UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

May 1, 2025 at 10:30 a.m.

1.	**25-90075-E-7** **FAT-1**	**MARK CHAPMAN** **Flor Tataje**	**MOTION TO SUBSTITUTE PARTY, AS TO DEBTOR** **4-14-25 [16]**

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 April 16, 2025. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Substitute is granted.

Non-Filing Spouse, Jerilyn Chapman, seeks an order approving the motion to substitute in the case for the deceased Debtor, Mark Allen Chapman. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor filed for relief under Chapter 7 on January 31, 2025. On March 18, 2025, Debtor passed away. Mrs. Chapman does no provide a declaration in support of the Motion. At the hearing, **xxxxxxx**.

A Certificate of Death was filed on April 14, 2025. Ex. A to the Motion, Dckt. 16.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The

> motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, the Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Certificate of Death. Based on the evidence provided, the court determines that further administration of this Chapter 7 case is in the best interests of all parties, and that Debtor's Non-Filing Spouse, Jerilyn Chapman, may continue to administer the case on behalf of the deceased debtor, Mark Allen Chapman. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Non-Filing Spouse, Jerilyn Chapman, is substituted as the successor-in-interest to Mark Allen Chapman and is allowed to continue the administration of this Chapter 7 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

2. **25-90033-E-7** **APRIL CERVANTEZ** **CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 2-26-25 [15]**
NF-1 **Pro Se**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 28, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is denied without prejudice.

The Deadlines for:

(1) Filing a Complaint for determination that a debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6), or that Debtor should be denied a Discharge pursuant to 11 U.S.C. § 727(a)(2) through (7); and

(2) Filing a motion that Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(8) or (9),

are extended to and including May 14, 2025.

May 1, 2025 Hearing

The court continued the hearing on this Motion as Debtor has attempted to make a court call appearance at the prior hearing but had dropped off. A review of the Docket on April 28, 2025 reveals nothing new has been filed with the court.

A review of the Docket shows that the Debtor appeared at the continued 341 Meeting of Creditors on April 29, 2025. April 29, 2025 Chapter7 Trustee Docket Entry Report. The 341 Meeting has been further continued to May 13, 2025.

In light of the Debtor's appearance at the April 29, 2025 Continued 341 Meeting and Debtor's efforts to appear at the prior hearing on this Motion, the Motion is denied without prejudice.

However, given that the completion of the 341 Meeting of Creditors has been delayed:

(1) The Deadline for filing a complaint for determination that a debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6), or that Debtor should be denied a Discharge pursuant to 11 U.S.C. § 727(a)(2) through (7); and

(2) The Deadline for filing a motion that Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(8) or (9)

are each extended to and including June 20, 2025.

REVIEW OF MOTION

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that April Alberta Cervantez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on March 25, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 10, 2025. Dckt. 17. Debtor does not state any reasons in support of her opposition.

DISCUSSION

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

Debtor opposes the Motion, but does not state the grounds.

At the hearing, no appearances were made by the Debtor or the Trustee.

The Trustee reports that the Debtor did appear at the March 25, 2025 341 Meeting, and it has been continued to April 8, 2025. Trustee's March 25, 2025 Docket Entry Report.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on April 17, 2025. This will afford the Debtor the opportunity to continue with the prosecution of the case. Additionally, the court can, if the Trustee is satisfied that this Case should not be dismissed, then extend the time for filing nondischargeability actions and objections to discharge, even though denying the request to dismiss (this additional relief requested in the Motion.

April 17, 2025 Hearing

The court continued the hearing on this Motion as Debtor, although filing opposition, did not appear at the prior hearing. The 341 Meeting was continued to April 8, 2025. Debtor did not appear.

The Debtor made a phone appearance on the 10:30 a.m. calendar, but unfortunately had to drop off before the court called the matter. Unfortunately, due to the structure of the court calendar, some matters higher on the calendar took much more time then the court (inaccurately) projected and Debtor's matter was not called until almost noon.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on May 1, 2025. This will afford Debtor the opportunity to attend the continued 341 Meeting of Creditors a t8:00 a.m. on April 29, 2025 (*via* Zoom), and thereby hopefully resolve the basis for the present Motion to Dismiss.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), having been presented to the court, the Debtor having attempted to attend the hearing, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.
>
> **IT IS FURTHER ORDERED that :**
>
> (1) The Deadline for filing a complaint for determination that a debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6), or that Debtor should be denied a Discharge pursuant to 11 U.S.C. § 727(a)(2) through (7); and
>
> (2) The Deadline for filing a motion that Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(8) or (9)
>
> are each extended to and including June 20, 2025.

3. **24-90615-E-11 RLL-6** | **JEA2, LLC** **Anthony Asebedo** | **MOTION FOR COMPENSATION FOR W.F. BAMBAS APPRAISAL COMPANY, APPRAISER(S)** **4-2-25 [85]**

Item 3 thru 4

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 2, 2025. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is six days late of the required notice period.

At the hearing, **XXXXXXX**

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

The Motion for Allowance of Professional Fees is granted.

JEA2, LLC, Debtor in Possession ("Movant"), moves this court for a first interim allowance of compensation in the amount of $3,840.00 to W.F. Bambas Appraisal Company ("Appraiser"). Movant does not seek allowance for costs.

The order of the court approving employment of Appraiser was entered on January 22, 2025, with employment effective as of December 28, 2024. Dckt. 50. The order granting employment also granted the now requested flat fee of $3,840 as described in the *ex parte* Motion.

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 Appraiser's services for the Estate include providing appraisal services and a written appraisal report regarding the value of JEA2's real property, analyzing any other party's appraisal of those properties, and when necessary providing expert testimony in connection with confirmation of JEA2's proposed Plan of Reorganization or a creditor's motion for relief from the automatic stay as to JEA2's real property. The court finds the services were beneficial to and were reasonable.

FEES REQUESTED
Fees

Movant seeks the court's authorization to approve Appraiser's flat fee in the amount of $3,840. The court authorized Appraiser's employment and the amount of this fee by Order on January 22, 2025. Docket 50.

FEES ALLOWED
Fees

The court finds that the flat fee is reasonable. First Interim Fees in the amount of $3,840.00 are approved 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 Debtor in Possession from the available funds of the Estate.

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 JEA2, LLC, Debtor in Possession, on behalf of W.F. Bambas Appraisal Company, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that W.F. Bambas Appraisal Company is allowed the following fees and expenses as a professional of the Estate:
>
> W.F. Bambas Appraisal Company, Professional employed by Debtor in Possession
>
> Fees in the amount of $3,840.00,
>
> 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.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate.

4. **24-90615-E-11 RLL-7** | **JEA2, LLC** **Anthony Asebedo** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF REYNOLDS LAW, LLP FOR ANTHONY ASEBEDO, DEBTORS ATTORNEY(S)** **4-2-25 [90]**

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

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 2, 2025. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is six days late of the required notice period.

At the hearing, **xxxxxxx**

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

The Motion for Allowance of Professional Fees is granted.

The law firm Reynolds Law, LLP ("Applicant") for JEA2, LLC, Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 16, 2024 through February 28, 2025. The order of the court approving employment of Applicant was entered on November 8, 2024, with employment effective as of October 17, 2024. Dckt. 20. Applicant requests fees in the amount of $28,186.00 and costs in the amount of $1,983.47.

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 generally administering the case including having a Disclosure Statement heard and approved and a proposed Plan to be considered in the near future. 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.

(a) Case Administration (32.4 hours for $12,466.00): Represented JEA2 at the Meeting of Creditors and at the Initial Debtor Interview conducted by the United States Trustee, and assisted JEA2 in the gathering and reviewing of the financial information requested; reviewed and analyzed financial documentation provided by JEA2, including extensive documentation of loan from its primary lender, SBN V Ag I, LLC ("Summit"); assisted JEA2 in preparing and filing needed amendments to the chapter 11 schedules; responded to inquiries and requests for information by the United States Trustee; responded to inquiries from and negotiated as necessary with various creditors and their agents and attorneys; reviewed, filed, and served Monthly Operating Reports; drafted, filed, and served JEA2's Initial Status Conference Statement and made court appearance at the initial Status Conference in this case. Mot. 3:21-4:3, Docket 90.

(b) Employment/Fee Applications (7.7 hours for $3,080.00): Filed application and obtained court order authorizing JEA2's employment of RLL as bankruptcy counsel (Docket Control No. RLL-1); filed application and obtained court order authorizing JEA2 to employ Jones Lang LaSalle Brokerage as JEA2's real property broker (Docket Control No. RLL-2); filed application and obtained court order authorizing JEA2 to employ William F. Bambas Appraisal Co. as JEA2's real property appraiser and expert witness (Docket Control No. RLL-4). Mot. 4:4-10.

(c) Relief From Stay Issues (4.7 hours for $1,880.00): Investigated and filed response to motion filed by Summit in the related chapter 11 case of Jeffrey Arambel (the Debtor's managing member) for relief from the automatic stay, where such motion initially appeared to encompass JEA2's real property. Mot. 4:11-14.

