in the Property in the amount of $527,090 pursuant to Cal. Code Civ. Pro. § 704.730(a)(2). Amended Schedule C, Docket 57 p. 8 line 2.

Debtor's Other Property includes a 2022 Mercedes GLE 350 valued at $75,175; a 2019 Forest River R Pod valued at $16,600; a 2019 GMC Sierra valued at $26,050 (which is not subject to this Motion

to Abandon); furniture valued at $2,755; electronics valued at $5,000; camping gear valued at $500; clothing valued at $500; jewelry valued at $10,000; pets valued at $1; $2,500 cash; checking account valued at $5,000; ownership in Debtor's business, Robert P. Obregon DDS, Inc., valued at $1; 401(k) plan valued at $53,826.80; and a life insurance policy valued at $1,000,000. Amended Schedule A, Docket 57 ps. 3-7.

On February 15, 2024, the Chapter 7 Trustee initially filed a limited opposition, concluding that indeed the Property was of inconsequential value to the estate and should be abandoned. Docket 47, ps. 1:25-2:3. The Chapter 7 Trustee also stated most of the Other Property should also be abandoned, except for the $2,500 cash and checking account valued at $5,000. *Id.* at p. 2:4-9.

However, on February 20, 2024, the parties filed a Stipulation with the court asserting that the situation has changed. Docket 51. The Chapter 7 Trustee stated that Wells Fargo's lien in the Property is likely to be paid through Debtor's business' Chapter 11 Subchapter V case (case no. 23-23620), meaning there would be nonexempt equity in the Property for the Chapter 7 Trustee to pursue. *Id.* at p. 2:18-23. At the parties' request, the court continued the hearing to April 4, 2024, to allow the Chapter 7 Trustee time to investigate if there would be any nonexempt equity in the Property available for the benefit of the estate. Order, Docket 55.

Since the Stipulation was filed and continuation granted, a review of the Docket on March 28, 2024 reveals that the Chapter 7 Trustee has not filed anything new in the case.

The Amended Schedules at Docket 57 assert a much larger homestead exemption in the Property compared to the originally filed Schedules at Docket 1. The Amended Schedule claims an exemption in the amount of $527,090 (Amended Schedule C, Docket 57 p. 8 line 2), whereas the original Schedule C lists the exemption as $187,358 (Original Schedule C, Docket 1 p. 17 line 2).

If the liens of Wells Fargo and Nstar/Cooper are accurately Scheduled and not to be paid through Debtor's business' Chapter 11 case, those liens would total $632,642. The Debtor is claiming $527,090 as exempt, meaning that there would not be any nonexempt equity in the Property, the Property having an asserted value of $801,500.

At the hearing, **xxxxxxx**

Some items of the Other Property appears to be of inconsequential value to the estate as well. The Amended Schedule C indicates that the furniture, electronics, camping gear, clothing, and pets are fully exempted. Amended Schedule C, Docket 57 ps. 8-9. However, the 401(k) retirement plan is only exempted in the amount of $1 (valued at $53,826.80), and the life insurance policy is only exempted in the amount of $15,000 (valued at $1,000,000), leaving nonexempt equity in those assets of the estate. *Id.* At the hearing, **xxxxxxx**.

The cash in the amount of $2,500 and the checking account funds in the amount of $5,000 are not exempted, meaning those assets are not abandoned back to debtor.

~~The court finds that the debt secured by the Property and the exemptions claimed in the furniture, electronics, camping gear, clothing, and pets exceeds the value of the property and that there are negative financial consequences to the Estate caused by retaining the property. The court determines that the property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.~~

CHAMBERS PREPARED ORDER

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 Compel Abandonment filed by Robert Obregon and Theresa Obregon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is **xxxxxxx**.

5. 23-23777-E-12 BLL-2 | **BRENDAN SMITH** **Jenny Doling** | **MOTION TO DISMISS CASE** **3-6-24 [66]**

5 thru 10

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 will be held.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record who have appeared in the case, persons who have filed a request for notice, all creditors and parties in interest, and Office of the United States Trustee on March 6, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor has not filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The West Family Trust ("Creditor") seeks dismissal of the case on the basis that:

1. The debtor, Brendan Christopher Smith ("Debtor in Possession"), has improperly scheduled assets that do not exist, while also failing to properly

schedule certain assets that may be material to repaying creditors in violation of 11 U.S.C. § 1208(c)(1).

A. Particularly, Debtor in Possession has Scheduled $12,500 in monthly employment income, but Debtor in Possession has never and does not receive employment income. Motion, Docket 66 p. 2: 7-17. This number is merely a projection.

B. Debtor in Possession has similarly scheduled $12,535 per month in farming income, but again this is a projection. Debtor in Possession has not received and does not receive farming income. *Id.* at p. 3:5-16.

C. Debtor in Possession has overestimated a cause of action he has against Glenn Colusa Irrigation District. *Id.* at ps. 3:18-4:24.

2. Debtor in Possession has failed to schedule the following assets:

A. $120,000 remaining due to Debtor in Possession per the terms of a dissolution agreement between Debtor in Possession and Nicholas DiGrazia, Debtor in Possession's previous partner.

B. Fuel tanks estimated at $1,000; TMC 12' mower estimated at $5,000; Kawasaki mule estimated at $2,000; goose-neck equipment trailer estimated at $6,000.

C. Rent monies collected from tenants on Debtor in Possession's real property.

Id. at ps. 5:1-6:6.

3. Creditor sold the 92 acre real property commonly known as Glenn County APN 037-211-011 ("Property") to Debtor in Possession on November 26, 2013. Debtor in Possession is delinquent in payments on the Property, and in order to preserve its junior lien status, Creditor has had to make substantial payments to the senior lienholder, Banner Bank. Creditor is now owed $671,520.47. *Id.* at ps. 6:7-7:10.

