UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 24, 2025 at 10:30 a.m.

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1. **24-23905-E-12** **DEAVER RANCH, INC., A** **CONTINUED STATUS CONFERENCE RE:**
24-2211 **CALIFORNIA CORPORATION** **AMENDED COMPLAINT**
CAE-1 **12-26-24 [16]**

AGWEST FARM CREDIT, PCA V.
DEAVER ET AL

Item 1 thru 3

Plaintiff's Atty: Michael J. Gomez
Defendant's Atty: Martha A Warriner

Adv. Filed: 12/3/24
Answer: 1/3/25

Amd Cmplt Filed: 12/26/24
Answer: None

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/27/25 by stipulation of the Parties. Order filed 3/10/25 [Dckt 26]

The Status Conference is xxxxxxx

SUMMARY OF COMPLAINT

The Amended Complaint filed by AgWest Farm Credit, PCA ("Plaintiff"), Dckt. 16, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6). The Amended Complaint reviews the loan and loan restructuring history between the Parties.

SUMMARY OF ANSWER

Kenneth Deaver and Mary Deaver ("Defendant-Debtors") have filed an Answer, Dckt. 18, admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (I), and (O). Amd. Complaint ¶ 2, Dckt. 16. In the Answer, Defendant-Debtors admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 18. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (I), and (O). Amd. Complaint ¶ 2, Dckt. 16. In the Answer, Defendant-Debtors admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 18. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **xxxxxxx, 2025**.

c. Expert Witnesses shall be disclosed on or before **xxxxxxx , 2025**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2025**.

d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2025**.

e. Dispositive Motions shall be heard before **xxxxxxx, 2025**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxxx , 2025.**

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 3, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required.

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

The Motion to Dismiss is granted.

The court set a briefing schedule and final hearing on April 22, 2025, for this Motion which was filed and set for the initial hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2). The court set the briefing schedule that Opposition pleadings shall be filed on served on or before March 27, 2025, and Reply pleadings filed and served on or before April 10, 2025. Order, Docket 403. The Parties complied with their respective time lines.

REVIEW OF MOTION

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Prudential is informed that the Deavers's total aggregate debts as of the petition date total at least $11,952,415.60. This does not factor in the recent claim, Claim No. 18-1, of the IRS in Deaver Ranch reflecting an unpaid tax liability of $736,453.91, where it appears that the Deavers may have liability for portions of the IRS claim for at least those sums identified as FICA and Excise Taxes, which exceeds $200,000. The total aggregate debts as of the petition date

exceeds the jurisdictional cap of $11,097,350 and the Deavers are not eligible for Chapter 12 relief for this reason alone. *Id.* at 8:7-13.

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

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

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

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

Movant states that in 2018 it made a $4,450,000 loan to the Debtors, Deaver Ranch, Inc., the Debtors' Trust, Shenandoah Investment Properties, Inc. Motion, ¶ 3.2.; Dckt. 305. It is further alleged that the loan was to refinance existing indebtedness of ($4,072,429.23). *Id*.; ¶ 3.c. $125,000 of the loan proceeds was used to purchase an adjacent .5 acre parcel of real estate. *Id*.

As addressed below, the Debtor in Possession argues that the loan was used by Debtors to purchase Mr. Deaver's siblings interest in the property. Opposition, p. 5:6-17.

Debtor in Possession Initial Opposition

On February 25, 2025, the Debtors in Possession filed their Initial Opposition. Dckt. 385. (This Motion having been noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), opposition could be stated orally at the hearing.)

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

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

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

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

Debtor in Possession Opposition Filed March 27, 2025

Debtors in Possession state in their Opposition (Dckt. 428):

1. The most reliable source for determining Debtors' total income for the 2022 and 2023 tax years is their Federal tax returns for those years. Relevant portions of those returns are filed concurrently with the Deaver Declaration as Exhibit 2. As set forth therein, Debtors' farming income for those two years was $424,887.00 in 2022 and $442,523.00 in 2023. Their income from other sources for those years was $149,651.00 in 2022 and $229,378.00 in 2023. The farm income in 2022 was 74% of their total income. In 2023, it was 66%, including the capital gains income from the disposition of the Bamert Vineyards partnership. Opp'n 3:4-10.

2. Regarding debt limit eligibility, Debtors scheduled a total of $8,059,615 in secured claims, $34,000 in priority unsecured claims, and $1,888,471 in general unsecured claims, for a total of $9,982,086. The claims bar date in this case was November 8, 2024, for non-governmental claims and February 26, 2025, for governmental claims. The proofs of claim that were timely filed total $6,922,441.54. *Id.* at 3:11-15.

3. Debtors did not file any Schedules in bad faith, debtors having accurately scheduled all assets. *Id.* at 4:7-19.

4. The Flower Farm is and always has been a sole proprietorship. *Id.* at 4:24-25.

5. The obligations of Deaver's sister, FSA and the SBA listed by Prudential as examples of Debtors' bad faith are obligations that were personally guaranteed by Debtors. The obligations are in default, but no lender has sought payment from Debtors. Failure to list those obligations is therefore not evidence of bad faith. *Id.* at 5:1-4.

The Debtors in Possession do not appear to dispute that they have a liability for these debts, as guarantors, but do not offer an explanation as to why these debts were not listed on Schedule E/F. It appears that the argument may be that since the creditors have not yet made demand for paymento n said loans, then the Debtors believed that they do not have to disclose that such a liability exits. (The court notes that while not listed on the Schedules as an unsecured debt, the Debtors did list this creditor, the Small Business Administration , on the Verification of Master Address List, Dckt. 8 at 5-6, insuring that this creditor had notice of, and would be subject to, the proceedings in the Debtors' individual bankruptcy case.

