

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**May 23, 2024 at 10:30 a.m.**

1. [23-24610-E-11](#) LAFLEURWAY, LLC  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-23-23 [1]**

1 thru 2

**SUBCHAPTER V**

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 4/18/24 to be heard in conjunction with the Motion to Approve Loan Modification.

U.S. Trustee Report at 341 Meeting lodged 5/1/24

Operating Report filed 5/13/24

**The Status Conference is XXXXXXXX**

**MAY 23, 2024 STATUS CONFERENCE**

No updated Status Report has been filed by the Debtor in Possession. Pleadings in related matters have been filed by the Debtor in Possession.

At the Status Conference, **XXXXXXX**

**APRIL 18, 2024 STATUS CONFERENCE**

The Status Conference was conducted in conjunction with the continued hearing on the Debtor/Debtor in Possession's Motion for approval of a trial loan modification. As addressed in the Minutes and the hearing, the court has identified serious deficiencies in that Motion and its supporting pleadings, as well as statements made in documents filed under penalty of perjury and subject to the Federal Rule of Bankruptcy Procedure 9011 certifications.

Thursday, May 23, 2024 at 10:30 a.m.

The court has further continued the status conference to 10:30 a.m. on May 23, 2024 continued hearing on the Motion to Approve Trial Loan Modification. Carl Dexter, the responsible representative and managing member of the Debtor/Debtor in Possession was personally in attendance at the Status Conference and hearing on the Motion as ordered by the court.

#### **APRIL 4, 2024 STATUS CONFERENCE**

In reviewing the file, the court notes that the Debtor/Debtor in Possession has now filed three monthly operating reports for this Bankruptcy Case filed in December 2023 (shortly after the Debtor was created and real property transferred into it). These Monthly Operating Reports for December 2023, and January and February 2024, are summarized as follows:

- A. December 23 - 31, 2023 Monthly Operating Report; Dckt. 56.
1. The Debtor/Debtor in Possession states that the line of business in this Case is “Rental.”
  2. The total Opening Balances for all of the bank accounts when this case was filed was \$0.00. *Id.*; ¶ 19.
  3. The total Cash Balances on December 31, 2024, was \$3,900.00.
  4. It is stated that Professionals were paid \$5,000 “this month.”
  5. The \$3,900.00 in monies received were from “Cash Receipts.” *Id.*; ¶¶ 32-34.
  6. The Debtor/Debtor in Possession projects that for the full month of January 2024 the cash flow will again be \$3,900, while the cash disbursements for January 2024 will be \$3,900, resulting in \$0.00 of operating profits in January 2024. *Id.*; ¶ 35-36.
  7. Though ¶ 20 of the Monthly Operating Reports requires that a listing of the cash received be attached as Exhibit C, no listing of such receipts or their source(s) is provided.
  8. The Debtor/Debtor in Possession stated in response to the question that there are open bank accounts other than Debtor/Debtor in Possession account (*Id.*, ¶ 10), the Debtor/Debtor in Possession did not attach the required Exhibit B explaining why there were non Debtor/Debtor in Possession accounts.
  9. Though the Debtor/Debtor in Possession checked the boxes in Section 8 that there are financial reports (such as profit and loss statement or balance sheet), Budget or projections, and Project, job costing, or work-in-progress reports, none are attached to the December 2023 Monthly Operating Report as required in Section 8.
- B. January 2024 Monthly Operating Report; Dckt. 57.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.
2. Though stating under penalty of perjury on the December 2023 Monthly Operating Report that there was \$3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of January 1, 2024, there was \$0.00 of cash on hand. Dckt. 57; ¶ 19.
3. Debtor/Debtor in Possession then states that for January 2024 there were \$3,900.00 in cash receipts, there were no disbursements, and that on January 31, 2024, there was \$3,900.00 cash on hand. *Id.*; ¶ 20-23.
4. Debtor/Debtor in Possession then states that \$5,000.00 in professional fees were paid in the month of January 2024. *Id.*; ¶ 28.
5. Debtor/Debtor in Possession projects that there will be \$3,900.00 in cash receipts in February 2024, and also (\$3,900.00) in disbursements, which will leave a February 29, 2024 net cash flow to start March 2024. *Id.* ¶¶ 32 - 37.
6. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was \$3,950.00 in rental income and \$0.00 in expenses. *Id.*; p. 4.