4. Debtor in Possession has not filed a plan, but the case is five months old. This is unreasonable delay that is prejudicial to Creditor in violation of 11 U.S.C. §§ 1208(c)(1) and (3). *Id.* at p. 7:11-22.

Creditor has submitted the Declaration of its attorney, Byron Lynch, to authenticate Debtor in Possession's deposition at Exhibit A, Docket 70. Decl., Docket 68. Creditor also submits the Declaration of Rosanne West, co-trustee of the West Family Trust, Creditor here. Decl., Docket 69. Ms. West authenticates the facts alleged in the Motion, testifying to the overestimation of Debtor in Possession's cause of action against Glenn Colusa Irrigation District, as well as to the amount Debtor in Possession owes Creditor.

DISCUSSION

11 U.S.C. § 1208(c) provides in relevant part:

> (c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—
>
> > (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;
> >
> > . . .
> >
> > (3) failure to file a plan timely under section 1221 of this title. . .

Regarding unreasonable delay or gross mismanagement that is prejudicial to creditors, the bankruptcy treatise Collier provides:

> The first ground constituting cause for dismissal of a chapter 12 case is unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors. Note that section 1208(c)(1) is phrased in the conjunctive, so it will be necessary for the court to find both that the debtor has engaged in unreasonable delay or gross mismanagement and that the delay or mismanagement has been prejudicial to creditors. Unreasonable delay can be found from the debtor's failure to file or confirm a plan on a timely basis, from the debtor's failure to modify a plan after confirmation has been denied, or from the debtor's failure to consummate or perform under the terms of a confirmed plan. Prejudice to creditors ought to be fairly easy to demonstrate if either unreasonable delay or gross mismanagement has occurred.

8 COLLIER ON BANKRUPTCY ¶ 1208.03[1]. Creditors bear the burden of establishing that cause exists to dismiss a Chapter 12 case. *See Vaqueria Las Martas, Inc.*, 638 B.R. 482, 496 (B.A.P. 1st Cir. 2022). Factors the court may consider in determining whether a debtor has engaged in unreasonable delay that is prejudicial to creditors includes, "(1) failure to timely file documents; (2) failure to file a confirmable plan; and (3) failure to file a modified plan, or failure to perform under a confirmed plan. . . Similarly, gross mismanagement can be demonstrated by failure to provide accurate financial information and failure to provide insurance on collateral." *In re Keith's Tree Farms*, 519 B.R. 628, 643 (Bankr. W.D. Va. 2014).

Here, the court finds that Debtor in Possession has engaged in unreasonable delay or gross mismanagement that has prejudiced creditors. This court clearly outlined the problems plaguing this case in the civil minutes for the Status Conference held on February 1, 2024. Docket 59. None of these concerns have been addressed by Debtor in Possession.

Now five months into the case, Debtor in Possession has offered no Plan nor offered any reasonable excuse for the delay in filing a Plan. Moreover, this court has not granted Debtor in Possession an extension, meaning failure to timely file a Plan is in direct violation of the 90-day window provided by 11 U.S.C. § 1221.

Debtor in Possession reported on December 5, 2023 that he is working with secured creditor Banner Bank on a stipulated cash collateral budget. Docket 42 p 3:1-6. Banner Bank also filed a Motion

to Dismiss being heard on this same calendar (DCN.: RBK-1), where Banner Bank reports a cash collateral budget never materialized, Debtor in Possession failing to engage in negotiations.

Debtor in Possession also failed to gain the court's authorization to employ Raymond Sandelman as special counsel to pursue Debtor in Possession's cause of action against Glenn Colusa Irrigation District. It now appears to the court that Mr. Sandelman is withdrawing as counsel in that matter, meaning the state court action is not currently being prosecuted by any attorney, further clouding that asset of the estate.

Without court approval, Debtor in Possession employed a real estate professional to list certain real property located in Tehama County in which the Debtor's estate owns a partial interest without Court authority. Though the court addressed this problem in early February (Docket 59, p. 2), a review of the Docket reveals no Motion to Employ has been filed to date.

Finally, Debtor in Possession has failed to file a single monthly operating report as required by this court's Order entered on October 27, 2023 at Docket 15 (ordering Debtor in Possession to prepare, file, and serve Monthly Operating Reports as required by Local Bankruptcy Rules 2015-1 using the form found on the court's website).

Debtor in Possession has shown a cavalier attitude toward the bankruptcy process, enjoying the protections of bankruptcy while not actively working toward confirming a feasible plan of reorganization. This behavior amounts to unreasonable delay that is prejudicial to creditors, and the case is dismissed pursuant to 11 U.S.C. §§ 1208(c)(1) and (3).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 12 case filed by The West Family Trust ("Creditor"), 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.

6. 23-23777-E-12 RBK-1 — BRENDAN SMITH — Jenny Doling — MOTION TO DISMISS CASE — 3-6-24 [71]

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 will be held.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors and parties in interest, and Office of the United States Trustee on March 6, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, 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 Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor has not filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

Banner Bank ("Creditor") seeks dismissal of the case on the basis that:

1. The debtor, Brendan Christopher Smith ("Debtor in Possession"), has likely misreported his monthly income. Debtor in Possession stated on Schedule I that he has a total monthly income of $23,160, including gross monthly wages of $12,500.00 and net income from rental property and from operating a business, profession, or farm of $12,535.00. These income numbers were partially projections from a potential job offer which may or may not have worked out. Debtor in Possession has never filed a monthly operating report so there is no way to verify Debtor in Possession's income. Mem., Docket 73 p. 7:9-26. Debtor in Possession also revealed at the Meeting of Creditors that he is not yet actually employed, and he has merely received a job offer. *Id.* at ps. 8:25-9:9.