(d) Claims Issues (3.2 hours for $1,280.00): Reviewed lengthy and detailed documentation regarding Summit's loan to JEA2 and its managing member; reviewed proofs of claim filed in the case, including Summit's; communicated with creditors regarding their claims and answered questions regarding same. Mot. 4:15-18.

(e) Plan and Disclosure Statement (19.8 hours for $7,920.00): Drafted Plan of Reorganization and Disclosure Statement in support of the Plan and related exhibits and documents (Docket Control No.

RLL-3); drafted amended Disclosure Statement; communicated with JEA2 management to determine and revise terms of proposed Plan and contents of Disclosure Statement. Mot. 4:19-23.

(F) Cash Collateral (3.9 hours for $1,560.00): Communicated and worked with JEA2's managing member to compile detailed current year budget to support request for use of cash collateral; drafted and filed motion for authority to use cash collateral (Docket Control No. RLL-5). Mot. 4:24-27.

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**
Anthony Asebedo, Attorney	71.4	$400.00	$28,120.00
Arica J. McEvoy, Paralegal	.3	$220.00	$66.00
Total Fees for Period of Application			$28,186.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,983.47 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Filing fee	$1,738.00	$1,738.00
Postage		$16.56
Telephonic appearance fees		$24.50
Amendment filing fee		$34.00
Mileage	$0.70 per mile	$170.41
Total Costs Requested in Application		$1,983.47

The court does not authorize reimbursement for the court call fee. The attorney is able to bill his hourly rate while on call, and the attorney is free to appear in person to be heard. Therefore, costs in the amount of $1,958.97 are allowed, which are the requested costs less the cost for the court call appearance.

FEES AND COSTS & EXPENSES ALLOWED
Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $28,186.00 are approved 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 Debtor in Possession.

Costs & Expenses

First Interim Costs in the amount of $1,958.97 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 Debtor in Possession.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by the law firm Reynolds Law, LLP ("Applicant") for JEA2, LLC, Debtor in Possession ("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 Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Reynolds Law, LLP, Professional employed by Debtor in Possession
>
> Fees in the amount of $28,186.00
> Expenses in the amount of $1,958.97,
>
> 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.
>
> **IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate.

5. 24-90418-E-11 ROM-3

ART BUILDINGS LLC
Michael Berger

MOTION TO COMPEL AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF BRYAN CAVE LEIGHTON PAISNER LLP FOR SHARON Z. WEISS, CREDITORS ATTORNEY(S)
3-12-25 [101]

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's Attorney, United States Trustee, and attorneys of record on March 12, 2025. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Discovery and Request for Attorney's Fees is xxxxxxx.

Secured creditor Romspen California Mortgage Limited Partnership ("Romspen") moves the court for an order compelling discovery and awarding attorney's fees pursuant to Fed. R. Bankr. P. 2004, 7026, 7034 and7037, and Fed. R. Civ. P. 26, 34 and 37 against Debtor and Debtor in Possession Art Buildings LLC ("Debtor in Possession"). Romspen pleads the following with particularity:

1. Debtor in Possession refuses to produce documents and communications despite this Court's order directing Debtor in Possession to produce under Rule 2004. Mot. 1:21-22, Docket 101.

2. The documents that Debtor in Possession has produced come almost exclusively from its loan application with Romspen and are dated before the loan closed in 2022. The limited correspondence that Debtor in Possession has produced is only between it and Romspen. Debtor in Possession's productions do not include any communications with Debtor in Possession's largest creditor and potential insider, Perfect Logistics LLC. *Id.* at 1:24-28.

3. On October 31, 2024, Romspen filed its Motion to Take Rule 2004 Examinations and Issue Discovery. The Debtor in Possession did not object to the Rule 2004 Motion and on November 25, 2024, the Court entered an Order granting the Rule 2004 Motion. *Id.* at 3:4-8. Attachment B to the Rule 2004 Motion contained 30 requests for the production of documents.

4. Debtor in Possession failed to produce any documents by the December 30, 2024 extended deadline. *Id.* at 3:18-19.

5. On January 2, 2025, Debtor in Possession finally responded to the Requests and provided approximately 81 documents, and the overwhelming majority of which (75 documents) were documents from Debtor in Possession's 2022 loan application with Romspen. *Id.* at 3:20-24.

6. On January 10, 2025, counsel for Romspen sent a letter to Debtor in Possession's counsel detailing the deficiencies in Debtor in Possession's document production. On January 31, 2025, counsel for both parties conferred via phone. During the call, Debtor in Possession's counsel indicated that Debtor in Possession intended to supplement its production and requested additional time to provide supplemental responses and gather additional documents. *Id.* at 4:6-20.

7. On February 7, 2025, Debtor in Possession served a Supplemental Response to Romspen's Requests for Production. Debtor in Possession produced only 12 additional documents in conjunction with the Supplemental Response. Those 12 documents, like the majority of the documents Debtor in Possession originally produced, all date to before the closing of the Romspen Loan. Again, Debtor in Possession failed to produce a single email or communication in conjunction with the Supplemental Response. *Id.* at 4:22-5:5.

8. On March 3, 2025, prior to the date that Romspen intended to file this Motion, Romspen's counsel again contacted Debtor in Possession's counsel, reiterated the deficient nature of Debtor in Possession's production of documents, and informed counsel of Romspen's intent to file the Motion to Compel. In response, Debtor in Possession's counsel sought another meet and confer. On March 7, 2025, Debtor in Possession produced 45 emails. The emails that Debtor in Possession produced are exclusively emails between Debtor in Possession's principal and Romspen relating to either loan application issues or Debtor in Possession's efforts to obtain a modification of its financing with Romspen. *Id.* at 5:6-14.

9. Even though Debtor in Possession was afforded an additional 75+ days to respond to Romspen's Requests by the meet and confer process, Debtor in Possession has yet to produce any internal communications or any communications with parties other than Romspen. *Id.* at 5:17-20.

Romspen files the Declaration of Craig Schuenemann in support to authenticate the facts alleged. Docket 102.

In reading the Motion, it appears that the asserted non-production of discovery is for communications between the Debtor, Debtor in Possession, and third-parties:

> Debtor has failed to produce documents and communications in response to Romspen's 30 document requests. The documents that Debtor has produced come almost exclusively from its loan application with Romspen and are dated before the loan closed in 2022. **The limited correspondence that Debtor has produced is only between it and Romspen. Debtor's** productions do not include any communications with Debtor's largest creditor and potential insider, Perfect Logistics LLC. **Nor do Debtor's productions include documents related to Debtor's alleged efforts to develop and refinance its sole asset**.

Motion, p. 1:23-2:1; Dckt. 101 [emphasis added].

Romspen also files a Support Document that is the list of discovery requests at Docket 103. Romspen specifically requests the court compel Debtor in Possession to produce documents in response to Requests Nos. 1-9, 11-14, 17-19, 21, 23, and 29 no later than May 15, 2025. This "Support Document" appears to include the factual allegation and grounds that must be stated with particularity in a motion. When viewed in the normal size in which this document was filed, the text is extremely small and illegible. Using the Adobe edit function, the court sees that the font of this "Support Document" is 4.5 Ariel font. This is substantially smaller than Local Bankruptcy Rule 9004-2(a)(4) requirement that the font in pleadings not be less than 12-point type or larger than 14-point type.

The Motion states that the 30 requests for production of documents is Attachment B to the Motion for Authorization to conduct a Rule 2004 Examination. *Id*.; p. 3:9-10. The 30 types of documents requested are stated as:

> Request No. 1: All DOCUMENTS and COMMUNICATIONS RELATING TO DEBTOR'S acquisition of the PROPERTY.
>
> Request No. 2: All DOCUMENTS and COMMUNICATIONS RELATING TO DEBTOR'S financing of the PROPERTY.
>
> Request No. 3: All DOCUMENTS and COMMUNICATIONS RELATING TO any transfer or sale of the PROPERTY.
>
> Request No. 4: All DOCUMENTS and COMMUNICATIONS RELATING TO any permits or requests for permits for the PROPERTY.
>
> Request No. 5: All DOCUMENTS and COMMUNICATIONS RELATING TO any entitlements or requests for entitlements for the PROPERTY.
>
> Request No. 6: All DOCUMENTS and COMMUNICATIONS RELATING TO any approval of any site plan at the PROPERTY.

Request No. 7: All DOCUMENTS and COMMUNICATIONS RELATING TO testing or acceptance of utilities at the PROPERTY by any state or local authority.

Request No. 8: All DOCUMENTS and COMMUNICATIONS RELATING TO any approval of development or improvements at the PROPERTY from any state or local authority.

Request No. 9: All DOCUMENTS and COMMUNICATIONS RELATING TO any construction completed at the PROPERTY.

Request No. 10: All DOCUMENTS and COMMUNICATIONS RELATING TO any excavation
or grading done at the PROPERTY.

