UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

May 22, 2025 at 10:30 a.m.

1.	**22-90379-E-7** **RLL-4**	**JAMES MAHONEY** **David Johnston**	**MOTION TO ABANDON** **4-23-25 [153]**

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 and creditors that have filed claims on April 23, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is granted.

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

The Motion filed by Geoffrey M. Richards ("the Chapter 7 Trustee") requests that the court authorize him to abandon the estate's interest in (i) a certain Installment Note; (ii) the amount of payments received thereon to date, and (iii) a related Deed of Trust.

Debtor James R. Mahoney held a 50% fee simple interest in certain undeveloped real property bearing Stanislaus County APN 017-056-033-000 and located on Michigan Avenue in Modesto, California ("Property"). Trustee sold the Property by way of order on January 23, 2025. Docket 150. On behalf of the estate the Trustee received half of the net proceeds (the "Estate's Proceeds") from sale of title to the

Property; and the co-owner of the Real Property, Deborah E. Anderson received the other half. In addition to the proceeds of sale described in the previous paragraph, the Trustee and Anderson received as consideration for sale of the Property an Installment Note dated January 27, 2025 executed by Efrain Tostado-Garcia and Rosa Maria Valdez Tostado, as buyers of the Property.

Since the time the first installment payment on the Note became due, the Trustee has received half of each monthly payment and each payment has been deposited the client trust account of the Trustee's counsel. Such payments currently total $1,168.48. Mot. 2:10-18. The Estate's Proceeds are sufficient to pay all allowed claims against the estate in full as well as all administrative expenses of the chapter 7 case. As such, the Note and the Note Payments (including any future such payments that may be received by the estate) have no appreciable value or benefit to the estate.

The court finds that there are negative financial consequences for the Estate if it retains the Note, related Deed of Trust, and the right to future Note Payments, all claims in the case having been paid in full. The court determines that the Estate's interest in the Note and the right to future Note Payments is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Geoffrey M. Richards ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the property identified as (i) a certain Installment Note dated January 27, 2025 executed by Efrain Tostado-Garcia and Rosa Maria Valdez Tostado; (ii) the amount of payments received thereon to date in the amount of $1,168.48, and (iii) a related Deed of Trust, is abandoned to James R. Mahoney by this order, with no further act of the Chapter 7 Trustee required.

2. **24-23905-E-12 CAE-1** | **DEAVER RANCH, INC., A CALIFORNIA CORPORATION** | **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-30-24 [1]**

Item 2 thru 5

Debtor's Atty: David M. Goodrich

Notes:
Continued from 2/27/25. Specially set to the Modesto Division Courtroom and Calendar.

Operating Reports filed: 3/24/25

Chapter 12 Status Report filed 5/8/25 [Dckt 475]

[GG-10] Debtor's Motion for Order Authorizing Rejection of Unexpired Lease of Nonresidential Real Property filed 4/16/25 [Dckt 447]; set for hearing 5/29/25 at 10:30 a.m.

[DMW-12] First Interim Application for Allowance of Payment of Chapter 12 Fees and Reimbursement of Chapter 12 Expenses of Counsel for Debtors-In-Possession filed 4/17/25 [Dckt 453]; set for hearing 5/29/25 at 10:30 a.m.
[DMW-12] Supplemental and Final Application filed 5/6/25 [Dckt 470]

[BJ-3] Motion of the Prudential Insurance Company for Relief from Automatic Stay–Deaver Ranch, Inc. filed 5/14/25 [Dckt 481]; set for hearing 5/29/25 at 10:00 a.m.

[SGG-9] First and Final Application for Allowance and Payment of Chapter 12 Fees and Reimbursement of Chapter 12 Expenses of Golden Goodrich, LLP, General Bankruptcy County for Shenandoah Investment Properties, Inc. file 5/14/25 [Dckt 487]; set for hearing 6/12/25 at 10:30 a.m.

The Status Conference is xxxxxxx

MAY 22, 2025 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession.

At the Status Conference, xxxxxxx

3.	**24-23905-E-12 GG-9**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich**	**CONTINUED MOTION TO USE CASH COLLATERAL 2-13-25 [335]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 13, 2025. By the court's calculation, 14 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, opposition to the Motion was stated.

The Motion for Authority to Use Cash Collateral xxxxxxx.

May 22, 2025 Hearing

The court continued the hearing on the Motion for Authority to Use Cash Collateral in the Deaver case, the court having dismissed the SIP case. The court set the deadline of May 8, 2025 to file a supplement to this Motion to extend use of cash collateral. No supplement or other document has been filed.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Debtors in Possession Deaver Ranch, Inc. ("Deaver") and Shenandoah Investment Properties, Inc. ("SIP") move for an order approving the use of cash collateral. Deaver Ranch is a California certified sustainable vineyard located in Amador County, California. Deaver Ranch leases land, grows wine grapes, and sells its grape crop seasonally to wineries. It also owns cows and sheep that are used primarily for weed

control. The bulk of Deaver Ranch's revenue is generated from the sale of grapes during the last quarter of each year. Mot. 3:10-14.

SIP sells approximately 2,500 - 3,000 cases of wine annually, primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members. Its assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels and tumblers. SIP operates under the trade name "Deaver Vineyards." *Id.* at 3:15-19.

Deaver Ranch and SIP have filed proposed budgets as exhibits in support of the Motion. Docket 340. The proposed budgets contemplate usual and customary expenses associated with operating these businesses, including expenses of insurance, payroll, taxes, utilities, equipment, and maintenance fees. The budgets are from March through May of 2025. Deaver Ranch will end the period at negative cash flow of ($17,676). Ex. 1 at 4, Docket 340. Meanwhile, SIP will end the cash collateral period with a positive cash flow of $45,996. *Id.* at 5.

PRUDENTIAL'S OPPOSITION

The Prudential Insurance Company of America ("Prudential") filed an Opposition on February 21, 2025. Docket 360. Prudential opposes on the following grounds:

1. The Motion and these cases reflect that: (i) during this case, Deaver Ranch was unable to sell the majority of the grape crop (over 500 tons) and the crop was largely left to rot in the fields, all at substantial losses to the applicable estates, the prior authorized use of cash collateral and the applicable secured creditors who obtained replacement liens. Opp'n at 3:5-10.

2. Debtor in Possession and the related entities are going through business model overhauls, including where Debtor in Possession intends to take over the vineyard and cultivation duties from Deaver Ranch. However, Debtor in Possession has no resources to do so. Moreover, there do no appear to be funds for SIP to relocate and abandon its current premises, as is proposed. *Id.* at 3:10-23.

3. There are large amount of unpaid rents and other obligations due and owing in the case. *Id.* at 4:1-3.

4. Since the filing of these cases, the Deavers have been hemorrhaging cash and consuming assets, including cash, with little visible evidence of continued viability or viable economic success all to the prejudice of the creditors. *Id.* at 4:4-6.

5. The Motion reflects and confirms that during the pendency of this case, the Deavers' economic situation has gone from bad to worse--at or near economic collapse. *Id.* at 4:20-22.

6. It is not explained how Deaver Ranch can operate at a large loss through most of the year. *Id.* at 4:23-5:1.

AGWEST OPPOSITION

Agwest Farm Credit, PCA filed its opposition to this Motion for further use of cash collateral. Dckt. 381. The Agwest Opposition states the following grounds (as summarized by the court) for denial of the present Motion:

1. The Deaver Ranch is a "dead" operation, having no contracts for either its 2024 or 2025 grape crop. *Id*.; at 2:12-14.

2. For Shenandoah, the Debtor in Possession is selling off its existing wine inventory, with no new wine being produced. *Id*.; at 2:15-18.

3. The 2024 crop was not sold, but left to rot on the vine. *Id*.; at 2:24-25.

4. Shenandoah has spent $70,000 of cash collateral in the continue operation of the wine sale, with no new inventory being created. This has resulted in a ($70,000) diminution of the collateral. The "adequate protection" to be provided to creditors from the continued operation has failed. *Id*.; at 3:3-9.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. 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

Prudential again opposes on the grounds that these budgets do not reflect the actual financial situation of the related entities, the Debtors have been hemorrhaging cash and merely surviving off of cash collateral, and there is no reasonable hope of reorganization. Prudential ends its Opposition with the statement that "These cases should not continue. Opp'n at 5:10-15.

Agwest echos this opposition, identifying a ($70,000) loss of collateral from the prior use of cash collateral.

It is true that Deaver Ranch will end this period at a loss. In explaining how Deaver Ranch can continue as Debtor in Possession while operating at a loss, at the hearing, counsel for the Debtor in Possession stated that these expenses are necessary to preserve and maintain the grape vines and keep them in production for the 2025 year.

The moving papers also indicate that Deaver ranch relies on a sale of grapes for its income which typically comes in the late fall. Such an income scheme is not atypical of what the courts sees in Chapter 12 cases where the farming operation produces a crop for sale.

Meanwhile, it appears SIP is reporting that it can be profitable throughout the year, generating thousands through its business. Ex. 1 at 5, Docket 340. SIP ends the month of March with $27,153 cash on hand and it's the cash collateral period of May with $45,996 cash on hand. Such numbers are encouraging and show there is cash flow and hope for reorganization, contrary to the arguments of Prudential.

At the hearing, the court addressed the adequate protection issues and the need for the presentation of an economic plan and Chapter 12 Plan to move this case forward. AgWest requested that the court order the payment of the $750 a month adequate protection payment required under prior cash collateral orders.

Reviewing the budget and projected cash flow for the next two months (period for which the use is authorized), the Debtor in Possession's monthly cash flow runs slightly into the red. The cash collateral being spent is to maintain the grape vines and have them ready for the Spring growing season. This

spending works to enhance the AgWest collateral. Requiring a small payment of $1,500 provides little benefit at this point.