2. Creditor has been attempting to negotiate a cash collateral budget with Debtor in Possession since October 26, 2023. *See* Decl., Docket 74 ¶¶ 1-17; Exhibits 1-15, Docket 75. These efforts have been unsuccessful despite Debtor in Possession's counsel reporting she was preparing a budget. Any cash collateral used thus far has been against the Creditor's consent. Mem., Docket 73 p. 8:1-16.

3. Debtor in Possession has failed to pay real property taxes in the amount of $9,596.97. *Id.* at p. 8:17-19.

4. Debtor in Possession has failed to file any monthly operating reports. *Id.* at p. 8:24.

5. One of Debtor in Possession's major assets in the case is his lawsuit against Glenn-Colusa Irrigation District alleging damages for over spray of the Debtor in Possession's almond orchards. The attorney representing Debtor in Possession in that case, Raymond Sandelman, never gained court approval to represent Debtor in Possession. Moreover, Mr. Sandelman is now withdrawing as counsel from that action. *Id.* at p. 9:10-20.

6. Debtor in Possession executed an Exclusive Authorization and Right to Sell Agricultural Property, which involves property of the bankruptcy estate. Debtor in Possession did not seek court authorization for any sale of real estate that is property of the estate. *Id.* at p. 9:22-28.

7. The court should grant the Motion to Dismiss with prejudice to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a).

Creditor submits the Declarations of Robert Kaplan (Docket 74) and Donna Schmidt (Docket 77) in support of the Motion. Mr. Kaplan testifies that he was unable to reach a cash collateral budget stipulation with Debtor in Possession's counsel because Debtor in Possession's counsel refused to send over a budget. Decl., Docket 74 ¶ 17. Mr. Kaplan also authenticates Exhibits 1-29, as well as testifies to the authenticity of the facts alleged in the Memorandum of Points and Authorities. Ms. Schmidt testifies to the authenticity of a transcript of the Meeting of Creditors. Decl., Docket 77.

Creditor submits various Exhibits in support of its Motion, including email conversations between Creditor and Debtor in Possession's counsel showing a failure to agree on a cash collateral budget. Exhibits 1-15, Docket 75. The authenticated Exhibits also include evidence of past due taxes Debtor in Possession has failed to pay, evidence that Mr. Sandelman is now withdrawing as counsel from Debtor in Possession's state court action, the Exclusive Authorization and Right to Sell Agricultural Property documentation, and portions of the Rule 2004 examination of Debtor in Possession. Exhibits 17-29, Docket 76.

DISCUSSION

11 U.S.C. § 1208(c) provides in relevant part:

> (c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—
>
> > (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;
> >
> > . . .
> >
> > (3) failure to file a plan timely under section 1221 of this title;
> >
> > . . .
> >
> > (9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation. . .

Regarding unreasonable delay or gross mismanagement that is prejudicial to creditors, the bankruptcy treatise Collier provides:

> The first ground constituting cause for dismissal of a chapter 12 case is unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors. Note that section 1208(c)(1) is phrased in the conjunctive, so it will be necessary for the court to find both that the debtor has engaged in unreasonable delay or gross mismanagement and that the delay or mismanagement has been prejudicial to creditors. Unreasonable delay can be found from the debtor's failure to file or confirm a plan on a timely basis, from the debtor's failure to modify a plan after confirmation has been denied, or from the debtor's failure to consummate or perform under the terms of a confirmed plan. Prejudice to creditors ought to be fairly easy to demonstrate if either unreasonable delay or gross mismanagement has occurred.

8 COLLIER ON BANKRUPTCY ¶ 1208.03[1]. Creditors bear the burden of establishing that cause exists to dismiss a Chapter 12 case. *See Vaqueria Las Martas, Inc.*, 638 B.R. 482, 496 (B.A.P. 1st Cir. 2022). Factors the court may consider in determining whether a debtor has engaged in unreasonable delay that is prejudicial to creditors includes, "(1) failure to timely file documents; (2) failure to file a confirmable plan; and (3) failure to file a modified plan, or failure to perform under a confirmed plan. . . Similarly, gross mismanagement can be demonstrated by failure to provide accurate financial information and failure to provide insurance on collateral." *In re Keith's Tree Farms*, 519 B.R. 628, 643 (Bankr. W.D. Va. 2014).

Here, the court finds that Debtor in Possession has engaged in unreasonable delay or gross mismanagement that has prejudiced creditors. This court clearly outlined the problems plaguing this case in the civil minutes for the Status Conference held on February 1, 2024. Docket 59. None of these concerns have been addressed by Debtor in Possession.

Now five months into the case, Debtor in Possession has offered no Plan nor offered any reasonable excuse for the delay in filing a Plan. Moreover, this court has not granted Debtor in Possession an extension, meaning failure to timely file a Plan is in direct violation of the 90-day window provided by 11 U.S.C. § 1221.

Debtor in Possession reported on December 5, 2023 that Debtor in Possession is working with Creditor on a stipulated cash collateral budget. Docket 42 p 3:1-6. Creditor now reports a cash collateral budget never materialized, Debtor in Possession failing to engage in negotiations.

Debtor in Possession also failed to gain the court's authorization to employ Raymond Sandelman as special counsel to pursue Debtor in Possession's cause of action against Glenn Colusa Irrigation District. It now appears to the court that Mr. Sandelman is withdrawing as counsel in that matter, meaning that he no longer wants to represent the fiduciary Debtor in Possession in the State Court Action in the future, though he is currently serving as the attorney for the Debtor in Possession in that State Court Action.