Request No. 11: All DOCUMENTS and COMMUNICATIONS that refer or relate to any VALUATION of the PROPERTY, including but not limited to any appraisals, broker's opinions of value, real estate listings, advertisements, tax records, or insurance records.

Request No. 12: All COMMUNICATIONS between the DEBTOR and Perfect Logistics Inc.

Request No. 13: All DOCUMENTS RELATING TO any agreement or contract between DEBTOR and Perfect Logistics Inc.

Request No. 14: All COMMUNICATIONS between the DEBTOR and Dr. Narender Sandhu.

Request No. 15: All DOCUMENTS RELATING TO any agreement or contract between DEBTOR and Dr. Narender Sandhu.

Request No. 16: All DOCUMENTS RELATING TO Perfect Logistic's LLC's ability to convey title to the Property to DEBTOR.

Request No. 17: All DOCUMENTS and COMMUNICATIONS RELATING TO insurance on the Property or any insurance coverage that was placed on the PROPERTY.

Request No. 18: All DOCUMENTS and COMMUNICATIONS RELATING TO security at the PROPERTY.

Request No. 19: All DOCUMENTS and COMMUNICATIONS RELATING TO DEBTOR'S contracts and relationship with T&N Plumbing and Electrical.

Request No. 20: All DOCUMENTS and COMMUNICATIONS RELATING TO any effort that DEBTOR has made to sell the PROPERTY.

Request No. 21: All DOCUMENTS and COMMUNICATIONS RELATING TO any effort that DEBTOR has made to refinance its loan with ROMSPEN.

Request No. 22: All DOCUMENTS and COMMUNICATIONS RELATING TO any investors that DEBTOR has engaged with respect to the PROPERTY.

Request No. 23: All COMMUNICATIONS between DEBTOR and the City of Turlock, California.

Request No. 24: All DOCUMENTS and COMMUNICATIONS RELATING TO DEBTOR's assertion that it disputes the total amount owed to ROMSPEN.

Request No. 25: All DOCUMENTS showing the current and former members and their ownership interests in the DEBTOR.

Request No. 26: All DOCUMENTS showing the corporate structure and corporate governance of the DEBTOR.

Request No. 27: All DOCUMENTS and COMMUNICATIONS RELATING TO Expert Equity Advisors, LLC's role with DEBTOR.

Request No. 28: All DOCUMENTS and COMMUNICATIONS RELATING TO Dave Singh's role with DEBTOR.

Request No. 29: All DOCUMENTS and COMMUNICATIONS RELATING TO any bank account DEBTOR held in its name.

Request No. 30: All DOCUMENTS REGARDING or containing information related to DEBTOR'S financial status.

Motion for 2004 Exam; Attachment B, Documents Requested; Dckt. 70 at 11-13.

In the Motion, the shortcomings with respect to the production of documents is set forth by Romspen as:

> In response to Romspen's 30 court-approved Requests, Debtor produced only 138 documents.
>
> Debtor **did not provide any communications between it and the City of Turlock**, or between the Debtor and any of its other creditors.
>
> Debtor **did not provide any internal communications** among its officers and principals.
>
> Debtor **did not provide any communications with third parties** that might be interested in purchasing or refinancing the Property.

Of the 93 documents that the Debtor produced, **approximately 87 of those documents were exchanged in 2021 and 2022 between Romspen and Debtor** in conjunction with Debtor's loan application.

Debtor produced only five documents that were dated after 2022—a list of improvements dated 11/20/24, a 2023 appraisal, an insurance certificate, a Letter of Intent dated 9/18/24, and a Terms Sheet dated 7/8/24.

All of the 45 emails that Debtor finally produced on March 7, 2025 **are with Romspen** and relate to either Debtor's loan application with Romspen in 2022 or Debtor's subsequent efforts to obtain a loan modification.

In short, **Debtor produced only documents it either knew that Romspen already possessed or documents that contained virtually no information** relating to the ongoing bankruptcy case.

Debtor refused to disclose documents or communications related to the crucial issues relevant to the bankruptcy case, such as Debtor's efforts to refinance or the status of Debtor's permits with the City of Turlock.

A separate statement is filed herewith in compliance with Local Rule 9014-2 detailing additional documents for each of the 30 discovery requests that Debtor should be compelled to produce.

Motion to Compel, p. 8:9:7; Dckt. 101 [emphasis added] (the court reformatting one large paragraph into segmented sections for purposes of clarity in the statement of the shortcomings).

No declarations providing testimony evidence have been filed to support the factual allegations.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition and supporting documents on April 17, 2025, and again on April 21, 2025. Dockets 123-127, 131-135. The Oppositions appear completely identical and seem to have been mistakenly filed twice. The court references the one on April 21, 2025, which is at Dockets 131-135.

Debtor in Possession states in its Opposition:

1. Debtor in Possession has not refused to produce documents to Romspen, and has in fact produced documents responsive to 26 out of Romspen's 30 requests for production. Opp'n 2:1-2*; Dckt. 131.*.

2. On December 30, 2024, Debtor in Possession's counsel discovered that the firm's computer servers had been shut down for an upgrade, and that the office would be closed until January 2, 2025. Debtor in Possession's counsel emailed Romspen's counsel regarding the technical impossibility of production on December 30, 2024, and requested an extension to January 2, 2025. On January 2, 2025, Debtor in Possession's counsel provided the

Debtor in Possession's Response to Romspen's Requests for Production of Documents. *Id.* at 2:7-13.

3. On or about January 10, 2025, Romspen's counsel sent a letter to Debtor in Possession's counsel, requesting supplemental production of documents. On February 7, 2025, Debtor in Possession provided the Debtor in Possession's Supplemental Response to Romspen's Requests for Production of Documents. *Id.* at 2:17-20.

4. On or about March 7, 2025, Debtor in Possession located additional documents responsive to Romspen's document requests no.'s 2, 11, and 24, and produced them to Romspen. *Id.* at 2:20-22.

5. In the Debtor in Possession's Production Response, Supplemental Production Response, and March Production, Debtor in Possession produced documents responsive to 26 of Romspen's 30 requests. In the remaining four requests, Debtor in Possession made a diligent search of its records, but did not locate any responsive documents in its possession, custody, or control. *Id.* at 2:23-26.

6. Debtor in Possession understands that it is obligated to produce additional responsive documents to Romspen's requests for documents as they become known to Debtor in Possession. By way of explanatory comment regarding communications between the Debtor in Possession and Perfect Logistics, documents relating to agreements or contracts between Debtor in Possession and Perfect Logistics, and communications between Debtor in Possession and Perfect Logistic's president Dr. Narender Sandhu (Romspen Document Requests No.'s 12, 13, and 14), the Debtor in Possession typically communicates with Perfect Logistics and its members telephonically. *Id.* at 5:16-22.

7. By way of explanatory comment regarding Debtor in Possession's responses to Romspen's request for communications between Debtor in Possession and the City of Turlock, California, the majority of Debtor in Possession's dealings with Turlock were through an outside consultant. Debtor in Possession will reach out to its consultant to determine if he has additional documents that would be responsive to Romspen's Request No. 23, and will produce any such documents prior to the May 1, 2025, hearing date of the Motion to Compel. *Id.* at 5:25-6:4.

Debtor in Possession submits the Declarations of Sofya Davtyan and Satpreet Thiara in support of the Opposition. Decls., Dockets 133, 134.

In the Declaration of Satpreet Thiara, testimony is provided as to what documents were provided to Romspen. Dec., ¶ 6; Dckt. 133. In it, the statement is made that the Debtor in Possession has no or very limited records with which to respond to the following requests:

Request for Production	Thiara Testimony, Declaration ¶ 6
Request No. 12: All COMMUNICATIONS between the DEBTOR and Perfect Logistics Inc.	Grant Deed; Contract for Deed
Request No. 13: All DOCUMENTS RELATING TO any agreement or contract between DEBTOR and Perfect Logistics Inc.	Grant Deed; Contract for Deed
Request No. 14: All COMMUNICATIONS between the DEBTOR and Dr. Narender Sandhu.	Grant Deed; Contract for Deed
Request No. 17: All DOCUMENTS and COMMUNICATIONS RELATING TO insurance on the Property or any insurance coverage that was placed on the PROPERTY.	Certificate of Liability Insurance
Request No. 18: All DOCUMENTS and COMMUNICATIONS RELATING TO security at the PROPERTY.	Debtor made a diligent search of its records, and has not located any documents responsive to Request for Production No. 18 in its possession, custody, or control. The Property is fenced off, and Debtor does not have security services for the Property.
Request No. 19: All DOCUMENTS and COMMUNICATIONS RELATING TO DEBTOR'S contracts and relationship with T&N Plumbing and Electrical.	Consent of General Contractor
Request No. 21: All DOCUMENTS and COMMUNICATIONS RELATING TO any effort that DEBTOR has made to refinance its loan with ROMSPEN.	Debtor has made a diligent search of its records, and has not located any documents responsive to Request for Production No. 21 in its possession, custody, or control.
Request No. 23: All COMMUNICATIONS between DEBTOR and the City of Turlock, California.	Grading and Encroachment Permits, Turlock City Letter Re: 3200 Atherstone Rd.