6. While Debtors do not cultivate or harvest the grapes that are raised on the various parcels of real property, they do own the vines, which are fixtures

> on their properties and without which the grapes could not be grown, and they manage the grape growing operations of the Ranch. They are jointly and severally liable for the entire balance due and owing to both Prudential and to AgWest Farm Credit, PCA ("AgWest"). The obligations owing to AgWest were incurred for the sole purpose of producing a grape crop during the last several years, and the AgWest debt is thus farm-related debt. *Id.* at 7:5-11.

Debtors in Possession file the Declaration of Mr. Deaver in support. Decl., Docket 429. Mr. Deaver authenticates the facts allege din the Opposition. Mr. Deaver testifies that he and Mrs. Deaver are family farmers, and he directs the court to he tax returns for the yeas 2022 and 2023 showing farming income made up 74% and 66% of their total income for the respective years. *Id.* at ¶ 6. Mr. Deaver testifies that the Flower Farm is and always has been a sole proprietorship. *Id.* at ¶ 9. Mr. Deaver also testifies:

> Although we are involved in the management of the related businesses of the Ranch and Shenandoah Investment Properties, as of the Petition Date, we were receiving little, if any, of our income from those enterprises. Our current financial predicament is a classic example of the inherent risks of farming. We filed for Chapter 12 after a series of catastrophic events, primarily caused by weather and wildfires, over the last several years. We live on one of the parcels of real property, where the Flower Farm is located, and actively engage in the farming operations, including digging up daylilies. Our only other sources of regular income are our Social Security benefits and the small stipend I receive for my role on a local water board. Rental income has not been received, except sporadically, for the last several years.

Id. at ¶ 13.

Prudential's Objections to Mr. Deaver's Declaration at Docket 428 are overruled in their entirety. *See* Docket 440. The court finds the testimony in Mr. Deaver's Declaration to be fully relevant (Fed. R. Evid. 401), properly accounted from first-hand knowledge and experience (Fed. R. Evid. 602), do not require the testimony of an expert (Fed. R. Evid. 701) and not containing any statements in violation of the rules against hearsay (Fed. R. Evid. 801). For these reasons, the Objections to Mr. Deaver's Declaration at Docket 440 are overruled and the court finds the testimony to be properly presented and probative of material facts.

> The court would note, however, that Mr. Deaver did not sign his Declaration at Docket 429. At the hearing, **xxxxxxx**

Prudential's Reply

Prudential filed its Reply Brief on April 10, 2025. Docket 441. Prudential states, as summarized by the court:

> 1. Debtors intentionally omitting the obligations owed to Mr. Deaver's sister, the FSA, and the SBA for the given reason that those parties are not collecting on those debts equates to Debtors in this case submitting schedules in bad faith. *Id.* at 1:11-2:4.

2. The Flower Farm is a separate entity, a general partnership, and has been held out as such. *Id.* at 2:26-3:3.

3. Debtors aggregate debts exceed the statutory limits of $11,097,350 when adding the following omitted obligations: SBA Proof of Claim 3-1 ($752,149.86), SBA Proof of Claim 4-1 ($815,462.48), SBA Proof of Claim 23-1 ($114,643.92, which amount is not scheduled), the indebtedness owed to the FSA ($28,336.38), the pre-petition indebtedness of Mr. Deaver's guaranty of SIP's lease ($111,300), the post-petition indebtedness for the same lease and obligation ($45,900), and Prudential's understated claim ($636,081.40). These obligations are an additional indebtedness of $2,618,517.96, bringing the aggregate debt limits to $12,200,603.47. *Id.* at 7:28-8:22.

4. The Deaver's income does not meet the statutory limits. Deavers cannot use the income of SIP and rental income from Deaver ranch in the calculation of gross income. *Id.* at 9:10-24.

5. The majority of the Deaver's debts are also not arising out of a farming operation. Prudential's loan was used to refinance existing loans, not to run a farming operation. *Id.* at 11:11-19.

APPLICABLE LAW

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

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

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

> (A)individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $11,097,350 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—
>
> (i)the taxable year preceding; or
>
> (ii)each of the 2d and 3d taxable years preceding;
>
> the taxable year in which the case concerning such individual or such individual and spouse was filed; or

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

11 U.S.C. § 101(18). The $11,097,350 debt limitation was in effect when this Bankruptcy Case was filed in August 2024, with the debt dollar limitation applying to cases filed on or after April 1, 2025. A "Farming operation" is defined as:

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

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

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

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

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

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

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

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

Collier's Treatise states on the subject:

> The definition of family farmer is divided into two parts. The first applies to individuals, and the second applies to corporations and partnerships. Each sets up a different, though related, test for determining whether individuals, corporations and partnerships qualify as family farmers.
>
> Both have an aggregate indebtedness limitation of $11,097,350, and require the debtor to be engaged in a farming operation at the time that the case is commenced. If the case involves an individual, the farming operation must be owned and operated by such individual or by such individual and such individual's spouse. If the case

involves a corporation or partnership, the entity must be engaged in a farming operation and the farming operation must be conducted by a family that owns, either alone or in conjunction with relatives, more than 50 percent of the stock of the entity. For both individuals and entities, there is a further requirement that not less than 50 percent of the debtor's noncontingent, liquidated debts at the commencement of the case, other than debts for a dwelling used as a principal residence, must arise out of the debtor's farming operation.

An individual debtor must fulfill one additional test. The individual debtor must have received from his or her farming operation at least 50 percent of such individual's gross income during the taxable year preceding the year in which the petition was filed or during each of the second and third taxable years preceding the year in which the petition was filed. . .

For either an individual debtor or a corporate or partnership debtor to qualify as a family farmer, the debtor cannot have aggregate debts in excess of $11,097,350.9 The word "aggregate" is used in the definition of family farmer without qualification, in contrast to section 109(e) which sets forth the eligibility requirements for chapter 13. The indebtedness limitation in that section refers to "noncontingent, liquidated" debts. The lack of any qualification also stands in contrast to later language in the definition which uses the phrase "noncontingent, liquidated" to qualify the term "aggregate debts." The logical inference from this choice of language is that Congress explicitly intended that all of a person's debts be used in calculating the indebtedness ceiling. This would certainly include government farm program indebtedness if the debtor's obligation under the program is styled as a loan.