Without court approval, Debtor in Possession employed a real estate professional to list certain real property located in Tehama County in which the Debtor's estate owns a partial interest without Court authority. Though the court addressed this problem in early February (Docket 59, p. 2), a review of the Docket reveals no Motion to Employ has been filed to date. Such Real Estate Professional is providing his/her services *pro bono*, the Debtor in Possession not having been authorized to employ such professional.

Finally, Debtor in Possession has failed to file a single monthly operating report as required by this court's Order entered on October 27, 2023 at Docket 15 (ordering Debtor in Possession to prepare, file, and serve Monthly Operating Reports as required by Local Bankruptcy Rules 2015-1 using the form found on the court's website).

Debtor in Possession has shown a cavalier attitude toward the bankruptcy process, enjoying the protections of bankruptcy while not actively working toward confirming a feasible plan of reorganization. This behavior amounts to unreasonable delay that is prejudicial to creditors, and the case is dismissed pursuant to 11 U.S.C. §§ 1208(c)(1) and (3).

Prospective Bar to Refiling

The bankruptcy courts are established by an act of Congress and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. §105 provides the bankruptcy courts with the inherent power to enter pre-filing orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v Reid, Murdock & Co.*, 177 F 684, (7th Cir 1910), *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999), and *In re Bialac,* 15 B.R. 901, (9th Cir. B.A.P. 1981), aff'd 694 F2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. §105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. §105 or the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 2007); and *Peugeot v. U.S. Trustee* (*In re Crayton*), 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for pre-filing review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007), en banc hearing denied, 521 F.3d 1215 (9th Cir. 2008); and *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes

other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a pre-filing review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process right of access to the courts. As discussed in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982), the right to seek redress from the court is a protected right civil litigants. The issuing of a prefiling only is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

> Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148; *see O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

Molski v. Evergreen Dynasty Corp, et al, supra, p. 1057. In the Ninth Circuit the trial courts apply a four factor analysis in determining if and what type of pre-filing or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered.

2. Second, the district court must compile "an adequate record for review."

3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation.

4. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered."

Id.

Here, Debtor in Possession has not engaged in repetitive filing of bankruptcy cases that would justify a prospective bar to refiling. It does not yet appear to the court at this stage that Debtor in Possession is a particularly vexatious litigant, despite the obvious shortcomings here. Debtor in Possession has clearly failed to prosecute this instant case; however, a search of the court's database reveals that this is Debtor in Possession's first attempt in this district. It may be that Debtor in Possession requires a clean slate to give a good faith effort in bankruptcy, perhaps retaining new counsel who is familiar with running a Chapter 12 case and representing a fiduciary of a bankruptcy estate. And although the court does not now enter a bar to refiling, the parties should be cognizant that the court is open to revisiting this idea should proper circumstances arise in the future.

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

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

The Motion to Dismiss the Chapter 12 case filed by Banner Bank ("Creditor"), 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.

No further relief is granted.

7. 23-23777-E-12 CAE-1 **BRENDAN SMITH** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-24-23 [1]**

Debtor's Atty: Jenny L. Doling

Notes:
Continued by order of the court filed 3/25/24 [Dckt 103]. To be heard in conjunction with other matters on the calendar.

The Status Conference is xxxxxxx

8. **23-23777-E-12** **BRENDAN SMITH** **CONTINUED ORDER TO SHOW CAUSE**
CAE-1 **Jenny Doling** **2-4-24 [60]**

Debtor's Atty: Jenny L. Doling

Notes:
Continued from 2/1/24. With the continuance of the Status Conference, the Debtor in Possession and other parties in interest shall show cause why the court should not convert this case to one under Chapter 7.

Trustee Report at 341 Meeting lodged 2/23/24

Resignation of Chapter 12 Trustee filed 2/27/24 [Dckt 62]

Trustee's Final Report and Account filed 3/5/24 [Dckt 64]

[BLL-2] Motion for Order Dismissing Chapter 12 Case [by Creditor, West Family Trust] filed 3/6/24 [Dckt 66], set for 4/4/24 at 10:30 a.m.

[RBK-1] Motion to Dismiss Chapter 12 Case [by Banner Bank] filed 3/6/24 [Dckt 71], set for hearing 4/4/24 at 10:30 a.m.

[BJI-1] Motion of Farm Credit Services of America for Relief From the Automatic Stay filed 3/15/24 [Dckt 84]; set for hearing 4/4/24 at 10:00 a.m.

The Order to Show Cause is sustained, and the case is dismissed.

APRIL 4, 2024 HEARING ON THE ORDER TO SHOW CAUSE

The court issued an order continuing the Status Conference and the Order to Show Cause hearing to 10:30 a.m. on April 4, 2024, due to unavailability of counsel at the prior March 26, 2024 scheduled date. A review of the Docket on April 1, 2024 reveals that Debtor in Possession has not filed any new documents with the court, the case falling into complete disrepair.

At the hearing, **XXXXXXX**

DECEMBER 12, 2023 STATUS CONFERENCE

On October 24, 2023, Brendan Christopher Smith, the Debtor commenced this voluntary Chapter 12 Case. In his Status Conference Statement filed on December 5, 2023, the Debtor in Possession reports that there is substantial litigation over claims of the Estate against the Glenn-Colusa Irrigation District for alleged damage to the Debtor's 2021 crop. In the Status Report the Debtor in Possession provides the court with an analysis of Debtor's eligibility to seek relief pursuant to Chapter 12 of the Bankruptcy Code.