Request No. 29: All DOCUMENTS and COMMUNICATIONS RELATING TO any bank account DEBTOR held in its name.	Debtor made a diligent search of its records, and has not located any documents responsive to Request for Production No. 29 in its possession, custody, or control.

APPLICABLE LAW

Federal Rule of Civil Procedure 37(a), as incorporated into bankruptcy through Federal Rule of Bankruptcy Procedure 7037, states:

> (a) Motion for an Order Compelling Disclosure or Discovery.
>
> (1) In General. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action. . .
>
> (3) Specific Motions.
>
> > (A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.
> >
> > (B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:
> >
> > > (i) a deponent fails to answer a question asked under Rule 30 or 31 ;
> > >
> > > (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4) ;
> > >
> > > (iii) a party fails to answer an interrogatory submitted under Rule 33 ; or
> > >
> > > (iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34. . .
>
> (5) Payment of Expenses; Protective Orders.
>
> > (A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted—or if the disclosure or requested discovery

> is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:
>
> > (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
> >
> > (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
> >
> > (iii) other circumstances make an award of expenses unjust.

A leading treatise on Federal Rules of Civil Procedures, Moore's Federal Practice, states on the subject:

> After deciding a motion to compel discovery, a district court must award the prevailing party its reasonable expenses, including attorney's fees, unless one of three exceptions applies. If the motion to compel is granted in part and denied in part, the court may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion. Expense shifting sanctions are defined as the "reasonable expenses incurred" in making or opposing the motion, including attorney's fees. . .
> . . .
>
> Before imposing expense shifting sanctions on a party who unsuccessfully made or opposed a motion to compel discovery or mandatory disclosures, a court must give the persons or parties to be sanctioned an opportunity to be heard.
>
> Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submissions from the affected parties. There is no absolute right to present oral argument. . .
>
> Sanctions imposed against a party or attorney responsible for taking the position that the court rejected when ruling on a motion to compel are limited to the reasonable expenses incurred in connection with the motion, including attorney's fees. This limitation stands in sharp contrast to the wide range and broad scope of sanctions that courts may impose after a court order has been violated (see § 37.50–37.51).

7 MOORE'S FEDERAL PRACTICE - CIVIL § 37.23[1], [5], & [6].

> There is a split in authority as to whether Rule 37(d) sanctions may be imposed when a party has responded to interrogatories or a request for inspection, but the response is so inadequate that it is tantamount to a complete failure to respond. Some courts believe that sanctions are available only if a party has failed completely to serve a timely response to interrogatories or a request for inspection. According to these authorities, if a party serves a response that contains answers that are incomplete, evasive, or false, the aggrieved party may file a motion to compel (see §§

37.01–37.06), but any sanctions will be limited to expense shifting sanctions (see § 37.23). More consequential sanctions may be available if an order compelling discovery is entered, and then violated (see §§ 37.50–37.51).

7 MOORE'S FEDERAL PRACTICE - CIVIL § 37.91[2].

The Ninth Circuit has strictly construed the interpretation of Fed. R. Civ. P. 37(d). *Fjelstad v. American Honda Motor Co.*, 762 F.2d 1334, 1339–1340 (9th Cir. 1985) (reversing sanctions based on answers deemed incomplete, evasive, and in some cases, false).

That said, the court is authorized to award moving party attorney's fees pursuant to Fed. R. Civ. P. 37(a)(5)(A). In fact, the language of that Rule states the court "must" award attorneys fees to the prevailing party, unless the presumption is rebutted by showing:

A. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action,

B. The opposing party's nondisclosure, response, or objection was substantially justified, or

C. Other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(5)(A).

In this case, the record reflects Movant is seeking in particular requests for production of documents relating to communications between Debtor and Debtor in Possession and its largest creditor and potential insider, Perfect Logistics LLC. Debtor in Possession responds by saying all of the documents it has possession of have been turned over regarding communications with Perfect Logistics LLC. *See* Decl. ¶ 8, Docket 133. Debtor in Possession argues that the communications between Debtor and Debtor in Possession and Perfect Logistics LLC have been primarily telephonic, and so there have not been documents to produce. *Id.*

There is also the issue of Debtor in Possession not turning over documents concerning conversations between Debtor, Debtor in Possession, and the City of Turlock. Debtor in Possession informs the court that the majority of Debtor in Possession's dealings with Turlock were through an outside consultant. Debtor in Possession has reached out to the consultant to determine if there are additional documents that it can produce in response to Romspen's requests.

The record reflects Debtor in Possession has engaged in communications with Romspen and has turned over 138 documents in response to the 30 requests. Debtor in Possession acknowledges its duty to continue to provide Romspen with documents as they become available.

However, it is very curious that the Debtor in Possession can only produce five documents that are after 2022, with everything being 2022 or older. The post-2022 documents are identified as: (1) a list of improvements dated 11/20/24, (2) a 2023 appraisal, (3) an insurance certificate, (4) a Letter of Intent dated 9/18/24, and (5) a Terms Sheet dated 7/8/24. This may indicate that the principals of the Debtor are not capable of maintaining proper business records, and as such cannot fulfill the fiduciary duties as principals of a Chapter 11 Debtor in Possession. If that is the case, then appointment of a Chapter 11 trustee is likely.

At the hearing, **XXXXXXX**

Fn.1.

FN. 1. Testimony is provided in the Satpreet Thiara Declaration that the "Debtor," and not the "Debtor in Possession, "[h]as engaged in negotiations with broker Elevated Equities for a loan to refinance the Property, and to satisfy its obligation to Romspen. Debtor anticipates filing a motion for Court approval for post-petition financing within the next two weeks, in order to move forward with the refinance of its Property." Declaration, ¶ 7; Dckt. 133.

No professional for obtaining the refinance of property of the Bankruptcy Estate has be authorized to be employed to provide such services for the Debtor in Possession, which results in such professional providing such services at "no charge." See, 11 U.S.C. § 330 requiring that compensation is allowed only for a professional for which authorization to employ pursuant to 11 U.S.C. § 327 has been obtained.

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

The Motion to Compel Discovery and Request for Attorney's Fees filed by Romspen California Mortgage Limited Partnership ("Romspen"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Discovery and Request for Attorney's Fees is **XXXXXXX**.

6. 24-21639-E-7 ABEL DOMINGUEZ AND VERONICA MUNOZ
Alonzo Gradford

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

DEBTORS DISMISSED: 05/10/24

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on January 14, 2025. By the court's calculation, 72 days' notice was provided. 28 days' notice is required.

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

The Motion to Vacate Order Imposing Sanctions is xxxxxxx.

May 1, 2025 Hearing

The court continued the hearing on this Motion to provide Mr. Gradford one last opportunity to appear and dispute the sanctions. Mr. Gradford filed a Motion to Continue the hearing on this matter on April 11, 2025, citing a scheduling conflict. Docket 61. The court rescheduled the hearing to the court's next Modesto date, May 1, 2025, at 10:30 a.m. A review of the Docket on April 28, 2025 reveals nothing new has been filed with the court.

In continuing this hearing, the court ordered Alonzo gradford, Esq., to appear in person at the continued hearing on May 1, 2025, with no telephonic appearance permitted. Order; Dckt 65.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

on June 5, 2024. Movant did not appear, and as such, the court issued sanctions in the amount of $1,000. Order, Docket 26.

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

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

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

Movant does not file a Declaration in support. At the hearing, no appearance was made by Movant.

APPLICABLE LAW

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

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

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

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

(4) the judgment is void;

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

(6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

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

However, upon the review of the files in this Case and Movant failing to appear at the March 27, 2025 hearing on his Motion, the court was prepared to deny the Motion. After some thought, the court concluded at the hearing to continue the matter one final time.

Review of Proceedings

The present Motion to Vacate relates to an Order issued by Chief Bankruptcy Judge Fredrick Clement which imposed a $1,000.00 sanction to be paid by Movant for failing to file the Required Statement of Compensation in this Case. The Order imposing sanctions, Dckt. 26, includes express findings by Judge Clement, stating that Movant failed to appear at the June 3, 2025 hearing, filed no opposition to the Motion and failed to file the Disclosure of Compensation notwithstanding Judge Clement having ordered to Movant to appear at the hearing. See Order to Show Cause, Dckt. 19, stating:

> **THEREFORE, IT IS ORDERED** that the debtor's(s') attorney [Movant] in this bankruptcy case shall appear before this court on the following date and time . . . .

Judge Clement's Order to Show case expressly permitted telephonic appearance by Movant.