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 12. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period March 1, 2025, through May 31, 2025. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to 10:30 a.m. on May 22, 2025, (Specially Set to the Court's Modesto Division Courtroom and Calendar) for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is shall be filed and served on or before May 8, 2025 with any opposition to be presented orally at the continued hearing.

If a party presenting an oral opposition to the further use intends to make reference to documents a computation of income, expenses, and other amounts, if copies of such can be filed and served on or before 5:00 p.m. on May 19, 2025, such would be of assistance to the court in preparing for the hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Heritage Home Furnishings, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**.

4.	**24-23905-E-12 DMW-10**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich**	**CONTINUED MOTION TO USE CASH COLLATERAL 2-6-25 [323]**

Final Ruling: No appearance at the May 22, 2025 Hearing is required.

Local Rule 9014-1(f)(2) Motion—Hearing Required. The Motion was improperly noticed under Local Bankruptcy Rule 9014-1(f)(1), but the Parties have agreed to hear the Motion under Local Bankruptcy Rule 9014-1(f)(2). *See* Reply, Docket 357.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on February 13, 2025. By the court's calculation, 14 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, Opposition was presented.

The Motion for Authority to Use Cash Collateral is denied without prejudice.

May 22, 2025 Hearing

This Kenneth and Mary Deaver Bankruptcy Case having been dismissed on April 24, 2025, the Motion is denied without prejudice. Order, Docket 464.

REVIEW OF MOTION

Chapter 12 Debtors and Debtors in Possession Kenneth Henry Deaver and Mary Jean Deaver ("Debtor in Possession") move for an order approving the use of cash collateral. Debtor in Possession requests the use of cash collateral in moving this case forward and paying personal expenses as well as business expenses. The expenses include maintenance fees, utilities, insurance, payroll, and other customary personal expenses and usual expenses in running this type of business. *See* Exhibits. 1 and 2, Docket 326.

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

PRUDENTIAL'S OPPOSITION

The Prudential Insurance Company of America ("Prudential") filed an Opposition on February 13, 2025. Docket 345. Prudential opposes on the following grounds:

1. Contrary to the claims of Mr. Deaver, the real properties (which are Prudential's collateral) are not property of this estate. The real properties are owned by the Deaver Trust, as Mr. Deaver previously testified at the first meeting of creditors. Opp'n 3:23-25.

2. The Motion and these cases reflect that: (i) during this case, Deaver Ranch was unable to sell the majority of the grape crop (over 500 tons) and the crop was largely left to rot in the fields, all at substantial losses to the applicable estates, the prior authorized use of cash collateral and the applicable secured creditors who obtained replacement liens. *Id.* at 3:26-4:1.

3. Debtor in Possession and the related entities are going through business model overhauls, including where Debtor in Possession intends to take over the vineyard and cultivation duties from Deaver Ranch. However, Debtor in Possession has no resources to do so. *Id.* at 4:1-10.

4. Since the filing of these cases, the Deavers have been hemorrhaging cash and consuming assets, including cash, with little visible evidence of continued viability or viable economic success all to the prejudice of the creditors. *Id.* at 4:22-24.

5. The Motion appears primarily directed to providing the Deavers with normal living expenses and to operate Flower Farms. *Id.* at 4:26-27.

6. The Motion reflects and confirms that during the pendency of this case, the Deavers' economic situation has gone from bad to worse--at or near economic collapse. *Id.* at 5:7-8.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed a Reply on February 20, 2025. Docket 357. Debtor in Possession states:

1. The majority of the parcels of real property in question are property of the Estate, as reflected by applicable title records. Only one of the parcels of real property subject to Prudential's interest is owned by a trust. *Id.* at 2:15-21.

It appears that the evidence supporting this statement are unauthenticated exhibits which appear to be an online service which states what it concludes are the "primary owners" of the properties.

2. Substantially all of the alleged facts set forth in the Objection, including Debtors' plans with respect to the lease of land to Deaver Ranch, Inc. and moving the Vineyards Tasting Room to the Flower Farm property, are

> irrelevant to Debtors' Motion which relates only to their individual use of cash collateral of AgWest Farm Credit, PCA ("AgWest"). As the Objection acknowledges, the secured claims of Prudential in Debtors' personal property have been subordinated to the claims of AgWest. The Motion, and the proposed budget, demonstrate that the Deavers and the Flower Farm continue to operate with a positive cash flow. *Id.* at 3:4-10.

On this point, while it is the Agwest cash collateral, that secures the loan, if the cash collateral is used and not replaced, then that diminishes value in the other collateral for junior lienholders.

> 3. The Deavers are negotiating with their secured creditors and are taking steps to consolidate assets and resources. Their continued use of cash collateral in their individual case is both necessary and beneficial to the estate and their secured creditors. *Id.* at 3:10-13.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. 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

Prudential objects on various grounds, but the tenor of the Opposition sounds in Debtor in Possession squandering estate assets and failing to successfully reorganize. As Debtor in Possession has noted, the requested use of cash collateral only relates to AgWest's cash collateral. The secured claims of Prudential in Debtors' personal property have been subordinated to the claims of AgWest.

The cash collateral is derived from payments from Deaver Vineyards, Debtors' social security income, and income from the sheep, goats, and cows, all of which are AgWest's collateral. Prudential's Opposition misses these points and fails to show how the requested expenses are not reasonable as the case moves forward. Debtor in Possession is operating in an overall positive cash flow as it attempts to reorganize, and the expenses appear reasonable to the court.

More significant, as the court addressed with the Parties, this case is approaching the "put up or shut up" phase with respect to a plan and whether the Debtors in Possession can operate the business in a profitable manner. This "phase" as set forth by the court provides additional adequate protection for AgWest. Also, as the court noted, it appears that AgWest and the Debtor in Possession may well want to find a way to sell the wine at retail, rather than a substantially decreased liquidation value, and provide greater returns for AgWest and payments to start reducing its debt.

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 12. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period March 1, 2025, through May 31, 2025. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court grants the Motion, authorizing the use of cash collateral through May 30, 2025, in the amounts as provided in the Budget filed as Exhibits 1 and 2, Dckt. 326, in support of the Motion, allowing for such expenditures to be increased by 10% per line item, without increase the total amount of cash collateral authorized to be used.

The court continues the hearing to 10:30 a.m. on May 22, 2025, (Specially Set to the Court's Modesto Division Courtroom and Calendar) for Debtor in Possession to file a Supplement to, with any opposition to be presented orally at the continued hearing.

If a party presenting an oral opposition to the further use intends to make reference to documents a computation of income, expenses, and other amounts, if copies of such can be filed and served on or before 5:00 p.m. on May 19, 2025, such would be of assistance to the court in preparing for the hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Kenneth Henry Deaver and Mary Jean Deaver ("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 denied without prejudice, this case having been dismissed.

5. 24-23923-E-12 CAE-1 KENNETH/MARY DEAVER

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-30-24 [1]

DEBTOR DISMISSED: 04/28/25

Final Ruling: No appearance at the May 22, 2025 Status Conference is required.

Debtors' Atty: Martha A. Warriner; Andy C. Warshaw

Notes:
Continued from 2/27/25. Specially set to the Modesto Division Courtroom and Calendar.

Operating Reports filed: 3/24/25; 4/22/25

> The Chapter 12 Bankruptcy Case of Kenneth and Mary Deaver having been dismissed (Order; Dckt. 200), **the Status Conference is concluded and removed from the Calendar.**

6. **23-90616-E-7** **DAVID MARTINEZ** **MOTION TO SELL AND/OR MOTION TO PAY**
FW-7 **Thomas Moore** **4-17-25 [182]**

Items 6 thru 7

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 and all creditors and parties in interest on April 17, 2025. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property and Pay Broker's Fees is granted.

The Bankruptcy Code permits Peter L. Fear, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363 Here, Movant proposes to sell the real property commonly known as 425 Osprey Drive, Patterson, CA 95363 ("Property").

The proposed purchaser of the Property is Rocia Herrera Arreola ("Buyer"), and the terms of the sale are:

A. Sale price of $475,000;

B. The sale of the Property is in "As-Is" condition, with the buyer to provide smoke detectors, carbon monoxide detectors, and water heater bracing if necessary;

C. Additionally, the Property is subject to a deed of trust recorded on April 13, 2010 in favor of Mortgage Electronic Registration systems, Inc., as nominee for Guild Mortgage Company ("Guild"), securing an original indebtedness of $157,102.00, which was subsequently assigned to Guild Mortgage Company. This lien will be paid in full through escrow; and

D. Additionally, the Property is subject to a deed of trust recorded on March 20, 2023 in favor of Val-Chris Investments, Inc., securing an original indebtedness of $181,000.00, which was subsequently assigned to Hassan Baradan-Azimi, Trustee of the Azimi Family Trust dated October 21, 2021, as to 55.25% interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, trustees of The Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust dated January 8, 2016, as to 44.75% interest, as tenants in common ("Creditor"). This lien will be paid in full through escrow.

Guild filed a Non-Opposition on May 6, 2025, supporting the Motion so long as its secured claim is paid in full. Docket 192.

Creditor also filed a Non-Opposition on May 8, 2025, supporting the Motion so long as its secured claim is paid in full. Docket 194.

The court would note these secured creditors choose to release their liens in escrow or not, and that their claims are entitled to be paid in full. The Motion proposes to pay these claims in full with proceeds of the sale.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will generate approximately $50,646.60 in proceeds for the Estate. Although the sale is to an insider, Debtor's wife, the sale is in the best interest of creditors and the Estate as Trustee reports this current offer is better than the previous offer. Mot. ¶ 7, Docket 182.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $28,500. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission. The commission shall be split evenly between the Estate's Broker, Brian Brazeal of RE/MAX Executive, and Buyer's broker Ramon Cervantes of KW CA Premier.