C. February 2024 Monthly Operating Report; Dckt. 58.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.
2. Though stating under penalty of perjury on the January 2024 Monthly Operating Report that there was \$3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of March 1, 2024, there was \$0.00 of cash on hand. Dckt. 57; ¶ 19.
3. Debtor/Debtor in Possession then states that \$5,000.00 in professional fees were paid in the month of February 2024. *Id.*; ¶ 28.
4. For projections, in addition to projecting \$3,900 in cash receipts in April 2024, the Debtor/Debtor in Possession also projects (\$3,900) in disbursement in April 2024. *Id.*; ¶¶ 32-37.
5. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was \$3,950.00 in rental income and \$0.00 in expenses. *Id.*; p. 4.

Taken as stated by the Debtor/Debtor in Possession under penalty of perjury, as of February 29, 2024, there should have been \$11,700.00 in cash being held by the fiduciary Debtor in Possession, not \$0.00 as indicated by the fiduciary Debtor/Debtor in Possession.

On March 25, 2024, the counsel for the Debtor (in the upper left hand corner he is identified as “Attorney for Debtor Lafleur Way, LLC” and not the Debtor/Debtor in Possession) filed a Motion for Order Approving Trial Loan Modification. Dckt. 62. In the Motion, the Attorney for Debtor states that the Debtor is to make payments, and that the Debtor understands the modified loan terms, and that multiple “Debtors” (even though the sole debtor in this case is Lafleur Way, LLC) continue to meet all eligibility requirements of the modification program. Motion, ¶ 5, 8, 4; Dckt. 62.

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration “on behalf of” the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony “on behalf of” another entity). *Id.*; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

3. The subject real property is commonly known as 1078 La Fleur Way< [sic] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [sic] trial modification.

[Second ¶ 3]

3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [sic] PHH, Mortgage.

4. That the first payment of \$3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The exhibits are true and correct copies of the documents received from Plaza Home Mortgage. <sup>FN.1.</sup>

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FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.  
-----

In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

Looking at the exhibits provided by the Debtor/Debtor in Possession, the fiduciary to the Bankruptcy Estate, the court begins with the Letter from Plaza Home Mortgage which Mr. Dexter testifies that “I have been offered a trial loan modification from our lender Plaza Mortgage co / o PHH, Mortgage.” <sup>FN.2.</sup> The court summarizes or “quotes” the information provided in the Letter; Exhibit A, Dckt. 65 at 2-3; as follows:

- A. The Letter, dated February 29, 2024, is addressed to “Carl Dexter” personally, and not to LaFleur Way, LLC via a managing member.
- B. The Letter makes reference to a death and Mr. Dexter having acquired an ownership interest in the La Fleur Way Property.
- C. A Death Certificate is required by the borrower’s death.

- D. If there is a deed transferring title to Carl Dexter, a copy of the deed so transferring title to Carl Dexter.
- E. Spousal agreement documenting a non-probate transfer of community property.
- F. Court order or decree documenting that no court proceedings are required for the transfer of title to Mr. Dexter.
- G. Documentation if Carl Dexter acquired title through intestate succession.
- H. Proof of Carl Dexter's identity.

There is nothing in this Letter indicating that anything is being done involving the Debtor Lafleur Way, LLC as the owner or with Lafleur Way, LLC, the fiduciary Debtor/Debtor in Possession.

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 FN. 2. From the plain language of Mr. Dexter's testimony under penalty of perjury, there appear to be multiple persons involved in this loan modification given that he states that Plaza Mortgage is "our lender."  
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Exhibit B (Dckt. 65 at 4-23) is identified as the Plaza Home Mortgage Trial Loan Modification. The provisions of the proposed Modification include (identified by page number on Dckt. 65):

- A. The Loan Modification, dated February 22, 2024 (well after the transfer of the property to the Debtor), is addressed to "Frank Allen." Dckt. 65 at 4.
- B. The Monthly Payment is to be \$3,052.89. *Id.*

No reference is made to the Debtor, Lafleur Way, LLC in either of these two letters with respect to an offered loan modification.