After Judge Clement denied without prejudice Movant's first Motion to Vacate (Order; Dckt. 44), Movant filed the second Motion to Vacate which is now before the court. That Motion (Dckt. 45), as with prior pleadings, fails to comply with the Local Bankruptcy Rules, including Local Bankruptcy Rule 9014-1(d)(4), which require the motion, points and authorities (which can be included with the motion if the total document is not more than 6 pages in length), each declaration, the exhibits (which can be combined into one exhibit document), and the notice of hearing to be filed as separate documents.

While presenting the court with "real world" events, including some involving family members, that interfered with his getting the documents filed and the Order to Show Cause hearing, this court was surprised that Movant did not appear telephonically at the hearing on the second Motion to Vacate. While the court's tentative ruling indicated that it was likely to grant the Motion, the text in the tentative stating so and stating that the $1,000.00 would be vacated were in ~~strikeout text~~.

While Movant, Alonzo Gradford, Esq., has provided information about why the failure to file the required documents occurred and now why he failed to appear at the hearing on the Order to Show Cause, it does not appear that Movant is appreciating the nature and scope of the failed conduct and the proceedings in this court.

Rather than denying the Motion, the court continues it one final time. In light of Movant's office being located in Modesto, California, the court specially sets the hearing to a Modesto date to minimize the disruption in travel when Movant attends the continued hearing.

The court continues the hearing to 10:30 a.m. on April 17, 2025, Specially Set to be heard in the Modesto Division Courthouse, 1200 I Street, Second Floor, Modesto, California. Alonzo Gradford, Esq., shall appear in person at the April 17, 2025 hearing - NO TELEPHONIC APPEARANCE permitted for the forgoing person ordered to appear.

April 17, 2025 Hearing

The court continued the hearing on this Motion to provide Mr. Gradford one last opportunity to appear and dispute the sanctions. Mr. Gradford filed a Motion to Continue the hearing on this matter on April 11, 2025, citing a scheduling conflict. Docket 61. The court reschedules the hearing to the court's next Modesto date, May 1, 2025, at 10:30 a.m.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Debtor's attorney, Alonzo J. Gradford ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

7.	**24-90741-E-11 BM-4**	**MID VALLEY NUT COMPANY INC.** **Robert Harris**	**MOTION TO USE CASH COLLATERAL 4-10-25 [85]**

Item 7 thru 8

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 creditors holding the twenty largest unsecured claims and other parties in interest on April 15, 2025. By the court's calculation, 16 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is granted.

Mid Valley Nut Company Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral from services like custom cracking and fumigation, in which the grower retains title to the nuts. In recent weeks, the Debtor in Possession received approximately $23,000 in funds arising from these services being held in a segregated Debtor in Possession account. Debtor in Possession seeks authority to use $7,500 of these funds to pay a post-petition retainer required by Debtor in Possession's proposed accountant, David E. Harris, CPA, CTRS, CGMA, of Bean Hunt Harris & Company, for preparation of the Debtor's federal and state tax returns for its fiscal year ending June 30, 2024. Mot. 2:21-24.

APPLICABLE LAW

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

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

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

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

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for paying the retainer for an accountant to prepare necessary tax documents. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral in the amount of $7,500 to pay a post-petition retainer required by Debtor in Possession's proposed accountant, David E. Harris, CPA, CTRS, CGMA, of Bean Hunt Harris & Company. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Mid Valley Nut Company Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, pursuant to this order, and the cash collateral in the amount of $7,500 may be used to pay a post-petition retainer required by Debtor in Possession's proposed accountant, David E. Harris, CPA, CTRS, CGMA, of Bean Hunt Harris & Company.
>
> **IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

8. 24-90741-E-11 CAE-1 | **MID VALLEY NUT COMPANY INC.** Robert Harris | **CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION** 11-30-24 [1]

Debtor's Atty: Robert G. Harris

Notes:
Continued from 3/13/25

Operating Reports filed: 3/18/25; 3/20/25

U.S. Trustee Report at 341 Meeting lodged: 3/28/25

[BM-3] Debtor's Motion for Authority to Enter Into Subordination, Nondisturbance, and Attornment Agreement, to Use Cash Collateral, and to Grant Adequate Protection filed 3/20/25 [Dckt 60]; Order granting filed 4/7/25 [Dckt 83]

The Status Conference is xxxxxxx.

MAY 1, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

APRIL 17, 2025 STATUS CONFERENCE

No updated Status Conference Statement has been filed. At the Status Conference, counsel for the Debtor in Possession reported that a sale of the property has been delayed by a financing requirement by a stalking horse buyer. The Debtor in Possession is working on getting a broker lined up.

The Debtor in Possession has obtained insurance coverage through July 15, 2025. The Debtor in Possession is set to employ an accountant, with the hearing on the motion to employ set. The proceeds from the sale of nut oil are being segregated given the liens on it.

The Status Conference is continued 10:30 a.m. on May 1, 2025.

MARCH 13, 2025 STATUS CONFERENCE

On November 30, 2025, an Involuntary Chapter 7 Petition was filed by Creditors Suneel Sharma, JS Johal & Sons, Inc., and Karm Bains, holding a combined total of $167,500 in claims. Dckt. 1. On December 26, 2025, the Debtor filed an Answer to the Involuntary Petition. Dckt. 5. In the Answer the Debtor admits and denies specific allegations, and includes in the Affirmative Defendant a allegation that each of the Petitioning Creditors are ineligible to be such.

On February 7, 2025, an *Ex Parte* Motion to Approve Stipulation for Entry of an Order for Relief Under Chapter 11 was filed. Dckt. 10. The Stipulation between the Debtor and the Petitioning Creditors for the entry of the Order for Relief and Conversion to Chapter 11 is filed at Docket 12.

On February 28, 2025, the Debtor in Possession filed a Status Conference Statement. Dckt. 22. The Debtor in Possession reviews in detail the assets of the Bankruptcy Estate, as well as the claims of the major creditors.

The Debtor in Possession discusses pre-petition efforts to sell property of the Debtor.

The Debtor in Possession also states that due to applicable state law monies from the secured properties can only be used to pay the lien creditors. While that may be the law, if it so be, it would appear to be financially advantageous to the Bankruptcy Estate and lien creditors that if assets are to be sold, that they be properly marketed and the actual fair market value received.

While stating that California Law, Cal Food & Ag. Code §§ 55631 and 55633, bars the Debtor in Possession from using any of the proceeds from the sale of nuts for any purpose other than paying the producer, the Debtor in Possession does not address Federal Law, such as the Bankruptcy Code relating to the use of cash collateral and reorganization of secured claims through Chapter 11.

At the Status Conference, counsel for the Debtor in Possession reported that motions to sell property and a motion to approve a settlement are being prepared. The target date for the hearing on the Motion to Sell, and possibly other motions, is April 17, 2025.

The court and counsel for the respective Parties discussed the needed transparency in the marketing process for the various properties to be sold. The Parties intend to work and communicate with respect to the sale process so that the commercially reasonable value of the assets sold will be achieved.

The Status Conference is continued to 2:00 p.m. on April 17, 2025.

In light of the other Motion(s) to be set for hearing on April 17, 2025, the court authorizes all motions filed to be set for hearing on April 17, 2025, to be set for hearing at 2:00 p.m. (Specially Set Time), to be conduction in conjunction with the Status Conference in this Case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Chapter 11 Status Conference having been conducted by the court, and upon review of the pleadings, reports of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is **XXXXXXX**.

9. 25-90160-E-7 STEVEN AVALOS
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-7-25 [29]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on April 9, 2025. The court computes that 22 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: $338 due on February 28, 2025.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $338.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

10. 23-90171-E-7 CJL-2 | **JOSHUA MILLER** **Jenna Dakroub** | **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY** **3-26-25 [50]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and Office of the United States Trustee on March 26, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

At the hearing, **xxxxxxx**

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

The Motion for Contempt and Damages for Violation of the Automatic Stay is xxxxxxx .

Debtor, Joshua Scott Miller, ("Debtor") moves this court for an order finding creditor Lafayette Federal Credit Union ("Lafayette") is in contempt for violating the automatic stay and awarding damages to Debtor resulting from Lafayette's violations pursuant to 11 U.S.C. § 362. Debtor pleads with particularity:

1. In or around February 2021, Debtor applied for, and received, a personal loan from Lafayette. Mot. 3:5-6.

2. The Debtor's Bankruptcy Case was filed on April 20, 2023.

3. On or about April 26, 2023, the Bankruptcy Noticing Center ("BNC") mailed notice of Debtor's bankruptcy petition, and the resultant Automatic Stay, to Lafayette, at the business address for the Rockville, MD Lafayette branch location. *Id.* at 3:14-16.

4. On May 1, 2023, after Debtor filed his Chapter 7 petition and while the automatic stay was in place, Lafayette filed a UCC-1 Financing Statement ("File No. 2023-003115) (the "Financing Statement") in order to perfect Lafayette's security interest in Debtor's inground pool at his residence (the "Property"). *Id.* at 3:18-21.