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

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

The Motion to Sell Property filed by Peter L. Fear, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Peter L. Fear, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Rocia Herrera Arreola ("Buyer"), the Property commonly known as 425 Osprey Drive, Patterson, CA 95363 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $475,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 185, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.

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

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The commission shall be split evenly between the Estate's Broker, Brian Brazeal of RE/MAX Executive, and Buyer's broker, Ramon Cervantes of KW CA Premier.

7. **23-90616-E-7** **DAVID MARTINEZ** **CONTINUED MOTION FOR RELIEF**
ALG-3 **Thomas Moore** **FROM AUTOMATIC STAY**
11-18-24 [117]

BORIS A. CHECHELNITSKY AND
MARINA S. CHECHELNITSKY,
ETAL VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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.

The Motion for Relief from the Automatic Stay is xxxxxxx.

May 22, 2025 Hearing

The court continued the hearing based on information that counsel for the Trustee found a new buyer for the Property, and there is a Motion to Approve Sale is being set for 10:30 a.m. on May 22, 2025. The Motion to Approve Sale is being heard in conjunction with this Motion, and the court intends to grant the Motion to Approve Sale.

At the hearing, xxxxxxx

COURT'S CONTINUANCE OF HEARING

On December 12, 2024, the hearing on this Motion for Relief From the Automatic Stay was conducted in conjunction with Motions by the Chapter 7 Trustee for an order compelling the Debtor, along with Debtor's counsel, to fulfill the Debtor's statutory obligation (11 U.S.C. § 334) to appear at the 341 Meeting of Creditors (Debtor and Debtor's counsel having failed to appear at the originally scheduled and the first continued 341 Meeting), and the Chapter Trustee's Motion to set a deadline for the Debtor to make any changes to claimed exemptions. For this Motion for Relief From the Stay, the court stated that it would grant the Motion.

As the court prepared its written ruling for the Civil Minutes and re-re-read the Trustee's exhibits, it appears to the court that in granting such relief the Debtor and Debtor's counsel may well not fully appreciate the impact of such relief and possible foreclosure of the property while it is property of the Bankruptcy Estate (and beyond the control of the Debtor). The Debtor must actively work to protect his claimed exemptions, and that the duties and obligations of a Chapter 7 Trustee run to the Bankruptcy Estate and not the Debtor (who in this case is represented by counsel to provide not only legal advance, but commencing such proceedings as are in the Debtor's interest to protect the Debtor's exempt assets).

In light of the grounds upon which this Motion has sought relief, the substantial equity cushion in which Debtor has claimed his three figure homestead exemption, and the email communications between Debtor's Counsel and the Chapter 7 Trustee, the court determines that conducting a continued expedited final hearing on this Motion is necessary and property.

The court has continued this for an expedited final hearing at 11:30 a.m. on December 19, 2024, specially set in the Sacramento Division Courthouse.

The basis for such conclusion is stated below.

REVIEW OF MOTION

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") seeks relief from the automatic stay with respect to David Martinez's ("Debtor") real property commonly known as 425 Osprey Drive, Patterson, California 95363 ("Property"). Movant has provided the Declaration of Chris Boulter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 120.

Movant argues Debtor has not made 17 monthly installment payments, including multiple postpetition payments, with a current payment delinquency of ($35,872.72). Mot. 3:14-20, Docket 117; Decl. ¶ 9, Docket 120. Good through December 1, 2024, the total outstanding payoff balance on Movant's loan has increased to approximately ($242,691.46), which consists of a principal balance of ($181,000.00), accrued interest of ($38,156.29), late charges of ($4,009.38), and total fees, costs and charges in the sum of ($19,525.79). Decl. ¶ 10, Docket 120.

Movant states that there is a debt of at least approximately ($119,815.00) secured by a senior deed of trust that encumbers this Property. Guild Mortgage filed Proof of Claim 2-1 on January 23, 2024, which stated its secured claim to be ($114,044.83). There were no prepetition defaults as of the time the proof of claim was filed. The monthly loan payment and the monthly escrow payment for the Guild Mortgage Claim is stated to be $1,250.28. POC 2-1, Proof of Claim Attachment.

Movant using the Debtor's stated value for the Property of $500,000.00, after deducting Movant's secured claim, the ($114,004.83) Guild Mortgage secured claims stated in Proof of Claim 2-1, and estimated costs of sale of ($40,000), which is stated to be Debtor's estimate and would equal 8% of a $500,000 gross sale, there is $132,448.31 in equity for the Debtor. As discussed below, the Debtor has exempted this equity pursuant to his homestead exemption. Scheduled C; Dckt. 15 at 11.

The grounds stated in the Motion note that the Chapter 7 Trustee has communicated that the Trustee will not be opposing this Motion in light of the Debtor having exempted all of the equity in this Property with his homestead exemption. Motion, p. 2:15-17; Dckt. 117. However, Debtor and his counsel have not taken any action with respect to the Property in which Debtor has his six figure homestead exemption claimed.

TRUSTEE'S RESPONSE

Peter L. Fear, the Chapter 7 Trustee ("Trustee") filed a Response on December 2, 2024, noting Debtor has failed to appear at either of the 341 Meetings in this case. Docket 137. Trustee states:

1. Debtor's schedules disclose an interest in another parcel of real property, located at 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property"), which Trustee believes has equity available for distribution to creditors of the bankruptcy estate. *Id.* at ¶ 5.

2. Trustee intends to sell the Las Palmas Property, but the bankruptcy estate would be prejudiced if the Property were foreclosed upon, and Debtor subsequently amended his exemptions to claim an exemption in the Las Palmas Property. *Id.* at ¶ 6.

3. Trustee has brought a motion (the "Exemption Motion") to limit the time for Debtor to amend his claimed homestead exemption in the Property or to amend any portion of the Las Palmas Property, which is set for hearing on December 12, 2024, at 10:30 a.m. *Id.* at ¶ 8.

4. Until the Exemption Motion is granted, Trustee believes the estate would be prejudiced if the Property was foreclosed upon. *Id.* at ¶ 9.

5. As a result, Trustee requests that the granting of the Motion be delayed unless and until the Exemption Motion is granted, and any foreclosure by Movant delayed until after the time period for the Debtor to amend his exemptions has expired pursuant to that motion. *Id.* at ¶ 10.

Homestead Exemption and Impact on Bankruptcy Estate

Peter Fear, the Chapter 7 Trustee, appeared at the hearing and has filed an informational response (Dckt. 137) to the Motion. The Trustee reports that the Debtor has elected to claim his homestead exemption in this Property. Schedule C; Dckt. 15 at 1. In the Schedules Debtor has valued the Property at $500,000.00 (Sch. A/B; Dckt. 15 at 3), and has identified two claims secured by the Property: (1) Guild

Mortgage for ($116,278.88) and (2) Movant for ($210,000). Sch. D, ¶¶ 2.1, 2.3; Dckt. 1 at 13, 14. Movant computes the claim to be approximately ($242,691). Dec., ¶ 10; Dckt. 120.

Based on Debtor's valuation, the homestead exemption claimed (the actual possible homestead exemption that can be claimed is much higher) exhausts all of the value of the Property, leaving nothing for the Chapter 7 Trustee to administer for the Bankruptcy Estate.

In his response the Trustee states that the Debtor and his counsel have now failed to appear at the first two 341 Meeting of Creditors. Con. Non Opp, ¶ 4; Dckt. 137. The Trustee also reports that he has been attempting to communicate with the Debtor's counsel concerning this Property, and by separate Motion is seeking an order to compel the attendance of the Debtor at the continued 341 Meeting and for the court to set a deadline for Debtor to file amended exemptions.

In the Trustee's Motion to Reduce Time Allowed to Amend Exemptions (Dckt. 99), the Trustee recounts the communication attempts with Debtor's counsel and to see if the Debtor wanted to proceed with the Trustee selling the exempt property. Motion to Reduce, ¶¶ 10, 11, 12, 13, 14, 15; Dckt. 99. Exhibits A, B, C, and D are copies of email communications concerning the Property and the Debtor's exemption. Dckt. 102.

In an email dated October 8, 2024, from the Chapter 7 Trustee to Debtor's counsel, Mr. Moore, the Trustee poses the following question to Debtor's counsel:

> The meeting of creditors was today and there was no appearance by the debtor or his counsel. I understand that the lender on the Osprey property wants to move aggressively to foreclose. It appears to me that there is a substantial amount of exempt equity in the property. Would the Debtor prefer for me to sell the real property and work out some split of the equity so that he doesn't lose all of it in a foreclosure sale?

Exhibit A; Dckt. 102.

The Trustee states that the response to the October 8, 2024 email was a call on October 30, 2024, from Mr. Moore's assistant who connected the Trustee with another attorney in that office. Dec., ¶ 16; Dckt. 101. The Trustee further testifies that after that call he received an email from Mr. Moore and an email discussion ensued on October 30, 2024. A copy of the email discussion thread is filed as Exhibit B, Dckt. 102.

The response from Mr. Moore was that the Debtor was open to selling the Property and paying the creditors with secured claims, but Mr. Moore was unsure of the Trustee's "fees" for working out a deal to do that. *Id*.; October 30, 2024 at 3:15 p.m. email from Mr. Moore. Mr. Moore also notes that there are less than $10,000.00 of unsecured claims in the Bankruptcy Case.

The Trustee responded with an email at 4:58 p.m. on October 30, 2024, stating that they could move forward and work to get the Osprey Property sold prior to any foreclosure sale, and that it would be likely that with the sale of the Osprey Property all claims could be paid and no other assets would need to be sold.