If the validity of a debt is disputed, the court should make a preliminary determination with regard to the validity of the debt. If it is prima facie valid, it should be counted even though the debtor may have defenses to payment or rights of offset. The date on which the aggregate indebtedness limitation is to be calculated is the date of commencement of the case. Debts that have been forgiven or satisfied prior to filing should not be included. In determining the amount of the debtor's outstanding debts, the debtor's schedules should be accorded prima facie validity.

2 COLLIER ON BANKRUPTCY ¶ 101.18[2] & [3].

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

DISCUSSION

The three major issues identified in this Motion contest eligibility by calling into question: whether Debtor in Possession's debt surpasses the limit of $11,097,350; whether Debtor in Possession not less than 50 percent of whose aggregate noncontingent, liquidated debts, on the date the case is filed, arise out of a farming operation; and whether Debtor in Possession receives from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for— (i)the taxable year preceding; or (ii)each of the 2d and 3d taxable years preceding. The court focuses in on the questions of debt

limits for eligibility purposes, the court not needing to consider the remaining two objections to render its decision.

The court notes that Prudential is asking the court to view its entire loan as not related to a farming operation. And yet, Prudential's own loan documents filed in support of its Proof of Claim 13-1 make direct reference to farming operations. This argument is not persuasive.

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

While arguments may exist on those points, this matter boils down to applying the plain statutory language and dollar limitations imposed for seeking relief under Chapter 12.

Debt Limits

The debt limits for eligibility to operate under Chapter 12 are not to exceed $11,097,350. 11 U.S.C. § 101(18). Prudential argues the debt limits are $12,200,603.47 because Debtors in Possession have excluded various proofs of claims from the calculation in their schedules in the total amount of $2,618,517.96. The law provides that the court is to give Debtors in Possessions the scheduled debt *prima facie* validity. *See In re Quintana*, 107 B.R. 234, 247 at n. 6 (B.A.P. 9th Cir. 1989); 2 COLLIER ON BANKRUPTCY ¶ 101.18[2]. However, the burden shifts to the Debtors in Possession to show the debt is properly scheduled when a creditor rebuts the presumption of validity with evidence of a higher debt calculation. In fact, *Quintana* instructs:

> The debtors' schedules should be the starting point to a determination of the debtor's aggregate debts. A Chapter 12 petition was properly dismissed in *Reiners v. Federal Land Bank of Jackson* (*In re Reiners*), 846 F.2d 1012 (5th Cir.1988), when it was "undisputed that the aggregate debt reflected on the face of the Reiners' petition was greater than $1.5 million." *Id.* at 1013. The Quintanas' schedules do not reflect aggregate debts greater than $1.5 million. However, the schedules are not dispositive. If the debtors' schedules were dispositive, then eligibility could be created by improper or incomplete scheduling of creditors. A bankruptcy court should "look past the schedules to other evidence submitted when a good faith objection to the debtor's eligibility has been brought by a party in interest." *In re Williams Land Co.*, 91 B.R. 923, 927 (Bankr.D.Or.1988).

Quintana, 107 B.R. at 247 at n. 6.

The court has afforded *prima facie* validity to Debtor in Possession's schedules, but Prudential has rebutted the presumption of validity showing that the debts are in fact greater than scheduled. Indeed, Debtors in Possession have scheduled their total liabilities in the amount of $9,582,085.51. Summ. of Assets at 8, Docket 1. Prudential has provided evidence that there are additional debts in the amount of $2,618,517.96 that should be added to this calculation.

Debtor in Possession states in their Opposition to the Motion that they did not include the debts of Deaver's sister, FSA and the SBA because those debts are not being actively pursued. Such an excuse

is not sufficient to fail to schedule the obligations. The court does not include satisfied or forgiven debts in the calculation, but there is no evidence these debts were satisfied or forgiven. Failing to schedule such debt could be an omission made in bad faith.

Debtor in Possession did not schedule the SBA claim at all. *See* Schedule D, Docket 1. However, the SBA's proofs of claim 3-1, 4-1, and 23-1 total $1,682,255.54, which should be added to the debt limit calculation. That brings the total to $11,264,341 when calculating the SBA claims into the scheduled debt. This amount already exceeds the debt limits for Chapter 12.

Additionally, Debtors in Possession also scheduled Prudential claim in the amount of $4,256,115.00, Schedule D at 26, but Prudential's claim is in the amount of $4,892,196.40. POC 17-1. There is another difference of $636,081.40 that should be added, bringing the total debt to $11,900,422.40, in even greater excess of the debt limits. [Fn.1.]

FN. 1. As set forth in 11 U.S.C. § 101(18)(A) , it is the liquidated, noncontingent debt from which the debt limit is computed. There is not an exclusion of disputed debt.

Debtors in Possession respond by saying the court should side with the Sixth Circuit Bankruptcy Appellate Panel in *In re Perkins*, 581 B.R. 822 (B.A.P. 6th Cir. 2018). Perkins stands for the proposition that if the schedules have been filed in good faith, the court should not add additional debt amounts deriving from later-filed proofs of claims to the debt calculation. The court declines to side with the ruling in *Perkins*, the Ninth Circuit precedent directing the court to look beyond what is depicted in the Schedules; however, even if the court were to side with the rule in *Perkins*, Debtors in Possession would still fail eligibility. The Schedules intentionally omit debts based on the fact that the lenders have not sought payments from Debtors. Opp'n at 5:1-4. Debtors in Possession offer no case law or statutory provisions in support of their proposition that a debt need not be scheduled if creditors are not actively pursuing the debt. That is likely because there is no supporting authority for such a proposition. A debt must be listed on the Schedules unless it is forgiven or satisfied. 11 U.S.C. § 521.

Because the aggregate debt of $11,900,422.40, exceeds $11,097,350 in this case, the Debtors fail the monetary eligibility requirement of 11 U.S.C. § 101(18) and 11 U.S.C. § 109(f).