5. Thereafter, on or about July 24, 2023, Debtor received a Chapter 7 bankruptcy discharge, and the bankruptcy case was closed on or about November 3, 2023.

6. Lafayette's action in filing the Financing Statement caused Debtor to lose out on profits from the sale of the Property, as potential buyers who had made offers backed out upon discovering the existence of the Financing Statement. While Debtor eventually did sell the Property after the lien was removed, he was forced to accept an offer considerably less than those he received from potential buyers prior to the discovery of the existence of the lien. *Id.* at 2:12-16.

7. On or about February 16, 2024, Debtor's attorney mailed a demand letter (the "Demand Letter") to Silverman: (1) explaining that Lafayette's filing of the Financing Statement constituted a violation of the Automatic Stay; (2) explaining that Debtor had suffered financial harm due to the Lafayette's violation; and (3) making a reasonable offer to settle Debtor's automatic stay violation claim informally. *Id.* at 4:23-5:1.

8. On or about February 21, 2024, Silverman filed a UCC-1 Financing Statement Amendment (the "Amendment") terminating Lafayette's lien on the Property. *Id.* at 5:3-6.

9. Despite taking action to terminate the lien, however, Silverman failed to provide either Debtor or Resolve with a copy of the Amendment, despite repeated requests by both Debtor and Resolve. *Id.* at 5:6-8.

Debtor filed his own Declaration in support of the Motion, authenticating the facts. Decl., Filed as Exhibit 1, Docket 36. Debtor testifies that the residence was listed for $955,000, and Debtor almost immediately received an offer from a potential buyer at that price. Dec., ¶ 8,9; Dckt. 36. Debtor testifies that this was a "cash buyer." *Id*. This was in January 2024.

However, when the Lafayette lien was discovered in a title search, the listing price buyer "backed out" of the sale. *Id*.; ¶¶ 11.

Debtor then, in or around February 2024, has his attorney contact Lafayette's counsel demanding that the lien be terminated. *Id.*; ¶ 12. Additionally, Debtor "reached out" via phone and email "on multiple occasions" to Lafayette, but "was ignored. *Id.*; ¶ 13.

When another offer was presented in March 2024, it was determined that the lien had been removed and Debtor accepted that offer, which was for a lower asking price then the original listing price. The final sales price was $925,000, with Debtor having to use proceeds to pay $20,000 owed on the lease for the solar power installations on the residence. *Id.*, ¶¶ 14-16.

A second Declaration has been filed, that of Landon Miller, Esq., Debtor's attorney. Exhibit 2; Dckt. 37. In it Mr. Miller first provides testimony authenticating the 2021 Loan and security agreement which is filed as Exhibit 3. Dec., ¶ 2.

Mr. Miller also provides testimony authenticating the UCC-1 Financing Statement filed by Lafayette, Exhibit 6, (*Id.* ¶ 5), the UCC-1 Financing Statement Amendment filed by Lafayette, Exhibit 10, (*Id.*; ¶ 9), and Debtor's March 2024 and April 2024 mortgage statements, Exhibit 13, (*Id.* ¶ 11).

Mr. Miller does not provide any testimony as to how he has personal knowledge of the loan transaction and documentation in 2021, the UCC Financing Statements, or Debtor's monthly mortgage statements.

Review of Declarations Filed by Debtor

In reviewing the Debtor's Declaration, Dckt. 36, the court first notes that it is not made under penalty of perjury. In Paragraph 1 of the Declaration, Debtor states:

> 1. I am an adult person over the age of eighteen, competent to testify about the matters set forth herein. I make this declaration of my personal knowledge, as based on public records and as noted herein. As to matters stated upon information and belief, I believe them to be true. If called to testify to the facts set forth herein, I can and would do so.

Declaration; Dckt. 36. There are no other statements made in the Declaration regarding that the witness is testifying under penalty of perjury.

In well established federal law, 28 U.S.C. § 1746 requires that unsworn declaration must be made under penalty of perjury and contain specific language:

> **§ 1746. Unsworn declarations under penalty of perjury**
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, **any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration**, verification, certificate, statement, oath, or affidavit, **in writing of the person making the same** (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person

which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> **(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).**
>
> **(Signature)".**

28 U.S.C. § 1746 [emphasis added]. No such statement is made in Debtor's Declaration, nor is it made in Landon Maxwell's Declaration (Dckt. 37).

Debtor also states that his testimony is not only based on his personal knowledge, but that he is repeating something that he may have read in a public record (i.e., what he "heard" the public record "say," or that he is merely informed (possibly by his counsel, thereby waiving the attorney-client privilege) and believes (since it helps him win this matter). This runs contrary to the well established Federal Rules of Evidence promulgated by the United States Supreme court. In Federal Rule of Evidence 602 a witness (other than an expert witness, which Debtor is not presented as) must have personal knowledge of what he/she is testifying to.

> **Rule 602. Need for Personal Knowledge**
>
> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Fed. R. Evid. 602. Information and belief is not personal knowledge. Parroting what someone may have read in a public record is at best hearsay, and does not provide reliable testimony of what is actually in the public record. As discussed in 3 Weinstein's Federal Evidence § 602.02:

> [1] Personal Knowledge Based on Sensory Perception
>
> A witness may testify only about matters on which he or she has first-hand knowledge.[1] Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences.[2] The witness's testimony must be based on events perceived by the witness through one of the five senses.[3]
>
> Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by

> empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

While "information and belief" may be a tool in good faith in drafting a complaint, it is not a personal knowledge basis for providing testimony.

As the court noted above, Landon Maxwell, Esq., Debtor's attorney, attempts to authenticate loan documents from 2021, UCC filings by Lafayette, and the Debtor's mortgage statements, Mr. Maxwell does not show how he has any personal knowledge basis for what these document are, but appears to merely be repeating what the Debtor, his client, told him (and also possibly waiving the attorney client privilege).

LAFAYETTE'S OPPOSITION

On April 10, 2025, Lafayette filed its Opposition. Docket 54. Lafayette states:

> 1. Lafayette did not receive actual notice of the bankruptcy in a timely manner and that once it was made aware, it promptly took corrective actions in good faith. The Debtor's assertions of willfulness and damages are unsubstantiated and do not meet the applicable legal standards. Accordingly, the Motion should be denied. Opp'n 3:5-9.
>
> 2. While Debtor asserts that notice was mailed to 3535 University Blvd, Rockville, MD 20850—a location that is a physical branch of Lafayette—it is not the official or designated address for receiving or processing legal correspondence. The proper mailing address, as consistently reflected on loan documentation and Lafayette's website, is 2701 Tower Oaks Blvd., Rockville, MD 20852. *Id.* at 3:14-18.
>
> 3. Lafayette did not receive actual notice until on or about August 2, 2023, when it was redirected to the Tower Oaks address and received the Order of Discharge. Upon receipt, Lafayette followed strict internal protocols to notate the account and close any active collection efforts. *Id.* at 3:20-23.

While other matters may be in dispute, Lafayette acknowledges that as of August 2, 2023, it had the Debtor's discharge and knew of this Bankruptcy Case.

> 4. Upon eventually receiving proper notice of the Debtor's discharge, Lafayette took immediate steps and acted swiftly and in good faith. On February 14, 2024, Debtor's counsel contacted Silverman Theologou, LLP directly to inform them of the outstanding UCC1 lien. The next day, February 15, 2024, the amendment was filed to release the lien. The Debtor's counsel was informed of this promptly by phone. *Id.* at 4:7-11.

In making this Statement, Lafayette does not state what "proper notice" is as opposed to actual notice, which is acknowledged as having be obtained by at least August 2, 2023.

5. Debtor alleges emotional distress and legal fees but fails to substantiate these claims with credible evidence. *Id.* at 5:2-3.

Lafayette submits no evidence to support its Opposition, including its allegation that it did not have notice of Debtor's bankruptcy case.

DEBTOR'S REPLY

Debtor filed a Reply on April 24, 2025. Docket 55. Debtor states:

1. The burden is on Lafayette to prove the address notice was sent to was the wrong address.

2. There is no requirement that notice must be sent to a creditor's preferred address in order to be valid. *Id.* at 3:7-8.

3. Here, the address used – the correct address for a physical Lafayette Federal Credit Union branch location owned and operated by Lafayette – is surely "reasonably calculated" to reach Lafayette. *Id.* at 3:15-17.

4. Lafayette's violation was willful. As of August 2, 2023, Lafayette had an affirmative duty to release its lien on Debtor's property. Lafayette failed to remedy its violation of the automatic stay until February of 2024.

5. Debtor suffered damages related to this violation, including emotional distress.

APPLICABLE LAW

Once the creditor learns or has notice of a bankruptcy case having been filed, any actions that it intentionally undertakes are deemed willful. [Fn.1.] As the Ninth Circuit Court of Appeals explained in *Goichman v. Bloom*, 875 F.3d 224, 227 (9th Cir. 1989):

> A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

FN. 1. *See Thompson v. GMAC, LLC*, 566 F.3d 699, 702-3 (7th Cir. 2009); *Eskanos and Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002); *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (holding that the knowing retention of estate property violates the automatic stay); and *In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004).