At the Status Conference, counsel for the Debtor in Possession reported that books and records are being produced by the Debtor's C.P.A., which should be delivered later on December 12, 2023.

The Debtor in Possession and creditors are working on a stipulation to use cash collateral. The Chapter 12 Trustee reported that the First Meeting of Creditors has been continued to allow for the financial records to be produced.

Banner Bank addressed the litigation with Glenn-Colusa, and the need for the non bankruptcy counsel has not yet been appointed. Debtor in Possession counsel reported that a draft of the employment application has been prepared, has been reviewed, and is to be promptly.

Counsel for the West Family Trust discussed the amount of debt coming due in January 2024, and whether any portion of that will be paid. A stipulation has been reached with Wells Fargo Bank, which will be submitted shortly with respect to its secured claim.

Counsel reported that Debtor's income has been increased by $150,000 by virtue of his new job with the Irrigation District.

FEBRUARY 1, 2024 STATUS CONFERENCE

At the continued conference counsel for the Debtor in Possession (who is a fiduciary of the Bankruptcy Estate), counsel for Creditors, and the Chapter 12 Trustee reported that no cash collateral stipulation has been worked out and that the financial documents and records have not been produced for the Chapter 12 Trustee.

Counsel for the Fiduciary Debtor in Possession reported that the Debtor's pre-petition accountant has refused to turn over documents, financial records, and financial information, which are property of the Bankruptcy Estate, to the Fiduciary Debtor in Possession. Counsel for the Fiduciary Debtor in Possession also reported that no action has been taken since the December 12, 2023 Status Conference to compel the turnover of these records and documents via a 2004 Examination or other procedure that the Debtor in Possession, a fiduciary to the Bankruptcy Estate, to recover these necessary Documents.

Apparent Fiduciary Debtor in Possession's Unauthorized Use of Cash Collateral

It was further reported that no use of cash collateral stipulation has been worked out and there is no order authorizing the use of cash collateral. At this juncture it is unclear whether the fiduciary Debtor in Possession has been using cash collateral in violation of 11 U.S.C. § 363(c)(2), which states:

> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
>
> > (A) each entity that has an interest in such cash collateral consents; or
> >
> > (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

given that there has not been the consent of the creditor given and no order of this court authorizing the use of cash collateral.

Fiduciary Debtor in Possession Engaging the Services of a Professional
Without Obtaining Court Authorization

Counsel for the Fiduciary Debtor in Possession further reported that attorney Raymond Sandelman, Esq. is special counsel for the Fiduciary Debtor in Possession, who has control over the Bankruptcy Estate, in which are such claims to be prosecuted by Special Counsel are now located (11 U.S.C. § 541(a)), has failed to obtain authorization to be employed by the Fiduciary Debtor in Possession (11 U.S.C. § 327) and appears to be refusing to do such. As is well known, while a professional may work for a trustee or debtor in possession, if the court has not authorized the employment, the professional may no be paid any compensation for his/her services. *See*, 11 U.S.C. § 330(a)(1) requiring that a professional be authorized to be employed for that professional receiving any compensation for the services rendered.

The State Bar identified only one Raymond Sandelman admitted to practice law in California, with Mr. Sandelman listing his office as being in Chico, California.

Fiduciary Debtor in Possession Employment of Real Estate Professions
Without Obtaining Authorization From the Court

Counsel for the Fiduciary Debtor in Possession further reported that the Fiduciary Debtor in Possession and Tyler Tamagni, a co-owner in the 16.32 acres in Tehama County, California, APN: 091-220-016-000, have engaged the services of a real estate broker; identified as Elt Ranch Properties, Inc, with Kyle Dalrymple serving as the licensed Broker Associate. The California Department of Real Estate identifies ELT Ranch Properties, Inc. having a Broker's License and Kyle Dalrymple being a Broker Associate. [Fn. 1.]

The address listed for the Broker and Broker Associate by the California Department of Real Estate is:

ELT Ranch Properties, Inc.
Randal Howard Edwards, Designated Officer
Anthony Joseph Toso, Designated Officer
Kyle Evan Dalrymple, Broker Associate
8408 Lander Ave
Hilmar, CA 95324

FN. 1. https://www2.dre.ca.gov/publicasp/pplinfo.asp?License_id=02105819

While the Fiduciary Debtor in Possession may not need court authorization to list a property for sale, any sale contract the Fiduciary Debtor in Possession enters into must be approved by the court before the sale can proceed. 11 U.S.C. § 363(b)(1).

Additionally, it is only the Fiduciary Debtor in Possession, in that fiduciary capacity, who may enter into a listing agreement or contract to sell property of the Bankruptcy Estate - not the individual Debtor. All of the Debtor's prepetition property immediately became property of the Bankruptcy Estate upon the filing of this Case. *See*, 11 U.S.C. § 341(a), subject to some exceptions not applicable here.

Further, the Broker and Broker Associate cannot be paid any compensation for their services unless their employment has been authorized by the court.

Counsel Authorized to be Employed is the Attorney for the Fiduciary Debtor in Possession, not the non-fiduciary Debtor

On November 11, 2023, the court authorized the Fiduciary Debtor in Possession to employ Jenny L. Doling, Esq. of J. Doling Law, PC as the counsel for the Fiduciary Debtor in Possession. As such employed profession, counsel for the Debtor in Possession has fiduciary duties running to the Bankruptcy Estate.

Apparent Dysfunctional Administration of the Bankruptcy Estate

What has been presented to the court appears to show that in the three months since the filing of this Bankruptcy Case the Fiduciary Debtor in Possession has grossly failed to fulfill his duties and obligations as a debtor in possession. The Fiduciary Debtor in Possession has failed to obtain documents and financial information to present to the Chapter 12 Trustee.