At the hearing, **xxxxxxx**

The Motion is granted and the bankruptcy 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 filed by Secured Creditor the Prudential Insurance Company of America ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the ~~Motion to Dismiss is granted and the Bankruptcy Case is dismissed~~.

3.	**24-23905-E-12 FRB-2**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich**	**CONTINUED AMENDED OBJECTION TO HOMESTEAD EXEMPTION 2-27-25 [392]**

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 12 Trustee, and Office of the United States Trustee on February 27, 2025. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is ~~overruled~~.

Creditor AgWest Farm Credit, PCA ("Creditor" or "AgWest") objects to debtors and debtors in possession Kenneth Henry Deaver and Mary Jean Deaver's ("Debtors") claimed homestead exemption. AgWest objects on the following grounds:

1. Debtors listed their fee simple interest in the property commonly known as 21643 Shenandoah School Road, Plymouth, CA ("Property"). In the operative version of their Amended Schedule C, as reflected in their Schedule A/B, the Debtors described the Property as: "House with vineyards and farmland on 88 acres. This property has the shop for Deaver Ranch."

   But California law only allows a debtor to claim a homestead exemption in property is either necessary or convenient for the enjoyment of the family residence. The Property in which they are trying to claim an exemption is being used for commercial purposes, which is neither necessary nor convenient for the enjoyment of the family residence. Therefore, the claim of exemption fails. Obj. 4:1-11, Docket 392.

2. The exemption should be disallowed pursuant to 11 U.S.C. § 522(q)(1)(B)(ii) because Debtors received their loan from AgWest out of fraud or deceit. Specifically, Debtors told AgWest that Amador Flower Farm was a separate entity, and AgWest loaned Debtors money based on this premise; however, Debtors now say the Flower Farm is a sole proprietorship. Obj. at 5:1-11.

3. Similarly, Debtors violated their fiduciary duties by not clearly providing values of the Flower Farm's assets. *Id.* at 2:15-25.

On March 5, 2025, the Parties submitted a Stipulation with the court where they agreed to bifurcate the grounds in this Objection. Docket 407. The Parties stipulate that the court should consider under this Objection only the grounds set forth in Section III.A. of the Objection, namely, Debtors cannot claim the homestead exemption in any land used for commercial purposes. Stip. ¶ 6, Docket 407. The court will consider the 11 U.S.C. § 522(q)(1)(B)(ii) objection as set forth Section III.B. of the Objection in the related Adversary Proceeding, Adv. Proc. No. 24-02211-E. *Id.* at ¶ 7. Therefore, the court now only considers the Objection as set forth in Section III.A. of the Objection.

Debtors' Opposition

Debtors filed an Opposition on March 5, 2025. Docket 408. Debtors state:

1. The Homestead Property consists of 88 acres of real property. Debtors have resided in the residence located on that property for approximately 35 years. Of the 88-acre parcel, the residence, grounds, gardens (where Debtors grow substantially all of their own produce), along with the well from which they get their water, comprise approximately seven acres. Debtors' home is approximately 3600 square feet and has 2 bedrooms, an office, a full basement, and 3½ bathrooms. Opp'n 2:18-23.

2. AgWest files this Objection without any supporting evidence. There is no evidence Debtors use the Property for commercial purpose. *Id.* at 3:10-14.

3. As set forth in the Deaver Declaration, the Homestead Property is a single parcel of land on which Debtors' home and related outbuildings are located. *Id.* at 3:18-19.

4. *Rey v. Urquio* (*In re Rey*), 657 B.R. 634 (B.A.P. 9th Cir. 2024) hold the definition of "dwelling" as "a place where a person resides and may include but is not limited to . . . [a] house together with outbuildings and the land upon which they are situation." *Id.* at 641. Opp'n 3:15-18.

5. In expanding on the meaning of "outbuildings," the *Rey* court stated "California has not strictly limited the homestead exemption to the dwelling house in which the family resides but also has included 'the usual and customary appurtenances, including outbuildings of every kind necessary or convenient for family use and lands used for the purposes thereof." *Gregg v. Bostwick*, 33 Cal. 220, 227 (1867). Opp'n 3:24-4:2.

6. In *Rey*, the Court went on to state: "*Gregg* also makes clear that a debtor's use of the property is inherently a factual question. Whatever is used—being either necessary or convenient—as a place of residence for the family as contradistinguished from a place of business, constitutes the homestead, subject to the statutory limit as to value. If, however, it is also used as a place of business by the family, which frequently happens, it may not therefore cease to be a homestead, if it would be necessary or convenient for family use independent of the business." *Id.* at 642-43. Opp'n. 4:2-8.

7. Applicable case law holds that the determination of whether the homestead exemption applies to the entire Homestead Property, or only a portion, is an issue of fact to be determined by the Court based on evidence. AgWest has not presented any evidence as to Debtors' usage of the Homestead Property, other than Debtors' description of the property in their Schedules. Obj. 4:18-21.

AgWest's Reply

AgWest filed a Reply on March 20, 2025. Docket 418. AgWest states:

1. Debtors are only entitled to exempt the residential portion, not the full 88 acres. This Objection only seeks to limit the claimed exemption to the residential portion of the Property.

2. AgWest notes that the Property subject to the exemption is the very same property listed on Deaver Ranch's Petition as its principal place of business. *Id.* at 3:27-28.

3. Debtors bear the burden of proof with respect to their claimed exemption.

DISCUSSION

As an initial matter, Counsel for AgWest has argued before this court in the past that a Debtor bears the burden of proof in showing they are entitled to claim an exemption. That is simply incorrect and a misstatement of the law in this Circuit. AgWest cites the court to a trial-court level bankruptcy opinion in support of this contention, *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015). As Counsel for AgWest is aware, such an opinion is not binding on the court.