The Trustee testifies that later on October 30, 2024, the Trustee received a reply from Debtor's attorney, Mr. Moore, rejecting an agreement for the sale of the Property in which Debtor had exempted all of the value in excess of the liens. Dec., ¶ 18; Dckt. 101. A copy of Mr. Moore's response email at 8:13 p.m. on October 30, 2024, is provided as Exhibit C; Dckt. 102. Mr. Moore's response is:

> You want me to agree to waive a 173k exemption for less than 10k in unsecured debt? That may be enough to not sell the other property? I must be reading your email incorrectly. If I am not, I will file a motion to sell the property myself if that's the case and argue the motion for relief from stay on property one. As far as property two, we will have to file motions I guess.

Id.

What appears to stand out in this response is that Debtor's counsel appears to state that the entire exemption of $173,000 would be waived to pay only ($10,000) in unsecured claims. Mr. Moore then states that he will file a motion himself to sell the Property and then argue against the Motion for Relief From the Stay.

It is unclear what motion Mr. Moore, as Debtor's counsel, would file with respect to the Property in which the exemption is claim, other than a motion to have the property immediately abandoned so the Debtor could sell the Property and pocket the exempt equity in excess of the secured claims.

No motions have been filed by the Debtor and the Debtor has not opposed this Motion for Relief from the Stay so Movant can foreclose on this Property in which the Debtor has claimed his homestead exemption. It appears that Debtor and Debtor's counsel do not understand the role of a Chapter 7 trustee and that trustee's duties to the Bankruptcy Estate. The Trustee is not going to sell property in which all proceeds are claimed as exempt.

The Trustee testifies that he has heard nothing further from Debtor's counsel. Dec., ¶¶ 19, 21; Dckt. 101. He testifies that he sent a follow up email on November 4, 2024, to Mr. Moore, Debtor's counsel, as a (in the court's terminology) "last ditch effort" to see if the Property in which the exemption is claimed could be sold rather than having the automatic stay terminated and the foreclosure sale proceed. *Id*.; ¶ 20. A copy of the November 4, 2024, email from the Trustee to Mr. Moore and counsel for Movant is provided as Exhibit D, Dckt. 102, which states:

> Messrs. Moore and Graff:
>
> I have been in conversations with both of you about the property at 425 Osprey Drive. I have told Mr. Graff [Movant's counsel] that I would not oppose a stay relief motion if the Debtor refused to waive some portion of the homestead exemption, such that it made sense for me to sell the property. Mr. Moore has not yet affirmatively stated what he would do, but he seemed disinclined to advise his client to waive any portion of the homestead exemption. This has been dragging on for about a month now. I need to sell either the Las [sic] Palmas property or the Osprey Drive property, or possibly both. But I am not going to wait around any further on this.
>
> Here are the Debtor's options:

> 1. Stipulate to carve-out at least $20k from the exempt sale proceeds on Osprey for the bankruptcy estate. I will then sell the Osprey property, pay off the lender, and pay any net proceeds over $20k to the Debtor. I will also sell Las [sic] Palmas, because that [a $20,000 carve out] will not be enough to pay all claims in this case.
>
> 2. Not agree to waive any exemption in the Osprey property. I will stipulate to stay relief with Mr. Graff's client and will sell Las [sic] Palmas.
>
> 3. Agree to waive the entirety of the homestead exemption. I will sell Osprey, use the net proceeds to pay claims, and will turn over any surplus amount to the Debtor. I anticipate this would provide enough to not need to sell Las [sic] Palmas, so I will not list it unless something unexpected happens and Osprey does not generate enough funds to pay all claims in the case.
>
> Debtor has delayed interacting with me about this for about a month, so he needs to act fast. If I do not have an affirmative choice from him as to either 1 or 3 no later than close of business on Thursday, November 7, I will assume he wants to do 2, and will stipulate with Mr. Graff's client for stay relief.
>
> I look forward to hearing from you.

Exhibit D; Dckt. 102.

The statement in Paragraph 1 above is a common form of stipulation for a trustee to sell exempt property in which the debtor will take the majority of the sales proceeds. The Trustee recovers something for the estate that can be applied to the claims and expenses. The Trustee would then proceed to sell the Los Palmas property to pay the claims secured by that property, and then surplus proceeds from that sale would go to the Debtor.

The version in Paragraph 3 would be for the Debtor to waive the homestead exemption in its entirety, the Trustee would sell the Property that is the Debtor's residence, pay all claims with those proceeds, and then have the balance of the proceeds (there being under $10,000 in unsecured claims) and the Los Palmas property abandoned back to the Debtor. [Fn.1.]

FN. 1. The Los Palmas property is listed on Schedule A/B as having a value of $230,000, and on Schedule D Debtor lists it as securing only one claim in the amount of ($110,000.00). Dckt. 15. On Schedule E/F Debtor lists owing an unsecured priority tax claim of ($5,541.09) and general unsecured claims of ($7,571.00). *Id*.

No proof of claim has been filed by a creditor asserting a claim secured by the Los Palmas property, no priority tax claim has been filed, and only two general unsecured claims, which aggregate $3,812.89, have been filed in this Case.

The Debtor, though claiming an exemption in all of the value of the Property, has not filed an opposition to the Motion. The Debtor having claimed the exemption, there is no value for the Bankruptcy Estate in this Bankruptcy Case.

Though the Trustee is bringing to the attention of the court the interests of the Debtor, and the inaction of Debtor and Debtor's counsel, there is not a basis for the Trustee to oppose this Motion in light of the Debtor's homestead exemption, which exhausts all value in the Property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $242,691.46 (Declaration ¶ 10, Docket 120), while the value of the Property is determined to be $500,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B 3, Docket 15.

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

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

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Regarding Trustee's Response, the court would note Trustee has not provided any law that would support the court delaying granting such a motion. In order for a debtor to be eligible to claim the homestead exemption, the property must be that debtor's domicile, not mere residence. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.06 (discussing requirements for a "domicile" and for a "residence," noting a homestead exemption may only be applied to a debtor's domicile). It appears to the court Debtor would be unable to simply change the homestead exemption if Movant forecloses on the Property as Debtor has testified under penalty of perjury his homestead, his domicile, is the Property. Trustee expresses concern over Debtor amending the Schedules to claim an exemption in the Los Palmas Property, but Trustee does not cite which exemption Debtor may attempt to claim. As discussed, debtor cannot claim the homestead exemption in the Los Palmas Property if it is not his domicile.

California law defines a "homestead" in which an exemption may be claimed to as follows:

> (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a

> dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). The homestead exemption is not one that can be moved at whim, but must fulfill certain statutory requirements.

At the hearing, counsel for the Movant reported that this case has been pending for more than a year, with no payments made by Debtor.

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

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

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

December 19, 2024 Hearing

On December 17, 2024, a Stipulation between David Martinez, the Debtor, and Peter Fear, the Chapter 7 Trustee, was filed. Dckt. 151. The Stipulation is quite simple. In it the Debtor irrevocably waives any exemption that he could claim in the 425 Osprey Drive, Patterson, California Property, and that he will not claim any exemption in that Property in the future.

With the exemption waived, the Trustee will proceed with the marketing and sale of that Property for the benefit of the Bankruptcy Estate. As noted below, it is the creditors whose claim that is secured by the second deed of trust are moving for relief from stay on this Property. The Debtor's claim of a homestead exemption precluded the Trustee from selling the Property, the exemption exhausting what appears to be a six figure equity in the Property. There are only less than $10,000 of unsecured claims, as of this point in time, to be paid in this case. Thus, as a practical economic matter, it appears that a substantial part of the formerly exempt equity will still go back to the Debtor, as well as the other parcel of real property in this Bankruptcy Estate.

At the hearing, counsel for the Chapter 7 Trustee reported that the Debtor appeared at the 341 Meeting, confirming that the Trustee is going forward with the marketing of the Osprey Property.

Counsel for the Movant requested a continuance for administrative purposes.

The hearing Motion for Relief from the Automatic Stay is 10:00 a.m. on February 20, 2025.

February 20, 2025 Hearing

The court continued the hearing on this Motion for administrative purposes, Debtor and Trustee having reached economic terms that will allow Debtor to retain equity in the his residence and allow Trustee to liquidate the Osprey Property.

At the hearing, counsel for Movant reported that the stipulation has been signed and is being filed with the court. The Trustee received an offer and will be filing a Motion to Sell the Property.

The Parties requested that the court continue the hearing.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on April 17, 2025.

April 17, 2025 Hearing

The court continued the hearing based on information that the Parties had worked a out a deal resulting in a sale of the Property. However, Trustee withdrew his Motion to Sell on March 21, 2025, reporting that the stalking horse bidder had backed out of the sale.

At the hearing, counsel for the Trustee reported that a new buyer has been obtained and a Motion to Approve Sale is being set for 10:30 a.m. on May 22, 2025.

The hearing on the Motion for Relief From the Stay 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 Relief from the Automatic Stay filed by Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") having been presented to the court, the Debtor and the Chapter 7 Trustee having entered into a Stipulation for the marketing and sale of the Property securing Movant's Claim, the Chapter 7 Trustee reporting that a motion to approve the sale of the Property is set for May 22, 2025, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is **XXXXXXX**.

8. **24-90516-E-7** **DALE DEL ROSARIO**
DNL-3 **Michael Reid**

MOTION TO EMPLOY TMC AUCTION AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
5-1-25 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 1, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer's Fees and Expenses are granted.

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327, 328(a), 330, and 363.

Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Dale Soliman Del Rosario ("Debtor"):

1. 2007 Dodge Dakota, Vin ending in 7544 ("Vehicle").

Trustee requests the employment be effective retroactively to March 31, 2025, pursuant to Local Bankruptcy Rule 2014-1(b)(2). Trustee attempted to have Auctioneer employed earlier, but states:

> The Trustee's motion to employ, approve sale and payment of fees to Auctioneer was in the works, but due to an uncharacteristic error, was not finalized or filed with the Court.