The Ninth Circuit Court of Appeals discussed the automatic stay and the obligations of a party violating the stay in *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2009). In short, there is the affirmative

duty on the person violating the stay to correct the violation, not on the bankruptcy debtor to force the person to correct the violation. In the plain language of the Ninth Circuit Court of Appeals:

> To comply with his "affirmative duty" under the automatic stay, Sternberg needed to do what he could to relieve the violation. He could not simply rely on the normal adversarial process. *See Johnston Envt'l Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 615-16 (9th Cir. 1993) (holding that parties who attempted to exempt a debtor from their unlawful detainer action with a unilateral stipulation still violated the automatic stay because "the stipulation might not [have] accomplish[ed] its intended purpose" and thus the parties "could have, and should have, pursued the orthodox remedy: relief from the automatic stay"). At a minimum, he had an obligation to alert the state appellate court to the conflicts between the order and the automatic stay. As we have explained before, "[t]he automatic stay is intended to give the debtor a breathing spell from his creditors." *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 226 (9th Cir. 1989) (internal quotation marks omitted). The state court order intruded upon Johnston's "breathing spell." Sternberg did not act to try to fix that problem.
>
> . . .
>
> Johnston [the debtor] was not required to ask Sternberg [the creditor] to modify the order for Sternberg's violation to be willful. *See In re Del Mission Ltd.*, 98 F.3d at 1151-52 (concluding that the retention of taxes was a violation of the stay even though the debtor never requested their return). Likewise, Sternberg needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful. *See Eskanos*, 309 F.3d at 1214-15 (rejecting the law firm's assertion that something more than maintaining an active collection action was needed to violate the stay); *In re Goodman*, 991 F.2d at 618 ("Whether the [defendant] believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' . . . ." (internal quotation marks omitted)). All that is required is that Sternberg "knew of the automatic stay, and [his] actions in violation of the stay were intentional." *Eskanos*, 309 F.3d at 1215. Both of these elements were satisfied here.

Sternberg v. Johnson, Id. at 944-945.

The U.S. Supreme Court recently addressed the violation of the discharge injunction, which is akin to the automatic stay, protecting a debtor after the automatic say has expired. In discussing such violations and sanctions issued for violation thereof, the U.S. Supreme Court in *Taggart v. Lorenzen*, 578 U.S. 554 (2019), states:

> Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to “coerce the defendant into compliance” with an injunction or “compensate the complainant for losses” stemming from the defendant’s noncompliance with an injunction. *United States v. Mine Workers*, 330 U. S. 258, 303-304, 67 S. Ct. 677, 91 L. Ed. 884 (1947); see D. Dobbs & C. Roberts, Law of Remedies §2.8, p. 132 (3d ed. 2018); J. High, Law of Injunctions §1449, p. 940 (2d ed. 1880).

The bankruptcy statutes, however, do not grant courts unlimited authority to hold creditors in civil contempt. Instead, as part of the "old soil" they bring with them, the **bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction**.

In cases outside the bankruptcy context, we have said that civil contempt "should not be resorted to where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct." *California Artificial Stone Paving Co. v. Molitor*, 113 U. S. 609, 618, 5 S. Ct. 618, 28 L. Ed. 1106, 1885 Dec. Comm'r Pat. 295 (1885) (emphasis added). This standard reflects the fact that civil contempt is a "severe remedy," *ibid.*, and that principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt, *Schmidt v. Lessard*, 414 U. S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974) (*per curiam*). *See Longshoremen, supra*, at 76, 88 S. Ct. 201, 19 L. Ed. 2d 236 (noting that civil contempt usually is not appropriate unless "those who must obey" an order "will know what the court intends to require and what it means to forbid"); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2960, pp. 430-431 (2013) (suggesting that civil contempt may be improper if a party's attempt at compliance was "reasonable").

This standard is generally an objective one. We have explained before that **a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable**. As we said in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599 (1949), "[t]he absence of wilfulness does not relieve from civil contempt." *Id.*, at 191, 69 S. Ct. 497, 93 L. Ed. 599.

We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. *See Chambers v. NASCO, Inc.*, 501 U. S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Thus, in *McComb*, we explained that a party's "record of continuing and persistent violations" and "persistent contumacy" justified placing "the burden of any uncertainty in the decree . . . on [the] shoulders" of the party who violated the court order. 336 U. S., at 192-193, 69 S. Ct. 497, 93 L. Ed. 599. On the flip side of the coin, **a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction**. *Cf. Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787, 801, 107 S. Ct. 2124, 95 L. Ed. 2d 740 (1987) ("[O]nly the least possible power adequate to the end proposed should be used in contempt cases" (quotation altered)).

These traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. The typical discharge order entered by a bankruptcy court is not detailed. *See supra*, at 2-3. **Congress, however, has carefully delineated which debts are exempt from discharge**. See §§523(a)(1)-(19). **Under the fair ground of doubt standard, civil contempt therefore may be appropriate when the creditor violates a discharge order based on an objectively**

> **unreasonable understanding of the discharge order or the statutes that govern its scope**.

Lorenzen, 587 U.S. at 559-60.

Collier's Treatise on Bankruptcy provides a further discussion of this issue and provides some additional insight:

> A violation of the stay is punishable as contempt of court. Most courts will impose contempt sanctions for a knowing and willful violation of a court order, and the automatic stay is considered as equivalent to a court order. If the conduct is willful, even if based upon advice of counsel, contempt is an appropriate remedy. When a violation of the stay is inadvertent, contempt is not an appropriate remedy. Nevertheless, the creditor has a duty to undo actions taken in violation of the automatic stay. Failure to undo a technical violation may elevate the violation to a willful one. . .
>
> Section 362(k)(1), which was designated as section 362(h) prior to the 2005 amendments, provides for a recovery of damages, costs and attorney's fees by an individual damaged by a willful violation of the stay. In an appropriate case, an individual injured by a stay violation may also recover punitive damages. There also appears to be an "emerging consensus" that emotional distress damages may be recovered in an award of actual damages under section 362(k)(1). . .
>
> In *Sternberg v. Johnston,* the Court of Appeals for the Ninth Circuit held that a debtor may recover attorney's fees under section 362(k)(1) to the extent that they are an element of the debtor's actual damages. Applying this narrow construction of the statutory language providing for recovery of "actual damages, including costs and attorneys' fees," the Sternberg court held that attorney's fees may be recovered only for work involved in bringing about an end to the stay violation and not for pursuing an award of damages. The court said that "actual damages" was an ambiguous phrase and that more explicit statutory language was required to deviate from the American Rule in which parties bear their own attorney's fees, at least with respect to fees related to the recovery of damages.

3 COLLIER ON BANKRUPTCY ¶ 362.12[2] &[3].

In this case, the uncontroverted facts before the court are simple and clear. Debtor filed the case on April 20, 2024. Lafayette then committed an act that would have violated the automatic stay by perfecting its interest under 11 U.S.C. § 362(a)(5), assuming Lafayette received proper notice of the case. Importantly, the notice question becomes moot as Lafayette admits in their own Opposition that they had knowledge of the case and the discharge injunction on August 2, 2023, almost four months after commencement of the case but less than two weeks after Debtor receiving a discharge. It then became incumbent upon Lafayette to remedy its violation of the stay promptly upon learning of the case. Lafayette did not do so until being prompted in February of 2024, approximately six months after learning of the case and its violation of the stay. Failing to remedy the violation amounts to a knowing and wilful violation of the automatic stay.

While the admissions document Lafayette's actual knowledge of not only of Debtor's Bankruptcy Case, but also that he got a discharge, as of August 2, 2025, and then no action was taken by Lafayette until approximately six months later in response to a demand by Debtor's counsel, the court has not been presented with evidence beyond that point which is permitted under the Federal Rules of Evidence.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Contempt and Damages for Violation of the Automatic Stay filed by Debtor, Joshua Scott Miller, ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, court finding Lafayette Federal Credit Union ("Lafayette") violated the automatic stay pursuant to 11 U.S.C. § 362(a)(5). The court shall hold an evidentiary hearing on **xxxxxxx** in order to determine damages.

11. 24-90618-E-11 CDK-2 | **JEFFERY ARAMBEL**
Chris Kuhner | **MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION TO VACATE O.S.T.**
4-25-25 [131]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on April 28, 2025. By the court's calculation, 3 days' notice was provided. The court set the hearing for May 1, 2025. Dckt. 135.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

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

At the hearing, **xxxxxxx**

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

The Motion to Vacate is xxxxxxx.

Debtor in Possession Jeffery Edward Arambel seeks an order of the court vacating its prior order entered on April 1, 2025, granting relief from the automatic stay ("Relief From Stay Order"). Order, Docket 110. The Relief From Stay Order granted relief from stay to creditor SBN V Ag I LLC ("Summit"), but the court also delayed the effective date and time of the Relief From Stay Order to 12:01 p.m. on May 1, 2025.