The court in *Pashenee* arrived at the conclusion that "the debtor, as the exemption claimant, bears the burden of proof." *Pashenee* 531 B.R. at 837. However, the *Pashenee* court relied on the Supreme Court case of *Raleigh v. Illinois Dept. Of Revenue*, 530 U.S. 15 (2000), in arriving at its conclusion. In *Raliegh*, the Supreme Court dealt with the issue of a *proof of claim*, not a *claim of exemption*, and narrowly held: "When the substantive law creating a tax obligation puts the burden of proof on a taxpayer, the burden of proof on the tax claim in bankruptcy court remains where the substantive law put it (in this case, on the trustee in bankruptcy)." *Id.* at 15. The terms of art are clearly distinguishable. The court does not extend the ruling in *Raleigh* to the established law surrounding the burden of proof in claiming an exemption.

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

California has opted out of the federal exemptions provided in the Bankruptcy Code. Cal. Code Civ. P. § 703.130. Therefore, Debtors have claimed their exemption in the Property pursuant to Cal. Code Civ. P. § 704.730 in the amount of $426,000. Am. Schedule C at 2, Docket 173.

The Objection in this case is made based on the allegation that Debtor in Possession does not use the entire 88-acre parcel for residential purposes and can only claim the actual residential portion of the Property as exempt. AgWest has produced some evidence in support of its burden of proof in making the Objection. Namely, AgWest points the court to the information found in the schedules, such as the address of the Property claimed exempt is the same address listed for the related business case of Deaver Ranch, Inc. *See* Voluntary Petition at 1, Docket 1. This fact tends to show that Debtors do not use the entire Property primarily for residential purposes.

Both Parties cite the court to the *Rey v. Urquio* (*In re Rey*), 657 B.R. 634 (B.A.P. 9th Cir. 2024) opinion. The court states in *Rey*:

> The automatic homestead exemption is rooted in the statutory definitions of "homestead" and "dwelling." The statute defines a homestead as "the principal dwelling (1) in which the judgment debtor ... resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor ... resided continuously thereafter until the date of the court determination that the dwelling is a homestead." CCP § 704.710(c). In turn, a "dwelling" for purposes of the homestead exemption is defined to mean "a place where a person resides and may include but is not limited to ... [a] house together with the outbuildings and the land upon which they are situated."10 CCP § 704.710(a)(1) (emphasis added). Based on the statutory definition of dwelling, California has not strictly limited the homestead exemption to the dwelling house in which the family resides but also has included "the usual and customary appurtenances, including outbuildings of every kind necessary or convenient for family use and lands used for the purposes thereof." *Gregg v. Bostwick*, 33 Cal. 220, 227 (1867).

Rey, 657 B.R. at 641-42. The *Rey* opinion heavily relies on California's Supreme Court's Decision in the late 1800's in *Gregg*. *Gregg* informs us:

> Whatever is used--being either necessary or convenient--as a place of residence for the family as contradistinguished from a place of business, constitutes the homestead, subject to the statutory limit as to value. If, however, it is also used as a place of business by the family, which frequently happens, it may not therefore cease to be a homestead, if it would be necessary or convenient for family use independent of the business.

Gregg, 33 Cal. at 228.

The inquiry, therefore, is factual and determined based on the use of the Property. Debtors have provided the court with evidence that seven acres of the 88 acre plot are entitled to be claimed exempt under the homestead exemption. Mr. Deaver states in his Declaration:

> Of the 88-acre parcel, the residence, grounds, gardens (where we grow substantially all of their own produce), along with the well from which we get their water, comprise approximately seven acres, all of which is necessary for the use and enjoyment of our home.

Decl. ¶ 5, Docket 409.

However, there is no evidence before the court tending to show that the remaining 81 acres are used primarily as a place of residence for the family.

The record shows the vineyards are planted on that property, which are the same vineyards that Deaver Ranch uses in its wine-making business. There is also a shop on the 88-acre parcel used by Deaver Ranch according to the Schedules. Am. Schedule C at 2, Docket 173. The fact alone that a portion of the Property is used as a business does not defeat the availability of claiming the homestead exemption; however, it is not clear that the remaining 81 acres are used for any residential purposes. If a portion of the Property is used as a business property, the evidence must show that the property " would be necessary or convenient for family use independent of the business." *Gregg*, 33 Cal. at 228. There is no evidence in support of such a showing.

In its Reply, AgWest makes it clear that the objection is only to that portion of the property that is outside of the definition of a "Homestead," i.e. the dwelling, outbuildings, and land on which such dwelling and outbuildings are situated.

There appears to be no dispute that Debtor's dwelling is on the 88 acre property. There is no dispute that with respect to the dwelling, which includes the outbuildings and land related thereto, is property in which the Debtor may claim a homestead exemption. Thus, there is no dispute that Debtors have claimed a homestead exemption of $426,000.00. Amended Schedule C; Dckt. 187 at 2.

If a judgment creditor were to try and take the 88 parcel to sale and sell it, along with the Debtors' homestead, the judgment creditor would have to pay the Debtors their $426,000.00 homestead exemption for the judicial sale to be concluded. See Cal. C.C.P. § 704.800, which states:

> § 704.800. Minimum bid
>
> (a) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including but not limited to any attachment or judgment lien, the homestead shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

In Footnote 4 AgWest states that if it were to prevail and the court were to specified a limited portion of land for the homestead exemption, then discovery could be conducted to determine "the value of the property that is exempt versus that which is not." Motion, FN. 5, p. 5:27-28; Dckt. 418. This presumes that a homestead exemption is limited to the value of the homestead property, and not the amount stated in the California exemption statute. It is not, and a judgment debtor has the right to be paid the full amount of the statutory homestead exemption before a judgment creditor may sell the homestead out from under the judgment debtor.