Mot. 3:8-9. Auctioneer actually sold the Vehicle on March 31, 2025, for a gross price of $4,000. Auctioneer's fees and expenses totaled $1,119.00, and Trustee is in possession of net sales proceeds in the amount of $2,881.00. *Id.* at 3:16-17. Trustee and Trustee's counsel DNLC have agreed to waive their compensation in order to provide an increased distribution to general unsecured creditors.

> The essential terms of the Employment Agreement are as follows:
>
> (a) Auctioneer will receive compensation of twenty percent (20%) of the gross sale proceeds, plus reimbursement for expenses in an amount not to exceed $350.00.
>
> (b) The estate shall be paid all net proceeds of the sale due the estate within thirty (30) working days of any auction.
>
> (c) All gross proceeds of the sale shall be maintained separate from Auctioneer's personal or general funds and accounts pursuant to California Civil Code Section 1812.607(j).
>
> (d) At the conclusion of the sale conducted by Auctioneer, Auctioneer shall provide the United States Trustee and the Trustee, and file with the Court, an itemized statement of the asset sold, the name of the purchaser, and the price received for the asset, as required by Federal Rule of Bankruptcy Procedure 6004(f). A true and correct copy of the itemized statement is attached hereto as Exhibit B.

Id. at 5:3-13.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction has extensive experience in auctioning assets similar to the Vehicle. Decl ¶ 4, Docket 53. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 9-11.

DISCUSSION
Motion to Employ and
Authorization to Sell

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such

terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 54. Approval of the commission is subject to the provisions of 11 U.S.C. § 328.

Auctioneer is authorized to sell the Vehicle. This authorization is effective March 31, 2025, the date the Vehicle was actually sold, pursuant to Local Bankruptcy Rule 2014-1(b)(2), the court considering counsel for Trustee making an honest mistake in not bringing this Motion earlier as well as forfeiting fees in connection with this Motion.

Motion for Authorization of Fees and Expenses

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)).

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)).

Here, Trustee has estimated that a twenty percent broker's commission from the sale of the Vehicle would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed $350 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed $350, in connection with the auction.

The Vehicle having been sold for a gross price of $4,000, Trustee is authorized to pay Auctioneer's fees in the amount of $1,119 from funds of the Estate. The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not anticipate opposition to the Motion. Mot. 5:6-9.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Nikki B. Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective March 31, 2025, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 54.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the 2007 Dodge Dakota, Vin ending in 7544 ("Vehicle").
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of $1,119, which represents twenty percent (20%) of the gross sales proceeds and expenses not to exceed $350.00. Trustee is authorized to pay such fees and expenses in the amount of $1,119 from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

9. **23-90021-E-7** **MARTHA MENDOZA** **CONTINUED MOTION FOR SUMMARY JUDGMENT**
24-9005 **DPL-1**
MENDOZA V. FRANCHISE TAX BOARD **3-4-25 [28]**

THE MENDOZA MATTERS SHALL BE HEARD ON THE COURT'S 2:00 P.M. CALENDAR

Item 9 thru 10
Status Conference 2:00 calendar

The Hearing on the Motion is xxxxxxx

MAY 22, 2025 HEARING

After having this matter under submission for an extended period of time, the court has issued its ruling and order there on granting Partial Summary Judgment for Defendant-FTB for the First and Third Claims for Relief.

The court used the May 22, 2025 hearing on this Motion and the Motion to Dismiss or Abstain from hearing the claims asserted in the Second and Fourth Claims for Relief as a status and scheduling conference.

At the hearing, xxxxxxx

10. **23-90021-E-7** **MARTHA MENDOZA** **CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT AND/OR MOTION FOR ABSTENTION OF THE SECOND AND FOURTH CLAIMS FOR RELIEF**
24-9005 **DPL-2**
MENDOZA V. FRANCHISE TAX BOARD **3-4-25 [39]**

The Status Conference is xxxxxxx

MAY 22, 2025 HEARING

After having this matter under submission for an extended period of time, the court has issued its ruling and order thereon dismissing without prejudice the r the First and Third Claims for Relief. The court does not authorize the filing of an Amended Complaint in this Adversary Proceeding.

The court used the May 22, 2025 hearing on this Motion and the Motion to Dismiss or Abstain from hearing the claims asserted in the Second and Fourth Claims for Relief as a status and scheduling conference.

At the hearing, xxxxxxx

11. 24-90528-E-11 BSH-5

HERITAGE HOME FURNISHINGS, LLC
Brian Haddix

MOTION TO VALUE COLLATERAL OF U.S. SMALL BUSINESS ADMINISTRATION
4-30-25 [91]

Item 11 thru 13

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and other parties in interest on April 30, 2025. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Value Collateral and Secured Claim of the United States Small Business Administration ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $119,548.52.

The Motion filed by Heritage Home Furnishings, LLC ("Debtor in Possession") to value the secured claim of the United States Small Business Administration ("Creditor") is accompanied by Fabiola Sandoval Sanchez declaration. Declaration, Dckt. 94. Ms. Sandoval is the co-president and a member of Debtor in Possession. Debtor in Possession seeks to value the following items of personal property:

a. Store Inventory (household furnishings).....$101,344.52

b. Deposit Accounts.....$2,301.00

c. Accounts Receivables.....$15,000.00

d. Office Equipment, Fixtures, Displays.....$900.00

e. General Intangibles (website, customer lists, goodwill)..... $3.00

f. TOTAL $119,548.52

("Personal Property"); Decl. ¶ 9, Docket 94. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Personal Property secures a loan incurred on June 5, 2020, which is more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $155,673.62. POC 1-1. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $119,548.52, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Heritage Home Furnishings, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of the United States Small Business Administration ("Creditor") secured by all tangible and intangible personal properly, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles aud software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code ("Personal Property"). Creditor's claim is determined to be a secured claim in the amount of $119,548.52, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Personal Property is $119,548.52 and is encumbered by a lien securing a claim that exceeds the value of the Personal Property.

12. 24-90528-E-11 BSH-6 | **HERITAGE HOME FURNISHINGS, LLC** Brian Haddix | **MOTION TO VALUE COLLATERAL OF ODK CAPITAL, LLC** 4-30-25 [96]

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 Creditor and other parties in interest on April 30, 2025. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Value Collateral and Secured Claim of ODK Capital, LLC ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.

The Motion filed by Heritage Home Furnishings, LLC ("Debtor in Possession") to value the secured claim of ODK Capital, LLC ("Creditor") is accompanied by Fabiola Sandoval Sanchez declaration. Declaration, Dckt. 99. Ms. Sandoval is the co-president and a member of Debtor in Possession. Debtor in Possession seeks to value the following items of personal property:

a. Store Inventory (household furnishings).....$101,344.52

b. Deposit Accounts.....$2,301.00

c. Accounts Receivables.....$15,000.00

d. Office Equipment, Fixtures, Displays.....$900.00

e. General Intangibles (website, customer lists, goodwill)..... $3.00

f. TOTAL $119,548.52

("Personal Property"); Decl. ¶ 9, Docket 94. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Personal Property secures a loan incurred on January 29, 2024, to secure a debt owed to Creditor with a balance of approximately $236,782.98. POC 11-1. The court has determined that creditor U.S. Small Business Administration's senior in priority secured claim exhausts all $119,548.52 in value of the Personal Property, leaving $0 to secure Creditor's claim. Therefore, Creditor's claim secured by a lien against the Property is under-collateralized. Creditor's secured claim is determined to be in the amount of $0, which is the value of the collateral that Creditor's claim may attach to. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by Heritage Home Furnishings, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of ODK Capital, LLC ("Creditor") secured by all assets now owned or hereafter acquired, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles aud software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code ("Personal Property"). Creditor's claim is determined to be a secured claim in the amount of $0 and shall be treated as an unsecured claim. The value of the Personal Property is $119,548.52 and is encumbered by the senior in priority lien of creditor U.S. Small Business Administration securing a claim that exceeds the value of the Personal Property.

13. 24-90528-E-11 BSH-7

HERITAGE HOME FURNISHINGS, LLC
Brian Haddix

MOTION TO APPROVE BID PROCEDURES AND DESIGNATE STALKING HORSE BIDDER
5-1-25 [104]

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 May 1, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Approve Bid Procedures and Designate Stalking Horse Bidder was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Approve Bid Procedures and Designate Stalking Horse Bidder is
xxxxxxx

Debtor in Possession Heritage Home Furnishings, LLC (" Debtor in Possession") moves this court for an order (i) approving bidding procedures for the sale of substantially all of the Debtor's assets, (ii) designating Minerva Home, Inc. as the stalking horse bidder ("Bidder"), and (iii) approving the form and manner of sale notice.

Bidder is an insider in the case. Bidder is owned by Jorge Sanchez, who is the spouse of co-president of Debtor in Possession Fabiola Sandoval Sanchez. Debtor in Possession seeks to sell all of its assets, including inventory, accounts receivable, deposit accounts and cash, office equipment, fixtures, and displays, and intangibles ("Personal Property") in the amount of $119,548.52. Bidder has agreed to serve as the stalking horse bidder, with the understanding that the proposed sale will be subject to overbid and further court approval. Mot. 3:9-15.

The proposed Asset Purchase Agreement, a summary of which is attached as Exhibit A at Docket 107, provides for a total purchase price of $119,548.52, payable in equal monthly installments over 60 months at 6.24% interest. The first payment is due 30 days after the effective date of a confirmed Subchapter V plan. The buyer will not take possession of the assets until after entry of a sale order and plan confirmation. Mot. 3:24-28.

In essence, the Asset Purchase Agreement consists of Debtor in Possession extending credit to Bidder. The court does not see in the Asset Purchase Agreement where the Estate will be having a security interest in the Personal Property in the event Bidder defaults on its payment obligations. It appears Debtor in Possession is simply making an unsecured loan to Bidder.