As clearly set forth in the Order Setting Chapter 12 Status Conference, the Fiduciary Debtor in Possession is required to file monthly operating reports.

> **IT IS FURTHER ORDERED**, the debtor-in-possession shall prepare, file, and serve Monthly Operating Reports as required by Local Bankruptcy Rules 2015-1 using the form found on the court's website.

Chapter 12 Status Conference Order, p 2; Dckt. 15.

A review of the Court's Docket shows that the Fiduciary Debtor in Possession has not filed a monthly operating report for November 2023 or December 2023, for which the filing dates have passed.

The Order Setting Chapter 12 Status Conference further notifies the Fiduciary Debtor in Possession and the Debtor that:

> **NOTICE IS HEREBY GIVEN**, that the court may, *sua sponte*, at the status conference, order the case dismissed or converted to Chapter 7 for cause if appropriate. At the request of the Debtor(s), the court may convert the case to Chapter 13 or 11.

Id.

The court could have at the February 1, 2024 Status Conference converted this case to one under Chapter 7 due to the apparent gross breaches of fiduciary duties by the Fiduciary Debtor in Possession. However, the court prefers to set a further hearing on that and will be issuing an Order to Show Cause Why This Case Should Not Be Converted to One Under Chapter pursuant to the Court's Order Setting Status Conference. This is to allow a "good faith" debtor in possession who did not appreciate his fiduciary and statutory duties to correct his or her conduct and that he or she can fulfill the fiduciary duties going forward.

Given this conduct by the Fiduciary Debtor in Possession, conduct of the purported Special Counsel, and the inability of the Fiduciary Debtor in Possession and the counsel authorized to be employed by the Fiduciary Debtor in Possession to obtain and provide financial records and information, the court has determined that it is necessary for the Debtor in Possession, Special Counsel for the Fiduciary Debtor in Possession, and the bankruptcy counsel employed by the Fiduciary Debtor in Possession to appear in person at the March 12, 2024 Status Conference in Person, no telephonic appearances allows for the persons ordered to appear in person.

Additionally, if the financial records and information have not been provided by the Debtor's prepetition Enrolled Agent Tracy Hannick, of Bean Counting Firm, Inc., and the Fiduciary Debtor in Possession has exercise his Bankruptcy Law and Rules rights to compel the production of the financial documents and information, the court will order Tracy Hannick to appear, along with the other persons who have been ordered to appear at a continued Status Conference to be held within 2 weeks of March 12, 2024.

The Clerk of the Court shall serve copies of the Order Continuing the Status Conference, to which will be the Civil Minutes from the February 1, 2024 Status Conference on the following persons either electronically or at their physical address:

Brendan Christopher Smith, Debtor in Possession
9081 Stanford Lane
Durham CA 95938

Jenny L. Doling, Esq.
J. Doling Law, PC
36-915 Cook Street
Palm Desert, CA 92211

David Burchard, Chapter 12 Trustee
PO Box 8059
Foster City CA 94404

Robert B. Kaplan, Esq.
Counsel for Banner Bank
2 Embarcadero Center 5th Fl
San Francisco CA 94111-3824

ELT Ranch Properties, Inc.
Randal Howard Edwards, Designated Officer
Anthony Joseph Toso, Designated Officer
Kyle Evan Dalrymple, Broker Associate
8408 Lander Ave
Hilmar, CA 95324

Byron Lee Lynch, Esq.
Counsel for the West Family Trust
PO Box 685
Shasta Lake CA 96019

Ian McGlone, Esq.
Boutin Jones, Inc.
555 Capitol Mall Ste 1500
Sacramento, CA 95814

Raymond L. Sandelman, Esq.
196 Cohasset Rd.,#225
Chico, CA 95926-2284

The U.S. Trustee for Region 17
Sacramento Division

Tracy Hannick, EA
Bean Counting Firm Inc.
383 Connors Court Suite D & E
Chico, CA 95926

MARCH 26, 2024 CONTINUED STATUS CONFERENCE AND HEARING ON ORDER TO SHOW CAUSE

The court has issued an Order to Show Cause as to why this Case should not be converted to one under Chapter 7. As addressed in the prior Civil Minutes, Debtor in Possession does has not been actively prosecuting this Chapter 12 Case. This has led the court to conclude that if such conduct is not corrected, then cause exists to convert the case to one under Chapter 7. These grounds to convert the case have been stated in the Civil Minutes for the February 1, 2024 Status Conference.

Since the last Status Conference, the following pleadings have been filed:

1. Motion to Dismiss Bankruptcy Case, DCN: BLL-2; Dckt. 66.

    a. The hearing is set for April 4, 2024, pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which opposition must be filed 14 days before the April 4, 2024 hearing date. That deadline expires on March 21, 2024. No opposition had been filed when the court reviewed the Docket on the morning of March 21, 2024.

2. Motion for Relief From the Stay, DCN: BJI-1; Dckt. 84.

    a. The hearing is set for April 4, 2024, pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which opposition must be filed 14 days before the April 4, 2024 hearing date. That deadline expires on March 21, 2024. No opposition had been filed when the court reviewed the Docket on the morning of March 21, 2024.

3. Amended Schedule A/B; Dckt. 93.

4. No Monthly Operating Reports have been filed, as are required by Order of the Court. Order; Dckt. 15.

The court issued an order continuing the Status Conference and the Order to Show Cause hearing to 10:30 a.m. on April 4, 2024, due to unavailability of counsel at the March 26, 2024 scheduled date. The Status Conference and hearing will be conducted in conjunction with several others Motions set for April 4, 2024.