At the hearing, **xxxxxxx**

Based upon the Objection, the applicable California law, there not being an issue of whether the residence on the Property was Debtors' dwelling, and the issue advanced by Creditor to be one to limit the homestead exemption to the "dwelling property," the Objection is overruled. The court has not been presented with any basis under California law that when a homestead dwelling is located on a larger piece of property that goes beyond the dwelling, outbuildings, and property therefore, that a judgment debtor's homestead exemption amount is reduced or pro rated, with the court determining a "value" for the portion of the property on which the dwelling is located. Such determination would have the effect of "overruling" the California Legislature and lowering the amount of a homestead exemption.

The Objection is ~~overruled.~~

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 Claimed Exemptions filed by Creditor AgWest Farm Credit, PCA ("AgWest") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection ~~is overruled~~.

4. **24-22967-E-7** **VANESSA FRANKLIN** **AMENDED MOTION TO VACATE , AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY**
VLF-2 **Pro Se** **3-25-25 [151]**

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.

The Proof of Service states that the Motion and supporting pleadings were served on Prime Legends, LLC; Prime Administration, LLC; and Prime Residential GP, LLC on March 24, 2025. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

As Debtor checked the box for Rule 7004 Service, Debtor was required to append Attachment 6A-1 to the Certificate. No attachment has been included. At the hearing, **xxxxxxx**

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 xxxxxxx.

BIFURCATION OF PROCEEDINGS

Fed. R. Civ. P. 42(b), as incorporated into bankruptcy through Fed. R. Bankr. P. 7042, authorizes the court to bifurcate trials. Fed. R. Civ. P. 42(b) states:

> (b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

This Motion has been brought requesting the court to both vacate the order for relief at Docket 100, and to find that Prime Legends, LLC ("Prime," "Landlord"), Creditor and former Landlord, has violated the automatic stay. The Motion seeks damages in excess of $2 million resulting from the alleged violations. As the court views the proceedings, the Motion for Sanctions for Violating the Automatic Stay and request for related damages depends directly on whether the court vacates its order granting relief from the automatic stay, including retroactive relief. *See* Order, Docket 100. Therefore, as a matter of convenience and to

economize the proceeds, the court bifurcates the proceedings and only considers the Motion to Vacate now.

The hearing on the Motion for Sanctions for Violating the Automatic Stay and request for related damages is continued to **XXXXXXX** to be heard at a time after the court issues a ruling on the Motion to Vacate.

THE MOTION

Vanessa Lynn Franklin ("Debtor") moves the court for an order vacating the order for relief at Docket 100 pursuant to Federal Rule of Civil Procedure 60(d)(3), which states:

> (d) Other Powers to Grant Relief. This rule does not limit a court's power to:
> . . .
> (3) set aside a judgment for fraud on the court.

While that states a general power of the court, Federal Rule of Civil Procedure 60(b)(3) is the specific provision which relates to fraud or misconduct by a party:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> . . .
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . .

The court has worked through the Motion and has organized the following grounds Motion to Vacate, and are summarized them as follows:

1. Prime's deliberate misrepresentations and calculated concealment of facts constitute fraud on the court.

2. On July 8, 2024, the Debtor filed for Chapter 13 bankruptcy. That same day, the Debtor emailed Trina Gross, Prime's Senior Community Director and Authorized management Person, with the official Notice of Bankruptcy Case Filing.

3. Ms. Gross acknowledged the notice and promptly cc'd Daniela Cuen, Assistant Community Director and Authorized Agent, confirming that both had direct knowledge of the bankruptcy.

4. Despite this clear notice, Prime violated the automatic stay by demanding rent just three days later on July 11, 2024.

5. Prime used various aliases to manipulate and mislead. Repeated fraudulent misrepresentation of a corporate identity constituted fraud on the court and warrant vacatur of a judgment obtained through deceit.

6. The absence of opposition in the original Motion for Relief was not due to negligence, but rather the result of the Debtor's mental health crisis that directly impacted her ability to communicate with her attorney for the three weeks leading up to the hearing.

Prime's Opposition

Prime filed an Opposition on April 10, 2025. Docket 161. Prime states, as relevant to the Motion to Vacate:

1. Although the Landlord was included in the Debtor's Schedule E/F, the Debtor omitted the Landlord from her Verification of Master Address List and the amended list, and the Landlord did not receive notice of the commencement of this case. *Id.* at 7:17-8:1.

2. Debtor paid rent for July on July 11, 2024, three days after commencing this case. *Id.* at 8:3-6.

3. Thereafter, the Debtor was current on rent until she failed to pay rent for September, 2024. The Debtor never paid any further rent. All of the unpaid rent accrued post-petition. *Id.* at 8:12-15.

4. The Landlord commenced an unlawful detainer action against the Debtor by filing a complaint on September 13, 2024. As mentioned above, "Prime Group" is the Landlord's registered fictitious business name. The Landlord was identified as "Prime Group, LLC" in the unlawful detainer pleadings by mistake. *Id.* at 8:19-22.

5. The Debtor filed her answer on October 3, 2024, ultimately alerting the Landlord of the bankruptcy case. The Landlord promptly ceased work on the unlawful detainer action. *Id.* at 9:24-10:1. That action was resolved in January of 2025 when Debtor voluntarily moved out.

6. Debtor is not entitled to relief under Rule 60(b)(3) because (1) she cannot prove that the Landlord's alleged actions prevented her from opposing the Motion for Relief from Stay, and (2) she cannot prove fraud, by clear and convincing evidence, among other necessary elements. *Id.* at 14:11-15.

7. The Debtor alleges that the Landlord made two intentional misrepresentations: (a) that the Landlord did not know about the bankruptcy case until October, 2024; and (b) that the Landlord somehow defrauded the Court by mistakenly identifying itself as "Prime Group, LLC" in its pleadings. On the contrary, the Landlord's misstatements were innocent mistakes that caused no prejudice. *Id.* at 19:3-8.

8. Even if the Debtor's emails came to light at the hearing on the Motion for Relief from Stay, the Court still would have granted retroactive relief from the automatic stay. Knowledge of a bankruptcy case is a major factor, but

it is not dispositive. *See National Environmental Waste Corp. v. City of Riverside*, 129 F.3d 1052 (9th Cir. 1997) *Id.* at 20:5-8.