At the hearing, **xxxxxxx**

Debtor in Possession states the proposed sale will be free and clear of all liens, claims, and interests pursuant to 11 U.S.C. § 363(f), with any valid, perfected, and enforceable liens to attach to the proceeds in the same order of priority, pending further order of the Court. Mot. at 4:12-14.

Debtor in Possession further proposes and seeks approval of the bid procedures attached as Exhibit B. These provide for overbid qualification criteria, a bid deadline of June 20, 2025, and an auction date of June 24, 2025, to be conducted by Debtor's counsel via Zoom or in person at counsel's office. Bids must exceed the stalking horse offer by at least $5,000 and include a 10% deposit and evidence of financial ability. If no qualified overbids are received, no auction will be held, and the stalking horse bid will be deemed the highest and best offer, subject to final court approval. Mot. 4:15-21.

The court expresses reservations with permitting counsel for Debtor in Possession to conduct an auction in private. Counsel for Debtor in Possession, although an ethical and well respected attorney, can certainly see questions arising around a sale conducted outside the court's purview by an interested party. It is the court's duty to ensure a sale is made in a commercially reasonable manner. At the hearing, **xxxxxxx**

Finally, regarding marketing the Personal Property, Debtor in Possession states although the Debtor's marketing budget is limited, a good-faith marketing effort will be made. The opportunity will be circulated to known industry contacts and competitors. The sale notice will also be posted on the Debtor's website and social media channels, and additional outreach will be undertaken where feasible. Mot. 4:26-5:2.

Like with the proposed auction, the court must ensure that the Personal Property has been marketed in a commercially reasonable manner. Debtor in Possession states details of the marketing will be coming forward in a Declaration in support of a future Motion to Sell. Mot. 5:28-4:2. Debtor in Possession is in essence requesting the court find Debtor in Possession's marketing efforts are commercially reasonable despite not knowing what these efforts actually consisted of.

Debtor in Possession states that "the process is subject to judicial oversight at each stage." Mot. 5:6-7. However, that is not true. The auction is supposedly going to be conducted on Zoom or at Mr. Haddix's office, and the marketing efforts are not fully disclosed even now. 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 Approve Bid Procedures and Designate Stalking Horse Bidder filed by Heritage Home Furnishings, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14.	**25-90029-E-11** **UST-1**	**RANCHO FRESCO TURLOCK INC.** **David Johnston**	**MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 (FILING FEE NOT PAID OR NOT REQUIRED), MOTION TO DISMISS CASE** **4-17-25 [39]**

Status conference 2:00 calendar

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession and all creditors and parties in interest on April 17, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case or Convert is granted, and the case is xxxxxxx.

United States Trustee, Tracy Davis ("U.S. Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 1112(b) on the basis that:

1. Rancho Fresco Turlock, Inc. (" Debtor in Possession") failed to satisfy timely any filing or reporting requirement established by the Bankruptcy

Code or by any rule applicable to a case under chapter 11 in violation of 11 U.S.C. § 1112(b)(4)(F). Mot. 4:1-17.

2. Cause exists under 11 U.S.C. § 1112(b)(4)(H), because the Debtor has failed to timely provide information reasonably requested by the U. S. Trustee or attend meetings reasonably set by the U.S. Trustee. Mot. At 4:17-5:2.

3. Cause exists under 11 U.S.C. § 1112(b)(4)(G), because the Debtor has failed to attend two meetings of creditors convened by the U.S. Trustee as required under 11 U.S.C. § 343. Mot. 5:3-16.

4. U.S. Trustee recommends dismissal as Debtor's counsel has informed the U.S. Trustee that the landlord has evicted the Debtor and there do not appear to be assets in the case. *Id.* at 5:17-27.

U.S. Trustee submitted the Declaration of Carla K. Cordero in support of the Motion to authenticate the facts alleged in the Motion and the attached Exhibits. Decl., Docket 41.

Walter Dahl, the Subchapter V Trustee ("Sub. V Trustee"), supports the Motion but instead suggests conversion is in the best interests of creditors fo the Estate. Docket 43. Sub. V Trustee says Debtor in Possession owns restaurant equipment and other assets from which a dividend may ultimately be disbursed to creditors.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P)failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

The Ninth Circuit has held that, although "section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court's finding that the Chapter 11 Petition was not filed in good faith when "the debtor's Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond." *Id.* at 829.

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

Collier's Treatise states on the subject:

> Congress added to the enumerated causes under section 1112(b)(4) the failure by the debtor to timely file or report information as required by other provisions of the Bankruptcy Code. By adding this provision, Congress has provided the statutory remedy for such failure where the remedy is not expressed within the Code provision setting forth the required reporting. For example, where a small business debtor fails to timely file the documents required to be appended to the petition pursuant to section 1116(1), such failure constitutes a failure to report. Similarly, section 1188(c) requires debtors proceeding under subchapter V to file a report of the debtor's efforts to obtain a consensual plan at least 14 days before the status conference scheduled by the court under section 1188(a). The failure to timely file this report constitutes cause. Nevertheless, by providing that the failure to report or file must be unexcused in order to constitute cause for dismissal or conversion, the statute provides to the court discretion in determining whether such cause has been established. "By inference the court, therefore, has the ability and some discretion to determine what is an 'excused' or 'unexcused' failure to 'timely file' the designated documents." Where the debtor subsequently cured the deficient filing and provided a good explanation for the delinquency in filing the documents required by section 1116(1), the court found that the failure to file or report was "excused."
>
> Unexcused failures to report or file required information however will constitute cause. When such unexcused failure has been demonstrated by the movant, the court shall dismiss or convert the case (or appoint a trustee or examiner), unless unusual circumstances are specifically found by the court to make such actions not in the best interest of creditors and the estate.

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

> Section 341 provides for a meeting of creditors to be attended by the debtor. Rule 2004 authorizes the bankruptcy court to permit the examination of the debtor regarding such matters as the debtor's operations, the debtor's assets and other information related to the administration of the bankruptcy estate. The debtor's failure to abide by these procedures constitutes cause to convert or dismiss the case, unless the debtor can demonstrate good reason for the debtor's failure. Again, even prior to the addition of this provision to section 1112(b) in 2005, courts determined that failure by the debtor to attend the section 341 meeting or the examination ordered by the court pursuant to Rule 2004 was a basis to dismiss the case

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

> Courts have noticed that this section is awkwardly worded. This section has been interpreted to mean "failure to timely provide information or attend meetings reasonably requested." For example, the debtor is required by section 521 to perform certain duties and provide the court, the United States trustee, and parties in interest with documents.
>
> The United States trustee is charged with, inter alia, monitoring plans and disclosure statements, verifying reports and schedules, reporting possible criminal activity and supervising the progress of cases under chapter 11 and may gather information from the debtor regarding operations in order to perform these duties. In small business cases, the United States trustee may require extensive access to the debtor's operations and business records in order to comply with the requirements of the office. The failure to comply with these requests, if the requests are reasonable, constitutes cause to convert or dismiss the case. However, a delayed response by the debtor is not always viewed as "cause" to dismiss or convert a case.

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

DISCUSSION

In this case, the court finds there is cause to dismiss or convert the case pursuant to 11 U.S.C. §§ 1112(b)(4)(F), (G), and (H). Debtor in Possession has not filed monthly operating reports in violation of 11 U.S.C. § 1112(b)(4)(F). Debtor in Possession has not attended at least two 341 Meetings in violation of 11 U.S.C. § 1112(b)(4)(G). Debtor in Possession has not timely complied with U.S. Trustee's attempts to review documents in the case in violation of 11 U.S.C. § 1112(b)(4)(H). Therefore, there is cause to dismiss or convert. The U.S. Trustee recommends dismissal, but the Sub. V Trustee recommends conversion.

In reviewing the Schedules, Debtor in Possession has scheduled a total of $355,375 in real and personal property assets, and $0 in secured claims against these assets. There are scheduled $380,000 in nonpriority unsecured claims and $1,600 in priority unsecured claims. Schedules at 3, Docket 13. It appears there is value for a Chapter 7 Trustee to pursue.

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 Dismiss or Convert filed by United States Trustee, Tracy Davis, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss or Convert is granted, and the case is **XXXXXXX**.

15. 24-90343-E-11 UST-1

MARTINEZ PALLET SERVICES, INC.
Gabriel Liberman

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE
4-16-25 [128]

Items 15 thru 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession and all creditors and parties in interest on April 16, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case or Convert is xxxxxxx.

United States Trustee, Tracy Davis ("U.S. Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 1112(b) on the basis that:

1. There has been substantial or continuing losses, and the absence of a reasonable likelihood of rehabilitation in the case of Martinez Pallet Services, Inc. ("Debtor in Possession"). Mot. 1:23-25.

    a. Specifically, Debtor in Possession's monthly operating reports from November 2024 through February 2025 evidence net negative income over a four-month period, and the February MOR indicates unpaid postpetition liabilities of $29,051. Additionally, the Debtor's own Plan projections indicate that the Debtor will not be able to propose a feasible plan capable of paying existing obligations to its secured creditors and required payments to priority creditors. *Id.* at 1:26-2:4.

U.S. Trustee submitted the Declaration of Carla K. Cordero in support of the Motion to authenticate the facts alleged in the Motion and the attached Exhibits. Decl., Docket 130.

Creditors Pedro Peres, Felicitas Molina, Pedro Davalos, Joel Ramirez, Sergio Lancesf, and Marco A Zombrano filed a Joinder in *pro se*. Docket 140. Creditors support dismissal on the basis that Debtor in Possession cannot propose a confirmable plan and Debtor in Possession has not acted in good faith. Creditors support conversion to a case under Chapter 7.