9. 23-23777-E-12 BRENDAN SMITH MOTION TO COMPEL ABANDONMENT
BLL-3 Jenny Doling 3-20-24 [95]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record who have appeared in the case, persons who have filed a request for notice, all creditors and parties in interest, and Office of the United States Trustee on March 20, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Leasehold, which is filed pursuant to 11 U.S.C. § 365(d)(4)(A) for the rejection of the lease and surrender to the Lessor is xxxxxxx.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by The West Family Trust ("Creditor") requests that the court order Brendan Christopher Smith ("Debtor in Possession") to abandon a leasehold estate located at the real property commonly known as 4718 First Avenue, Orland, California, APN 037-221-001-0 ("Leasehold"). The Leasehold commenced on November 1, 2014, and was to terminate after the harvest of 2039, unless terminated earlier pursuant to the terms of the lease. Agricultural Ground Lease, Exhibit A, Docket 99 p. 2.

The Leasehold has not been either rejected or accepted by Debtor in Possession. *See* Schedule G, Docket 34 p. 50.

The Declarations of Byron Lynch (Docket 97) and Rosanne West (Docket 98) have been filed in support of the Motion and provide testimony that Debtor in Possession has not scheduled or otherwise acknowledged the Leasehold in this case. Ms. West requests the Order of the court abandoning the Leasehold because she believes the Order is necessary for various regulatory authorities. Decl., Docket 98 ¶ 5.

DISCUSSION

11 U.S.C. § 365(d)(4)(A) provides:

> A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall **immediately surrender that nonresidential real property to the lessor**, if the trustee does not assume or reject the unexpired lease by the earlier of—
>
> (i)the date that is 120 days after the date of the order for relief; or
>
> (ii)the date of the entry of an order confirming a plan.

This section of the Code was amended in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act, providing for a lease of nonresidential real property to be deemed rejected if not otherwise dealt with through a plan or already assumed or rejected within 120 days from the date relief was ordered. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 404, 119 Stat. 23 (2005).

Once a lease has been deemed rejected, the lease is terminated. *See In re Port Angeles Waterfront Associates*, 134 B.R. 377, 380 (B.A.P. 9th Cir. 1991) (holding the law in the Ninth Circuit is clear that once a lease has been deemed rejected, the lease is terminated). The bankruptcy treatise Collier notes that if a lease has been deemed rejected pursuant to 11 U.S.C. § 365(d)(4), "[a] majority of courts hold that a lessor is entitled to immediate possession; a lessor is not required to pursue remedies in state court to effectuate surrender." 3 COLLIER ON BANKRUPTCY ¶ 365.05[b].

In this case, no plan has been filed or confirmed, and 120 days lapsed on February 21, 2024, the case having been filed on October 24, 2024. Creditor provides Debtor in Possession's testimony in his authenticated deposition that he is a party to the Leasehold, but a review of the Schedules shows no election regarding the Leasehold has been made. *See* Exhibit C, Docket 99 p. 28 (stating he was aware of the Leasehold and that he was a party to the Agricultural Ground Lease, but he did not believe the Leasehold should be scheduled because he was in a dispute with colessee, Creditor in this Motion). As the Leasehold has not been assumed or rejected by Debtor in Possession, the Leasehold is deemed rejected; as such, the Leasehold was terminated as to the Debtor in Possession and the Debtor in Possession is "then obligated to surrender the premises to the lessor." *In re Port Angeles Waterfront Associates*, 134 B.R. at 380.

~~Therefore, in accordance with 11 U.S.C. § 365(d)(4)(A), Debtor in Possession shall surrender the Leasehold back to the lessor, Hubert 'Wendall' and Brandi Lower, and Tori Castillo pursuant to 11 U.S.C. § 365(d)(4)(A).~~

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 Abandon Property filed by The West Family Trust ("Creditor") 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 Brendan Christopher Smith ("Debtor in Possession") shall surrender his interest in the leasehold estate located at the real property commonly known as 4718 First Avenue, Orland, California, APN 037-221-001-0 ("Leasehold") to the lessor, Hubert 'Wendall' and Brandi Lower, and Tori Castillo, with no further act of the Chapter 12 Trustee required.~~

10. 23-23777-E-12 BJI-1

BRENDAN SMITH
Jenny Doling

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-15-24 [84]

FARM CREDIT SERVICES OF AMERICA, PCA 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors and parties in interest, person who have filed a request for notice, and Office of the United States Trustee on March 15, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay / for Adequate Protection is granted.

Farm credit Services of America, PCA, d/b/a AgDirect ("Movant") seeks relief from the automatic stay with respect to an asset identified as a Massey Ferguson 4710 Tractor, serial no. MC070PJ5262017 ("Tractor"). The moving party has provided the Declarations of Tracie Archer (Docket 86) and Thomas G. Mouzes (Docket 87) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Brendan Christopher Smith ("Debtor").

Movant argues Debtor has not made five post-petition payments and seven pre-petition payments, with a total of $19,923.48 now due. Decl., Dckt. 86 p. 5: 1-23.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $19,923.48 (*Id.*), while the value of the Property is determined to be $24,000 as stated in Amended Schedules A/B filed by Debtor. Docket 93, p. 15.

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). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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 / for Adequate Protection filed by Farm credit Services of America, PCA, d/b/a AgDirect ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Property, under its security agreement, loan documents granting it a lien in the asset identified as a Massey Ferguson 4710 Tractor, serial no. MC070PJ5262017 ("Tractor"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

FINAL RULINGS

11.	**23-23620-E-11 GEL-10**	**ROBERT P. OBREGON DDS INC. Gabriel Liberman**	**MOTION TO VALUE COLLATERAL OF BANKER'S HEALTHCARE GROUP, LLC 3-7-24 [122]**
	11 thru 12		

Final Ruling: No appearance at the April 4, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Subchapter V Trustee, all creditors and parties in interest, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Banker's Healthcare Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.