Reference is made in the Letters to a Frank Allen, who appears to be stated by Carl Dexter to having been deceased. The court cannot identify any grant deed or other documents by which the La Fleur Way Property made its way from Frank Allen to Lafleur Way, LLC.

A Subchapter V plan has now been filed by the Debtor/Debtor in Possession, seeking to reorganize the Debtor's business operations. Dckt. 61. The court's initial observations regarding the Subchapter V Plan include:

- A. Lafleur Way, LLC as the Debtor/Debtor in Possession advances this Plan.
- B. Carl Dexter owns the Debtor, which is stated to be a "closely held corporation." Plan, p. 1:23-24; Dckt. 61.

In reality, as the court has pointed out previously, the Debtor and the Debtor/Debtor in Possession is a limited liability company, not a corporation.

- C. It is stated that the 1078 LaFleur Way, Sacramento, California property is rented to “persons and 1 corporation.” *Id.*; p. 1:27.
- D. The Plan then states:

Debtor filed the instant case, after the rights to the property just prior to foreclosure.

*Id.*; 2:1-2. While the court could guess what this sentence means to say, something like, “the Debtor was created on the eve of foreclosure, then had the Property transferred into it; and then filed this single real estate asset case to stop the foreclosure sale;” the court will not provide such editing services to the Debtor/Debtor in Possession, its managing member, and its counsel.

- E. The Plan states that the “Debtor” has been approved for a trial loan modification. *Id.*; p. 3:15-16.

As shown by the evidence provided by the Debtor/Debtor in Possession, no trial loan modification has been offered to it, but apparently only personally to Carl Dexter, upon his documenting the death of Frank Allen and Carl Dexter acquiring title through the late Frank Allen.

- F. Debtor has no creditors other than the creditor having a lien on the Real Property. *Id.*; p. 3:1-5.
- G. Counsel for the Debtor/Debtor in Possession received no retainer and projects his fees to be \$7,500.00 for this Subchapter V Case. *Id.*; p. 4:23-26.
- H. Under the Plan, it is the Debtor/Debtor in Possession who must make the payments on the claim secured by the Real Property. *Id.*; p. 5:16-26.
- I. Carl Dexter shall serve as the Chief Executive Office for the limited liability company Debtor/Debtor in Possession. *Id.*; p. 9:1-2.

It appears that the limited liability company Debtor/Debtor in Possession will have no managing member.

There is no financial information provided with the Subchapter V Plan, no projections of operations, or anything showing that the Debtor/Debtor in Possession can actually perform a Plan. As noted above, the Monthly Operating Reports are riddled with inconsistencies and Carl Dexter states under penalty of perjury on each that while the prior month ends with a cash balance of \$3,900, that money has disappeared before the start of the next month.

It appears that mischief is afoot in this Bankruptcy Case. There are no loan modification documents relating to the fiduciary Debtor in Possession. The Monthly Operating Reports are grossly incorrect. One might begin to suspect that there is a fraud being committed on the court in violation of federal law.

From the February 28, 2024, Loan Modification Offer Letter to Carl Dexter (Exhibit B; Dckt. 65), it expressly states that Carl Debtor has stated to the Lender that Carl Dexter has obtained title to the 1078 La Fleur Way Property; and not the Debtor that was created to file this Bankruptcy Case.

Looking at Schedule A/B, Debtor/Debtor in Possession does not provide a description of the nature of the 1078 La Fleur Way Property. As shown on Schedule A/B, Debtor/Debtor in Possession is devoid of any personal property assets to care and maintain a property (which the court is being told is a rental property). The Debtor/Debtor in Possession appears to have no way to fund the mortgage payment, property taxes, property insurance, landlord insurance, repairs, maintenance, legal fees, and the like.

At the Status Conference, the Subchapter V Trustee and counsel for the Debtor reported that they are working together for the Debtor/Debtor in Possession to correct the issues in this case and move forward with prosecution of this Case. The Subchapter V Trustee stated that she believes a Plan (though not the one proposed by the Debtor/Debtor in Possession) is feasible in this Case.