Debtor in Possession Opposition

Debtor in Possession filed an Opposition on May 8, 2025. Docket 142. Debtor in Possession states:

1. After careful consideration, Debtor has determined that it will sell the Turlock Property and find a comparable lease space with significant reduction in fixed expenses. Debtor has not secured a location but has confirmed with potential landlord that future lease payments would be approximately $3,500 to $5,000 a month, and the range would be based on how much land would be needed to operate in. Opp'n 2:4-9.

2. Debtor has also determined various pieces of equipment it can sell to assist in funding a future plan of reorganization, which it would not need to continue operating at its same level. Debtor has located a potential buyer in Los Angeles who is interested in the following assets, which total $121,000 in additional sale proceeds:

   a. (2) Dismantling machines at $17,000 each, totaling $34.000;

   b. (1) Single head saw - $15,000; and

   c. (16) van trailers at $4,500 each, totaling $72,000.

3. Debtor had a disruption in its income stream in March 2025 due to one of its trucks being impounded for traffic citations. With debtor resolving these issues, Debtor expects its future gross income and expenses will be sufficient to pay all its creditors in full. *Id.* at 3:3-20.

4. Debtor has also been working with its bookkeeper on its tax liability, which is significant. The Internal Revenue Service filed a proof of claim No. 3, and amended on August 15, 2024 for priority unsecured amount of $250,682.20 and general non-priority of $17,540.72. Based on tax records and payments the Debtor made to the IRS for the debts presented in the proof of claim, debtor believes the actual priority portion owed to the IRS is closer to $69,000.00. Debtor in Possession will object to the IRS' claim as part of its amended plan. *Id.* at 3:23-4:2.

5. Debtor refutes that a reorganization is unrealistic or futile. Debtor is aware and understands this case has taken various twists, turns and delays, but Debtor has a outlined a realistic plan. Debtor's proposed timeline to stabilize is reasonable, 60 days or July 2025, and understands that Debtor has previously argued in the past that changes were coming and with more

> income on the way. Debtor does make those same arguments again today but also with the proposals outlined above that are drastic. *Id.* at 5:12-16.

Debtor in Possession submits the Declaration of Adela Espinoza Sanchez, the secretary of Debtor in Possession, to authenticate the facts alleged in the Opposition. Docket 143.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;
> >
> > (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
> >
> > (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
> >
> > (E) failure to comply with an order of the court;
> >
> > (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
> >
> > (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
>
> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
>
> (K) failure to pay any fees or charges required under chapter 123 of title 28;
>
> (L) revocation of an order of confirmation under section 1144;
>
> (M) inability to effectuate substantial consummation of a confirmed plan;
>
> (N) material default by the debtor with respect to a confirmed plan;
>
> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P)failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

The Ninth Circuit has held that, although "section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court's finding that the Chapter 11 Petition was not filed in good faith when "the debtor's Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond." *Id.* at 829.

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

Collier's Treatise states on the subject:

> The first example of cause listed in section 1112(b)(4) is "substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation." In general, this standard has two basic requirements. First, it tests whether, after the commencement of the case, the debtor has suffered or continued to experience a negative cash flow, or, alternatively, declining asset values. Second, it tests whether there is any reasonable likelihood that the debtor, or some other party,

> will be able to stem the debtor's losses and place the debtor's business enterprise back on solid financial footing within a reasonable amount of time. Both tests must be satisfied in order for cause to exist under this subparagraph to dismiss or convert the case under section 1112(b)(4)(A).
>
> This standard asks two questions. First, does the debtor have a negative cash flow or declining asset values? This includes looking at the financial history of the debtor and determining if a pattern of decline exists. Second, will the debtor or another party be able to "stop the bleeding" and return the debtor to solid financial footing within a reasonable amount of time? The first question must be answered in the affirmative and the second in the negative for cause to exist. However, the "loss or diminution prong" is not relevant if the debtor is not an operating company but merely holds an intangible asset

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

DISCUSSION

In this case, it is undisputed that the monthly operating reports for the months of November 2024 through February 2025 reveal a negative net income. Debtor in Possession informs the court this is largely because one of its trucks was impounded for traffic citations. It does not comfort creditors or the court to know a Debtor in Possession is wasting assets of the Estate by failing to comply with traffic laws.

The court has heard arguments from Debtor in Possession before about increased income. Debtor in Possession asserts it is not now making those same arguments, instead offering a concrete pathway to a viable reorganization. Specifically, Debtor in Possession proposes to sell certain assets, stating there is already a buyer in place. A sale of the assets would certainly assist in generating income for the Estate; however, there is no Motion to Sell on file.

Debtor in Possession also proposes to sell the current real property at which it operates and downsize to something more affordable. Selling the real property would likely take time, and there is similarly not a Motion to Employ broker or Motion to Sell on file. This case has been ongoing for almost a year now with no clear direction, apparently changing courses at whim, there being no Plan currently on file. Debtor in Possession is proposing 60 days or by July of 2025 to right this ship.

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 Dismiss or Convert filed by United States Trustee, Tracy Davis, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss or Convert is **xxxxxxx**.

16.	**24-90343-E-11** **CAE-1**	**MARTINEZ PALLET SERVICES, INC.**	**CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION** **6-21-24 [1]**

Debtor's Atty: Gabriel E. Liberman

Continued from 4/17/25, counsel for the Debtor in Possession reporting that the insurance on the real property was cancelled. The Debtor in Possession stating that it is projected to be reinstated by Monday, April 21, 2025.

Operating Reports filed: 5/7/25 [Feb]; 5/7/25 [Mar]

The Status Conference is xxxxxxx

MAY 22, 2025 STATUS CONFERENCE

The Debtor in Possession has not filed an updated Status Report.

At the Status Conference, **xxxxxxx**

APRIL 17, 2025 STATUS CONFERENCE

The Debtor in Possession filed an updated Status Report on April 16, 2025. Dckt. 133. The Debtor in Possession reports that the course of this case will be taking on a new direction. Real property securing the First Chatham Bank claim is to be surrendered, and the business operations moved to a smaller leased property.

The Debtor in Possession is actively working to sell personal property assets which are not necessary for the ongoing operations. Additionally, the Debtor in Possession reports new clients being secured.

The U.S. Trustee filed on May 22, 2025, a Motion to Convert or Dismiss this case.

At the Status Conference, counsel for the Debtor in Possession reported that the insurance on the real property was cancelled, and the Debtor in Possession reports that it is projected to be reinstated by Monday April 21, 2025.

Counsel for Chatham Bank is investigating whether it will seek to foreclose on the property or have it sold through the Bankruptcy Case. The lapse in the insurance is a reoccurring problem.

The Subchapter V Trustee will communicate with the Responsible Representatives of the Debtor in Possession and then directly with the insurance agents to see what assistance she may offer in getting the insurance promptly reinstated.

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

FEBRUARY 20, 2025 STATUS CONFERENCE

On February 14, 2025, the Debtor/Debtor in Possession filed a Withdrawal of Plan Confirmation Hearing. Dckt. 113. The Debtor/Debtor in Possession advises the court that it is "currently working on an amended plan to resolve objections filed against the current plan and anticipates filing an amended plan within 30 days, as the current Plan is not confirmable." *Id.*

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that an Amended Plan is being prepared and will be filed and set for a confirmation hearing.

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

17. 25-90262-E-11 SAO-1 | **AMERICAN TRADERS, INC.** **Richard Jare** | **MOTION TO DISMISS CASE 4-23-25 [18]**

Status Conference 2:00 calendar

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession and 20 largest creditors on April 23, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case is ~~granted and the case is dismissed.~~

Central Valley Associates, LLC ("CVA," "Creditor"), seeks dismissal of the case pursuant to 11 U.S.C. § 1112(b) on the basis that:

1. The only asset in American Traders, Inc.'s (" Debtor in Possession") case is the leasehold rights in real property commonly known as 1720 Sisk Road, Modesto, California ("Leasehold"). Debtor in Possession's leasehold rights in the Property were extinguished in accordance with California law prior to the filing of Debtor in Possession's first bankruptcy case on October 11, 2024. Mot. 2:6-14.

2. This is Debtor in Possession's second bankruptcy filing within one year. Like Debtor in Possession's first bankruptcy case, this case was filed in bad faith since no reorganization of Debtor in Possession is possible. *Id.* at 2:17-19.

3. The value of Debtor in Possession's now terminated leasehold interest in the Property is less than the debt secured by this leasehold. Accordingly, even if Debtor in Possession's leasehold interest still existed, a sale would yield nothing for the bankruptcy estate. *Id.* at 2:20-23.

4. The Property is improved by a hotel. The City of Modesto revoked Debtor in Possession's license to manage this hotel for three years. Accordingly, even if Debtor in Possession did have an interest in this single purpose asset, it could not reorganize since it cannot operate this hotel. *Id.* at 2:24-27.

CVA filed the Declarations of Sean A. Okeefe (Docket 20) and Karen Sears (Docket 23) to authenticate the facts alleged in the Motion and to authenticate the accompanying Exhibits.

Secured creditor Poppy Bank ("Poppy") filed a Joinder to the Motion on April 24, 2025. Docket 30. Poppy asserts:

1. Poppy has been attempting to foreclose on Debtor in Possession's leasehold interest. The previous case frustrated the initial foreclosure proceedings, and this second case frustrated the most recent foreclosure proceedings. Joinder 2:16-23, Docket 30.

2. Poppy agrees with CVA that Debtor filed its bankruptcy petition in bad faith. As CVA points out, and as set forth above, according to Debtor's own schedules it has no equity in the property. Lack of equity in a single asset real estate1 are factors, amongst others, that a court may use to determine whether a debtor's filing is in good faith. *Id.* at 3:7-10.