9. In the event the Court is not inclined to deny the Motion on the basis of undisputed facts (which support denial of the Motion), the Court should set an evidentiary hearing. *Id.* at 28:37-29:1.

Debtor's Reply

Debtor filed a Reply on April 18, 2025, reiterating her initial points and disputing Prime's Opposition. Docket 174.

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).

In the context of Fed. R. Civ. P. 60(b)(3), Moore's Federal Treatise informs:

> Rule 60(b)(3) authorizes the court to grant a motion to relieve a party from a final judgment, order, or proceeding because of fraud, misrepresentation, or misconduct by an opposing party. For example, misconduct for which relief may be granted under this provision includes witness tampering, which consists of threatening a witness or attempting to dissuade a witness from testifying.
>
> Under Rule 60(b)(3), both intentional and unintentional misrepresentations and failures to disclose are a sufficient basis for relief. . .
>
> Courts determining Rule 60(b)(3) motions always require proof that the alleged fraud or other misconduct prevented the moving party from fully and fairly presenting his or her case at trial.

12 MOORE'S FEDERAL PRACTICE - CIVIL § 60.43[1][a] & [c].

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)(3) 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, there appear to be three grounds alleged to support vacating under Rule 60(b)(3): Prime used various aliases to confuse parties; Prime was aware of the bankruptcy proceedings through Ms. Trina Gross, Prime's Senior Community Director and Authorized management Person; and Debtor's failure to timely oppose the Motion for Relief stems from Debtor's mental health crisis.

In regard to the various aliases allegations, the court does not find that using the name of Prime Group, LLC, in the Motion for Relief as opposed to the true and correct name Prime Legends, LLC, results in obtaining the judgment through fraud. Nor does Prime using aliases in running its business operations result in fraud. The Motion was brought and filed against Debtor, regardless of the name of the moving party. Debtor's rights were affected regardless of who brought the Motion. Debtor's counsel appeared at that hearing on behalf of Debtor and did not present any opposition. Therefore, the court cannot conclude Prime using the incorrect alias in its Motion for Relief gives rise to the extraordinary grounds for relief under Rule 60(b)(3).

The more interesting discussion revolves around whether Prime misrepresented facts through misstatements and omissions to obtain relief. According to the record, notice of the bankruptcy was provided to Trina Gross, Prime's Senior Community Director and Authorized management Person, on July 8, 2024. It is not disputed that Prime did not bring this fact forward in obtaining its Motion for Relief. *See* Mot., Docket 76. In fact, Prime alleged in its Motion that Prime only learned of the bankruptcy on October 15, 2024. Mot. 2:16-20, Docket 76. This is a clear misrepresentation by Prime.

Prime makes no allegation that Ms. Gross is a low-level employee who had no responsibility to relay bankruptcy information to management. In fact, Debtor has presented evidence that Ms. Gross is an employee at Prime holding a high-level title. In her email signature, Ms. Gross signs off as "Senior Community Director." Ex. at 14, Docket 153. It appears she, being the point of contact for residents, should have conveyed this information to management at Prime. Further, it appears Ms. Gross in this email exchange blatantly continued recovery efforts for July's rent despite just being informed of the bankruptcy process. *Id.* Omitting this information is clearly a misrepresentation Prime made to the court.

However, the court also considers that Debtor has had an opportunity to bring these facts to light in opposing the Motion for Relief. Moore's informs us that "[c]ourts determining Rule 60(b)(3) motions always require proof that the alleged fraud or other misconduct prevented the moving party from fully and fairly presenting his or her case at trial." These misrepresentation were known by Debtor and not brought forward at the hearing on the Motion for Relief. Debtor's attorney appeared and did not oppose the Motion.

Debtor informs the court that no opposition was made due to a mental health crisis preventing her from communicating with her counsel in the days preceding the Motion for Relief. The mental health crisis is described in paragraph 4 of Debtor's Declaration, Docket 146, where she states she needed psychiatric intervention. Rule 60(b) gives the court broad equitable discretion in determining whether relief should be granted, especially applicable as here, where there are clear misrepresentations made to the court.

At the hearing, **xxxxxxx**

Therefore, in light of the foregoing, 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 to Vacate filed by Vanessa Lynn Franklin ("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**.

FINAL RULINGS

5.	**23-21205-E-7** **BLF-8**	**JERAMIE SABELMAN** **Michael Hays**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **3-12-25 [113]**

Final Ruling: No appearance at the April 24, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 12, 2025. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken of the Bakken Law Firm ("Bakken," "Applicant"), counsel of record for Chapter 7 Trustee Nikki B. Farris ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 16, 2023, through and including April 17, 2025. The order of the court approving employment of Applicant was entered on May 19, 2023, effective May 16, 2023. Dckt. 39. Applicant requests fees in the amount of $18,240.00 and costs of $248.57.

APPLICABLE LAW
Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include administering the case and recovering assets for creditors and Trustee. The Estate has $97,100.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED
Fees

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

General Case Administration: Applicant spent 6 hours in this category. This time included preparing Bakken's fee agreement and employment application, reviewing the Debtor's exemptions and discussing with Debtor's counsel, Michael O'Dowd Hays, the need for amended schedules because Debtor claim a larger exemption than available under California Code of Civil Procedure Section 703.140(b)(5), preparing and filing a stipulation to extend the deadline to object to exemptions, and preparing Bakken's fee application. Mot. 2:15-20.

Employment of Auctioneer and Sale of Property at Public Auction: Applicant spent 30.6 hours in this category. Applicant worked to liquidate various assets of the Estate, including five vehicles and a liquor license, resulting in a larger than anticipated return. *Id.* at 2:23-4:21.

Abandonment of Property of the Estate: Applicant spent 7.6 hours in this category. Applicant investigated various assets and ultimately had them abandoned to the Debtor. *Id.* at 4:22-5:21.