The Status Conference is continued to 10:30 a.m. on April 18, 2024, to be heard in conjunction with the Motion for Authorization for Post-Petition Credit.

## **FEBRUARY 21, 2024 STATUS CONFERENCE**

This Subchapter V case was filed by Lafleur Way, LLC on December 23, 2023. Dckt. 1. The Debtor is serving as the Debtor in Possession in this case. On February 13, 2024, the Debtor/Debtor in Possession filed a Status Conference Report. Dckt. 21. In the Report, the Debtor/Debtor in Possession states that it has conferred with the U.S. Trustee, and has contacted the Chapter 11 Trustee, and the Appointed Chapter 11 Trustee on January 4, 2024. *Id.*, p. 1:25 - 2:2.

In reviewing the file, in this Subchapter V case, on January 4, 2024, U.S. Trustee filed the Notice of Appointment of Lisa Holder as the Subchapter V Trustee in this Case. Dckt. 9. No other “Chapter 11 Trustee” has been appointed in this case. The Debtor is serving as the Debtor/Debtor in Possession, exercising the powers of, and having the fiduciary duties of a Chapter 11 trustee. *See*, 11 U.S.C. § 1184.

On February 14, 2024, 53 days after this case was filed, the Debtor/Debtor in Possession filed a Motion to Use Cash Collateral. Dckt. 23. In the Motion the Debtor/Debtor in Possession states that in December 2023, Shareholder Carl Dexter bought the La Fleur Way Property. *Id.*; p. 1:36 - 2:6. Further, that Carl Dexter, who is said to be a “shareholder” of the Debtor collects the monthly rents, which total \$3,775.00. It does not say that the Debtor purchased the Property or that he is collecting rents as a managing member or employee of the Debtor.

In the Motion, it is stated that the Debtor, not the Debtor/Debtor in Possession who is exercising the rights and has the fiduciary duties to the Bankruptcy Estate, seeks authority to spend the rent monies. The use is stated to be to maintain and preserve the ongoing value of the business (not making it clear whether it is the business of shareholder Carl Dexter, or a business that is property of the bankruptcy estate).

The Motion continues to seek authorization for the “Debtor,” and not the fiduciary Debtor/Debtor in Possession to operate the business.

The Motion references Exhibit A, with is a 60 month budget.

Additionally, the “Debtor” seeks to grant replacement liens for the cash collateral that is used by the Debtor. No assets are identified in which the replacement liens are to be granted by the Debtor (not the fiduciary Debtor/Debtor in Possession).

A Declaration of Carl Dexter is provided in support of the Motion. Dckt. 26. In it, Mr. Dexter states that he is “the president and majority shareholder in La Fleur Way, LLC.” *Id.*, 1:19-20. It is not clear how a limited liability company has a “president” and shareholders.

In his Declaration, Mr. Dexter states testimony that conflicts what is alleged in the Motion. He states that the Debtor, and not Mr. Dexter, purchased the Property. *Id.* ps. 1:25 - 2:1.

In his Declaration, Mr. Dexter states that the “shareholders” of the Debtor collect the rents. *Id.* p. 2:11-14. He does not testify that it is the Debtor, or now the Debtor/Debtor in Possession collects the rents.

Mr. Dexter further testifies that he personally “manage[s] the property and I am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor’s payment. *Id.* p. 2:18-20.

Mr. Dexter does not explain how he personally, and not the fiduciary Debtor/Debtor in Possession, is responsible for managing any property of the Bankruptcy Estate.

### **Review of the Filings and Public Record of the California Secretary of State**

The California Secretary of State reports that Lafleur Way, LLC filed its initial documents with the Secretary of State on December 22, 2023, that its Status is Active, and that Carl Dexter is identified as Debtor’s Agent. <https://bizfileonline.sos.ca.gov/search/business>.

On Schedule A/B Carl Dexter, as the “Manager” of the Debtor, states under penalty of perjury that as of the filing of this Case on December 23, 2023, the Debtor had no personal property and had only one piece of real property it owned, 1078 La Fleur Way, Sacramento, California, which is valued at \$950,000. Dckt. 1 at 9 - 12. On Amended Schedule D Carl Dexter states under penalty of perjury as the manger of the Debtor, that Debtor’ only creditor with a secured claim is PHH Mortgage, with a (\$550,449.95) claim secured by the La Fleur Way Property that is stated to have a \$950,000 value.