Debtor in Possession's Opposition

Debtor in Possession filed an Opposition and supporting pleadings to the Creditor's Motion and Poppy's Joinder on May 8, 2025. Docket 40-46. Debtor in Possession states:

1. Debtor in Possession respectfully requests that the matter be scheduled for evidentiary hearing after opportunity for discovery and further briefing is established. Opp'n 1:26-28.

2. Debtor in Possession owns the leasehold to property located at 1720 Sisk Road Modesto, CA 95350. *Id.* at 2:1-2.

3. This Chapter 11 case is different from the Prior Dismissed Chapter 11 Case as attorney Richard Jare intends to guide the Debtor in Possession towards the path of selling the property. *Id.* at 2:8-16.

Debtor in Possession submits the Declaration of Timothy Ian Crawley in support. Decl., Docket 41. Mr. Crawley is Debtor in Possession's state court counsel, testifying Creditor here has been frustrating Debtor in Possession's ability to sell its interest in the leasehold.

Moreover, Debtor in Possession filed the Declaration of Daljeet Singh Mann, who is Debtor in Possession's responsible representative. Docket 42. Mr. Mann testifies that there appears to be a buyer lined up for Debtor in Possession's leasehold interest, California Sisk Hotel Inc. ("Sisk").

Debtor in Possession also filed the Declaration of Deepinder Singh, who is the responsible representative of Sisk. Docket 43. Mr. Singh testifies that Sisk will likely purchase the leasehold in the range of $2,400,000. Decl. 2:28-3:1.

Poppy's Reply

Poppy filed a Reply to the Opposition on May 15, 2025. Docket 52. Poppy states the sale envisioned by Debtor in Possession would result in a significant shortfall of funds. The secured debt currently burdening the leasehold interest, using Debtor's own numbers, and current numbers from the City of Modesto, and not even counting various third party judgment liens, is as follows:

1. $3,448,891- Poppy Bank's outstanding lien (Docket #21, Schedule D, Part 2.1)

2. $81,636.90 – Property taxes (Docket #21, Schedule D, Part 2.2)

3. $254,402.64- City of Modesto TOT and MTMD taxes (Christensen Decl., para. 5, filed concurrent with this Reply).

APPLICABLE LAW

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

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;
> >
> > (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

> (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
>
> (E) failure to comply with an order of the court;
>
> (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
>
> (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
>
> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
>
> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
>
> (K) failure to pay any fees or charges required under chapter 123 of title 28;
>
> (L) revocation of an order of confirmation under section 1144;
>
> (M) inability to effectuate substantial consummation of a confirmed plan;
>
> (N) material default by the debtor with respect to a confirmed plan;
>
> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P)failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

The Ninth Circuit has held that, although "section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court's finding that the Chapter 11 Petition was not filed in good faith when "the debtor's Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond." *Id.* at 829.

The court would note that bankruptcy court's have found that a "desire for orderly liquidation of assets" is not a reason that would support a bad faith filing, but is a "legitimate reason[] to file

bankruptcy." *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

Collier's Treatise states on the subject:

> If the issue is whether the petition was filed in good faith, the movant bears the initial burden to make a prima facie showing to support the allegation of bad faith, but if the movant does so, the ultimate burden rests on the bankruptcy petitioner to demonstrate good faith.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[4].

DISCUSSION

The court finds that dismissal is proper because the case was not filed in good faith. As an initial matter, the law appears clear on the issue that Debtor in Possession does not own the leasehold, the very asset it is attempting to sell through bankruptcy. The case *In re Windmill Farms, Inc.*, 841 F.2d 1467 (9th Cir. 1988) is instructive. The court held there that "if a lease of nonresidential real property has been terminated under state law before the filing of a bankruptcy petition, there is nothing left for the trustee to assume [in bankruptcy]." *Id.* at 1470. Moreover, *Windmill* stands for the proposition:

> We hold that under California law a lease terminates for nonpayment of rent at least by the time the lessor files an unlawful detainer action, provided that a proper three-days' notice to pay rent or quit has been given, and the lessee has failed to pay the rent in default within the three-day period, and further provided that the lessor's notice contained an election to declare the lease forfeited.

Id. at 1472.

Here, Creditor has stated that the leasehold terminated prior to filing bankruptcy under California law. Creditor states Debtor was served with two valid ten-day notices to pay or quit the Property. When it failed to pay the arrearage owed, or to vacate the premises, CVA filed an unlawful detainer complaint. The latter filing terminated the Ground Sublease. Mem. 4:27-5:19.

The court has peeled through Creditor's Exhibits in support and has not seen the ten-day notices to pay or quit the Property, but the court has seen the unlawful detainer cause of action included as Exhibit 2, Docket 25.

At the hearing, **xxxxxxx**

The court need not determine whether Debtor in Possession owns the leasehold to dismiss the case. Debtor in Possession states that the prior case was dismissed as Debtor in Possession's prior counsel was not making efforts to sell the leasehold. This is a misstatement of the events. Debtor in Possession was expressly attempting to sell the leasehold in the prior case, but progress was not being made.

As in that case, Debtor in Possession here refuses to discuss the following glaring issues: Debtor in Possession likely does not own the leasehold, Debtor in Possession cannot sell the leasehold for any

amount near what is owed on the secured debt (the speculative sale being for $2,400,000 or less but Poppy's secured claim being in excess of $3,400,000), and Debtor in Possession does not have the necessary legal permits to operate the business. The case has been filed again on the eve of foreclosure, this time the case being filed on April 3, 2025 with trustee's sale to take place on April 4, 2025. These are factors the court considers in a bad-faith filing.

~~For these reasons, the case is dismissed. Creditor has made a prima facie showing that the case has been filed in bad faith. Debtor in Possession has not shown that the case has been filed in good faith. Debtor in Possession's only plan appears to be to ignore any arguments that it does not own the leasehold and to (hopefully) sell the leasehold for over $1,000,000 less than the secured obligations. The Motion to Dismiss is granted, and the case is dismissed, the court finding the case has not been filed in good faith pursuant to 11 U.S.C. § 1112(b).~~

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 Central Valley Associates, LLC ("CVA," "Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is ~~granted and the case is dismissed.~~

18. 24-90166-E-7 KMT-4

GRAINS OF VIRTUE BREWERY, LLC
Taras Kurta

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD FOR GABRIEL P HERRERA, TRUSTEES ATTORNEY(S)
5-1-25 [51]

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

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

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

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

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

The Motion for Allowance of Professional Fees is granted.

Nikki B. Farris, the Chapter 7 Trustee ("Applicant," "Trustee"), moves the court for authorization of first and final fees and expenses for Trustee's general counsel, Kronick, Moskovitz, Tiedemann & Girard ("KMTG"), in the reduced amount of $3,279.29 for fees and $220.71 for costs, for a total compensation of $3,500.00 for the period of April 1, 2024 through, and including, April 29, 2025. The order of the court approving employment of Applicant was entered on April 19, 2024. Dckt. 11.

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 KMTG's services for the Estate include assisting Trustee in liquidating various assets of personal property. The Estate has $14,000 of proceeds from the auctioned personal property. The court finds the services were beneficial to 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.

Stipulated Agreement and Auction of the Personal Property: Applicant spent 20.1 hours in this category. Applicant assisted the Trustee in liquidating various assets of this Estate by taking them to auction.

Employment/Fee Applications: Applicant spent 4.5 hours in this category. Applicant prepared this fee application and the application to employ KMTG.

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**
Gabriel P. Herrera, Attorney	1	$350.00	$350.00
Gabriel P. Herrera, Attorney	3.5	$375.00	$1,312.50
Gabriel P. Herrera, Attorney	20.1	$350.00	$7,035.00
Total Fees for Period of Application			$8,697.50

KMTG is reducing these requested fees to the amount of $3,279.29.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $220.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage and Photocopies	$0.15	$220.71
Total Costs Requested in Application		$220.71

FEES AND COSTS & EXPENSES ALLOWED

Fees & Costs
Reduced Rate

Applicant seeks to be paid a single sum of $3,500.00 for its fees and expenses incurred. First and Final Fees and Costs in the amount of $3,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$3,279.29
Costs and Expenses	$220.71

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Nikki B. Farris, the Chapter 7 Trustee ("Applicant," "Trustee"), for Trustee's general counsel, Kronick, Moskovitz, Tiedemann & Girard ("KMTG") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kronick, Moskovitz, Tiedemann & Girard is allowed the following fees and expenses as a professional of the Estate:
>
> Kronick, Moskovitz, Tiedemann & Girard, Professional employed by the Chapter 7 Trustee
>
> | | |
> |---|---|
> | Fees | $3,279.29 |
> | Costs and Expenses | $220.71, |

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

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

FINAL RULINGS

19. 25-90250-E-7 **DAVID HICKMAN**
Carl Gustafson

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-17-25 [12]

Final Ruling: No appearance at the May 22, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on April 17, 2025. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's counsel's failure to maintain the same address in PACER as listed on the Voluntary Petition.

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

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured, Debtor filing an Amended Petition on May 13, 2025, that corrects the email address. Docket 20.

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.

20. 21-90378-E-11 BSH-1 | **MOBREWZ, LLC** **David Johnston** | **MOTION BY BRIAN S. HADDIX TO WITHDRAW AS ATTORNEY 4-18-25 [127]**

Final Ruling: No appearance at the May 22, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 18, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Withdraw as Attorney is granted.

Brian S. Haddix ("Movant"), counsel of record for MoBrewz, LLC ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. Movant's representation was limited in scope and has now been fully completed. No further services are contemplated or required. Mot. 2:6-7.

B. Debtor continues to be represented by counsel David C. Johnston. *Id.* at 2:9.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the

withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that his representation was limited in scope and has now been completed. Decl. ¶ 3, Docket 129. Moreover, Debtor is still represented by competent counsel, not being left in *pro se.* The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Withdraw as Attorney filed by Brian S. Haddix ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for MoBrewz, LLC ("Debtor").