Motion to Reject Unexpired Lease or Executory Contract: Applicant spent 7.4 hours in this category. Applicant investigated and ultimately rejected various nonresidential leases. *Id.* at 5:22-6:12.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Lorris L. Bakken, Attorney	45.6	$400.00	$18,240.00
Total Fees for Period of Application			$18,240.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $248.57 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$163.07
Copying	$0.10	$62.00
Court Fees (Certified Copies)		$23.50
Total Costs Requested in Application		$248.57

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $18,240.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $248.57 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$18,240.00
Costs and Expenses	$248.57

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken of the Bakken Law Firm ("Bakken," "Applicant"), counsel of record for Chapter 7

Trustee Nikki B. Farris ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $18,240.00
Expenses in the amount of $248.57,

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

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

6. 25-20613-E-7 JCK-1 — RAJESHWAR/SAROJINI SINGH — Gregory Smith — MOTION TO AVOID LIEN OF ENIUM CAPITAL GROUP LLC — 3-19-25 [14]

Final Ruling: No appearance at the April 24, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and other parties in interest on March 19, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Enium Capital Group LLC ("Creditor") against property of the debtor, Rajeshwar Singh and Sarojini Lata Singh ("Debtor") commonly known as 8314 Cherbourg Way, Stockton, CA 95210 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $37,201.28. Support Document, Dckt. 17. An abstract of judgment was recorded with San Joaquin County on February 4, 2025, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $364,000 as of the petition date. Schedule A at 12, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $400,000 on Schedule C. Schedule C at 18, 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 Rajeshwar Singh and Sarojini Lata Singh ("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 Enium Capital Group LLC , California Superior Court for San Joaquin County Case No. STK-CV-UOC-2024-250, recorded on February 4, 2025, Document No. 2025-008911, with the San Joaquin County Recorder, against the real property commonly known as 8314 Cherbourg Way, Stockton, CA 95210, 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.

7. 25-21126-E-7 CALVIN/SHERRY LAMBERT
David Van Dyke

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
3-28-25 [14]

Final Ruling: No appearance at the April 24, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on March 28, 2025. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's attorney failing to keep their address updated in the PACER system.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney updated his change of address in the PACER system on April 7, 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

8. 25-20833-E-12 PATRICK/PATRICIA MCCAULEY
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-2-25 [12]

Final Ruling: No appearance at the April 24, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on April 3, 2025. The court computes that 21 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: $71 due on March 28, 2025.

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

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

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

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

9.	**23-21899-E-12 WF-17**	**JAKOB/GLADYS WESTSTEYN Daniel Egan**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY LLP FOR DANIEL L. EGAN, DEBTORS ATTORNEY(S) 3-20-25 [269]**

Final Ruling: No appearance at the April 24, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 20, 2025. By the court's calculation, 35 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Daniel Egan and Jason Eldred of Wilke Fleury LLP, the Attorneys ("Applicant") for Jakob Gerritt Weststeyn and Gladys Yvonne Weststeyn, the Debtor in Possession ("Client," "Debtor in Possession"), makes a Third Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 1, 2024 through February 28, 2025. The order of the court approving employment of Applicant was entered on June 30, 2023. Dckt. 32. Applicant requests fees in the amount of $18,135.50 and costs in the amount of $1,047.50.

APPLICABLE LAW
Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include case administration, asset analysis and recovery, assisting Debtor in Possession in business operations, preparing the Order confirming the Chapter 12 Plan, and prosecuting claims objections. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 20 hours in this category. Applicant represented Debtors in connection with administrative aspects of the case, including appearing at status conferences, preparing monthly operating reports, and advising Debtors of their duties under the Plan.. Applicant also conferred with counsel for the Debtors' irrevocable trust regarding litigation pending against both the Debtors and the trust. Finally, Applicant met with the Debtors to advise them regarding their duties under the plan. Mot. 4:5-11, Docket 269.

Asset Analysis and Recovery: Applicant spent 4.9 hours in this category. Applicant worked with the Debtors regarding their attempt to sell a trailer to generate income to the bankruptcy estate. As a result of an objection by the Trustee, the sale was not pursued. Wilke Fleury also assisted the Debtors in discussions with the Weststeyn Irrevocable Liquidating Trust regarding the sale of the "country home" and resolution of disputed liens on the home arising from claims asserted in the Chapter 12 case. *Id.* at 4:13-18.

Fee/Employment Applications: Applicant spent 8.9 hours in this category. Applicant prepared and prosecuted its second interim application for approval of fees and costs, and began preparing this application. *Id.* at 4:21-23.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Daniel L. Egan	11.60	$565.00	$6,554.00
Daniel L. Egan	18.20	$545.00	$9,919.00
Jason G. Eldred	3.3	$420.00	$1,386.00
Jason G. Eldred	.7	$395.00	$276.50
Total Fees for Period of Application			$18,135.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$101,708.50	$101,708.50
Second Interim	$22,384.50	$22,384.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$124,093.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,318.51pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $2,070.73 in the First Application and $1,318.51 in the Second Application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies		$1,047.70
Total Costs Requested in Application		$1,047.70

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of $18,135.50 pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second Interim Costs in the amount of $1,047.70 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$18,135.50
Costs and Expenses	$1,047.70

pursuant to this Application as interim fees and costs pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Daniel Egan and Jason Eldred of Wilke Fleury LLP, the Attorneys ("Applicant") for Jakob Gerritt Weststeyn and Gladys Yvonne Weststeyn, the Debtor in Possession ("Client," "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 Daniel Egan and Jason Eldred of Wilke Fleury LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Daniel Egan and Jason Eldred of Wilke Fleury LLP, Professional employed by Debtor in Possession
>
> | | |
> |---|---|
> | Fees | $18,135.50 |
> | Costs and Expenses | $1,047.70, |
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. Lilian Tsang the Chapter 12 Trustee, is authorized to pay the approved interim fees and expenses.