The Motion filed by Robert P. Obregon, DDS, Inc. ("Debtor") to value the secured claim of Banker's Healthcare Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 124. This is Debtor's second Motion to Value Collateral and Secured Claim of Creditor, the court having granted the prior Motion to Value on January 12, 2024 at Docket 91. Debtor explains that after having filed the previous Motion, creditor Wells Fargo Bank, N.A. ("Wells Fargo") filed its proof of claim (POC 13-1) asserting priority in the same collateral, giving rise to the present Motion.

Debtor is the owner of certain personal property related to his dental practice, depicted on the following table:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	$10,000.00
Account Receivables	90 days or less, collectible receivables	$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	$5,000.00
Office fixtures	Office lights	$500.00
Office Equipment	7 office computers, network equipment, Dentrix office software, printer and scanner	$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: $15,000 Loan balance: $15,637.62	0.00
	TOTAL:	**$47,637.90**

("Property"). Decl., Docket 124 p. 2:3-16. Debtor seeks to value the Property at a replacement value of $47,637.90 as of the petition filing date. *Id.* As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, Wells Fargo's priority secured lien is in the amount of $605,478.27, which does not leave any equity in the Property of the estate for subsequent lienholders. Declaration, Dckt. 124 p. 2:4-15.

Creditor's lien on the Property secures a loan incurred on or around December 13, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $84,258.62. Declaration, Dckt. 124 p. 2:19-25. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $0, the value of the bankruptcy estate's interest in the Property. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) 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 Value Collateral and Secured Claim filed by Robert P. Obregon, DDS, Inc. ("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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Banker's Healthcare Group, LLC ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor's Declaration, Docket 124 p. 2:3-16.("Property"), is determined to be a secured claim in the amount of $0,

and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $47,637.90 and is encumbered by a senior lien securing a claim of $605,478.27 (POC 13-1), leaving $0 in equity to be secured by Creditor's claim, Proof of Claim 2-1.

12.	**23-23620-E-11 GEL-9**	**ROBERT P. OBREGON DDS INC. Gabriel Liberman**	**MOTION TO VALUE COLLATERAL OF BANKER'S HEALTHCARE GROUP, LLC 3-7-24 [118]**

Final Ruling: No appearance at the April 4, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Subchapter V Trustee, all creditors and parties in interest, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Banker's Healthcare Group, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.

The Motion filed by Robert P. Obregon, DDS, Inc. ("Debtor") to value the secured claim of Banker's Healthcare Group, LLC ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 120. This is Debtor's second Motion to Value Collateral and Secured Claim of Creditor, the court having granted the prior Motion to Value on January 12, 2024 at Docket 91. Debtor explains that after having filed the previous Motion, creditor Wells Fargo Bank, N.A. ("Wells Fargo") filed its proof of claim (POC 13-1) asserting priority in the same collateral, giving rise to the present Motion.

Debtor is the owner of certain personal property related to his dental practice, depicted on the following table:

Category	Description	Market Value
Checking Account	Wells Fargo Bank, N.A Business checking account	$10,000.00
Account Receivables	90 days or less, collectible receivables	$8,137.90
Other inventory/Supplies	Office Supply Inventory: Paper, printer supplies and miscellaneous office supplies	$1,000.00
Other inventory/Supplies	Dental Supply Inventory: Disposable supplies, filling materials, sutures, anesthetics, needles, endodontic supplies, implants and associated supplies, impression materials, hygiene supplies	$8,000.00
Office furniture	Office waiting room chairs, table, kitchen table and reception chairs	$5,000.00
Office fixtures	Office lights	$500.00
Office Equipment	7 office computers, network equipment, Dentrix office software, printer and scanner	$15,000.00
Office Equipment	Glidewell Intraoral Dental Scanner Equipment package Secured by: Ascentium Capital equipment loan. Estimated value of equipment: $15,000 Loan balance: $15,637.62	0.00
	TOTAL:	**$47,637.90**

("Property"). Decl., Docket 120 p. 2:3-16. Debtor seeks to value the Property at a replacement value of $47,637.90 as of the petition filing date. *Id.* As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, Wells Fargo's priority secured lien is in the amount of $605,478.27, which does not leave any equity in the Property of the estate for subsequent lienholders. Declaration, Dckt. 120 p. 2:1-11.

Creditor's lien on the Property secures a loan incurred on or around December 13, 2017, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $38,653.81. Declaration, Dckt. 120 p. 2:23-24. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $0, the value of the bankruptcy estate's interest in the Property. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) 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 Value Collateral and Secured Claim filed by Robert P. Obregon, DDS, Inc. ("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 pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Banker's Healthcare Group, LLC ("Creditor") secured by an asset described as Personal Property in Table 1 of Debtor's Declaration, Docket 120 p. 2:3-16 ("Property"), is determined to be a secured claim in the amount of $0, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $47,637.90 and is encumbered by a senior lien securing a claim of $605,478.27 (POC 13-1), leaving $0 in equity to be secured by Creditor's claim, Proof of Claim 3-1.

13. 24-20636-E-7 RANDHIR SINGH — **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Rattan Dhaliwal — **3-5-24 [15]**

DEBTOR DISMISSED: 03/11/24

Final Ruling: No appearance at the April 4, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on March 5, 2024. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to failure to pay filing fees in the amount of $338.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 11, 2024 (Dckt. 17), 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.