The court discussed in the Civil Minutes for the hearing on the Motion for Relief From the Stay its rationale for tossing out a possible life preserver for the Debtor and any surplus equity that could exist, stating:

Delayed Effective Date of the Order

Though the court did not address with the Parties when the relief from stay order is effective, the court concludes that having it effective thirty(ish) days after entry is appropriate. This is because, in preparing this Ruling, several factors stand out to the court, including:

- There are substantial real property assets which the Debtor in Possession and the Real Estate Broker can be actively marketing and bring a property or two quicky (now five months into the case with no bankruptcy plan, or possible bankruptcy plans terms, being explained to the court and parties in interest), commercially reasonable sales transactions be brought before the court.

- The Debtor in Possession and the Real Estate Broker can provide a status report showing how the properties are being aggressively, commercially reasonably marketed.

- The Debtor in Possession and his counsel can, in conjunction with the marketing of the properties, some commercially reasonablely aggressively marketed, a proposed plan and show how this Bankruptcy Case will not languish.

- This will require the Debtor, as the Debtor in Possession and Debtor in Possession counsel presenting the court and parties in interest financially and bankruptcy reasonable reorganization plans, showing how such will be diligently prosecute.

- Debtor in Possession, Debtor, and Debtor in Possession's counsel may be in "shock" with this court having granted relief from the stay pursuant to 11 U.S.C. § 362(d)(1), notwithstanding the Debtor having a belief that the properties of the Bankruptcy Estate have great values in excess of the encumbrances (notwithstanding the Debtor in the two years before filing this Bankruptcy Case or the Debtor in Possession during the five months of this Bankruptcy Case being able to find a buyer for any of the properties or show how the properties are being marketed at fair market value).

The court concludes that a thirty (30) day delay in this order granting relief from the stay being effective is proper and warranted. Given the passage of time and the nature of the real property collateral, such additional delay is not of prejudice to Movant. Further, it gives the Debtor in Possession and counsel for the Debtor in Possession to recover from their "shock" and begin actively prosecuting this case and documenting how they are doing so. A mere continuance of the hearing on the

> Motion with direction from the court to do such would not, and has not, produced such results. This Motion has been pending since December 2014, having been continued by the court.

Civil Minutes; Dckt .109 at 14-15.

In stating the above, the court is clear that this is not just a "delay tactic" in which the Debtor (not fulfilling his duties as the fiduciary Debtor in Possession) fails to actively and aggressively (in a commercially reasonable manner) to promptly get some properties sold and creditors paid, but merely to continue in the pattern of conduct that over the last decade has led to multiple bankruptcies for Debtor and related entities. The Debtor in Possession must be a "man of action" and get properties marketed and sold - again, in a commercially reasonable matter - to get creditors paid.

RELIEF REQUESTED BY THE DEBTOR IN POSSESSION

The Debtor in Possession now moves for the court to vacate the Relief From stay Order and pleads as follows:

1. Debtor in Possession has proposed a Plan of Reorganization to immediately list the ranch properties that are commonly known as: (1) Lismer Ranch, (2) Rogers Ranch contiguous, (3) Begun Ranch and (4) Carlile Ranch with Solven Grosz of Pearson Realty with a deadline to sell those properties of December 31, 2025. Mot. 2:10-13.

2. In addition, the Plan provides that the Judy Gail Ranch property and the 601 Rogers Road property will continue to be marketed by the employed real estate broker, Colliers International Inc. with a deadline to sell those properties of June 1, 2026. *Id.* at 2:14-16.

3. During the listing and marketing of these properties, the Debtor will provide Summit will full access to any and all information it requests regarding the listing, marketing and sale of the real properties. *Id.* at 2:17-19.

4. Debtor in Possession has taken to heart the court's comments that meaningful progress in moving the case forward through a plan to sell the properties as quickly as possible may be grounds to vacate or modify the Relief From Stay Order. *Id.* at 3:19-21.

5. From the Debtor's perspective and as reflected in the Debtor evidence of value of the properties, there is significant value in the assets subject to the Relief From Stay Order. If Summit is allowed to foreclose that value will be lost. *Id.* at 3:22-25.

APPLICABLE LAW

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

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

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

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

DISCUSSION

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

In this case, Debtor in Possession argues that the court would be amenable to vacating or further delaying the effective date of the Relief From Stay Order if it saw progress in the case. While this may be true to an extent, the court needs to see real, meaningful progress in the case, including with concrete commercially reasonable deadlines. Debtor in Possession has provided the court with a time line and a proposed Plan of Reorganization attached as Exhibit A to Mr. Arambel's Declaration, Docket 132. The Plan attached as an Exhibit is not signed by Mr. Arambel.

Debtor in Possession indicates that the properties will be marketed and sold by Solven Grosz of Pearson Realty and Colliers International Inc. There are no Motions to Employ on file for these brokers.

The Debtor in Possession is not clear what additional checks and safeguards will be put in place with respect to the marketing and sale of these properties. In Debtor's prior bankruptcy case there is a Plan Administrator who is responsible for the marketing and sale of the properties under that Plan (the Debtor's involvement having been terminated due to his conduct in that Case).

While it appears that the Debtor may be making progress, it may be prudent for the court to consider appointing a third party to sell the various parcels in a commercially reasonable manner or other constructive, reasonable checks and balances to put in place to, the court already affording Mr. Arambel a number of years to sell these properties.

At the hearing, **XXXXXXX**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Debtor in Possession Jeffery Edward Arambel 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

12. 23-90021-E-7 MARTHA MENDOZA
24-9005 DPL-1
MENDOZA V. FRANCHISE TAX BOARD

CONTINUED MOTION FOR SUMMARY JUDGMENT
3-4-25 [28]

Final Ruling: No appearance at the May 1, 2025 Hearing is required.

The hearing on the Motion for Partial Summary Judgment is continued to 10:30 a.m. on May 22, 2025.

MAY 1, 2025 CONTINUED HEARING

The court under-estimated the time necessary in finalizing its rulings on the Motion for Partial Summary Judgment and the related Motion to Dismiss, identify what other questions (if any) the court had for the respective counsel, and other unrelated matters that arose in the past two weeks.

The hearing is continued to 10:30 a.m. on May 22, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Partial Summary Judgment filed by the California Franchise Tax Board 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 hearing on the Motion is continued to **10:30 a.m. on May 22, 2025**.

13. 23-90021-E-7 MARTHA MENDOZA
24-9005 DPL-2
MENDOZA V. FRANCHISE TAX BOARD

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT AND/OR MOTION FOR ABSTENTION OF THE SECOND AND FOURTH CLAIMS FOR RELIEF
3-4-25 [39]

Final Ruling: No appearance at the May 1, 2025 Hearing is required.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on May 22, 2025.

MAY 1, 2025 CONTINUED HEARING

The court under-estimated the time necessary in finalizing its rulings on the Motion to Dismiss and the related Motion for Partial Summary Judgment , identify what other questions (if any) the court had for the respective counsel, and other unrelated matters that arose in the past two weeks.

The hearing is continued to 10:30 a.m. on May 22, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by the California Franchise Tax Board 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 hearing on the Motion is continued to **10:30 a.m. on May 22, 2025**.

14. 25-90025-E-7 | **ERIK JAGER AND JOSEFINA CORRAL** | **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se | **4-2-25 [62]**

Final Ruling: No appearance at the May 1, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on April 4, 2025. The court computes that 27 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: $338 due on January 17, 2025.

The Order to Show Cause is discharged without prejudice, this Bankruptcy Case having been dismissed by prior order of the court (Order; Dckt. 71).

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $338.

However, this Bankruptcy Case having been dismissed by prior order of the court (Order; Dckt. 71). The Order to Show Cause is discharged without prejudice,

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, the files in this Case, this Bankruptcy Case having been previously dismissed (Order; Dckt. 71), and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged without prejudice, having been rendered moot by the prior dismissal of this Bankruptcy Case.

15. 25-90178-E-7 **MARINA GALLEGOS**
Scott Mitchell

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
3-28-25 [16]

Final Ruling: No appearance at the May 1, 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 30, 2025. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition

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 filed an Amended Petition on April 2, 2025, correcting the email address. Docket 18.

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.

16. 25-90079-E-7 **HENRY/MICHELLE HAAS** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **4-2-25 [60]**

DEBTORS DISMISSED: 04/11/25

Final Ruling: No appearance at the April 16, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on April 4, 2025. The court computes that 27 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on April 11, 2025 (Docket 62), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

17. 25-90186-E-7 **ANTONIO ANAYA**
Scott Mitchell

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-1-25 [14]

Final Ruling: No appearance at the May 1, 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 April 3, 2025. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition

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 filed an Amended Petition on April 7, 2025, correcting the email address. Docket 16.

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.