On Schedule E/F Mr. Dexter, as Debtor’s Manager, states under penalty of perjury that Debtor has no creditors with any unsecured claims.

This appears that this Chapter 11 Case was filed for a limited liability company created on December 22, 2023, into which the La Fleur Way Property was transferred into on December 22, 2024, and then the newly created limited liability company, the Debtor, was put into bankruptcy the next day, December 23, 2024. The sole asset of the Debtor that is in the Bankruptcy Estate is the La Fleur Way Property that was transferred to the Debtor the day before this Case was filed.

### **Prior Bankruptcy Cases Identifying a “Carl Dexter” as the Owner of Debtor’s Sole Asset**

In reviewing the court’s files, several prior bankruptcy filings by a “Carl Dexter” have been identified. These are:



A. Chapter 13 Case; 09-23601

1. Debtor....."Carl Dexter"
2. Filed.....March 2, 2009
3. Dismissed.....April 7, 2009
  - a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 09-23601; Mtn., Dckt. 11.
  - b. That debtor "Carl Dexter" requested the dismissal of his Chapter 13 case. *Id.*; Dckt. 17.
4. On the Petition, debtor "Carl Dexter" listed his street address as:

1078 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

B. Chapter 13 Case; 08-36063

1. Debtor....."Carl Dexter"
2. Filed.....November 3, 2008
3. Dismissed.....December 18, 2008
  - a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-36063; Mtn., Dckt. 11.
4. On the Petition, debtor "Carl Dexter" listed his street address as:

1078 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

C. Chapter 13 Case; 08-31041

1. Debtor....."Carl Dexter"
2. Filed.....August 8, 2008
3. Dismissed.....August 21, 2008
  - a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-31041; Mtn., Dckt. 9.

- b. That debtor “Carl Dexter” requested the dismissal of his Chapter 13 case. *Id.*; Dckt. 14.
- 4. On the Petition, debtor “Carl Dexter” listed his street address as:

1076 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

The “Carl Dexter” debtor in the three cases from 2008 and 2009 filed and prosecuted those cases in *pro se*.

The prosecution of this case by the Debtor/Debtor in Possession, its responsible representative Carl Dexter, and its counsel, Peter Macaluso, Esq, has not only raised serious questions with the court, but the U.S. Trustee. Counsel for the U.S. Trustee reported that they are in the process of filing a motion to dismiss this case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 11 Subchapter V Trustee, creditors, and Office of the United States Trustee on March 25, 2024. By the court’s calculation, 24 days’ notice was provided. 14 days’ notice is required.

The Motion to Approve Loan Modification 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 Loan Modification is XXXXXX.**

### **May 23, 2024 Hearing**

The court continued the hearing on this Motion to May 23, 2024, to afford Debtor/Debtor in Possession what may be the final opportunity to cure the deficiencies and continue in the prosecution of this Motion.

On May 16, 2024, Debtor/ Debtor in Possession filed with the court a Supplemental Motion to Use Cash Collateral and two Declarations of the Debtor/ Debtor in Possession’s managing member, Carl Dexter, in support. Dockets 96-98.

Debtor/ Debtor in Possession submits a three month proposal for cash collateral use, which would allow Debtor/ Debtor in Possession to make payments during the trial loan modification until a final loan modification can be obtained. Debtor seeks authority to use the rent income derived from the real property commonly known as 1078 La Fleur Way, Sacramento, Ca 95831 (“Property”) to make three payments of \$3,052.89 for April, May, and June of 2024. Decl., Docket 98 ¶ 8. Debtor/ Debtor in

Possession makes reference to a budget and 2024 annual forecast attached as Exhibit A in Carl Dexter's Declaration (Docket 97 ¶ 5), but the court has not seen such an Exhibit on the Docket.

The Supplemental Declaration of Carl Dexter again continues to make confusing statements about the Debtor/Debtor in Possession, who has a fiduciary duty to the Bankruptcy Estate, and Carl Dexter, the Responsible Representative of the Debtor/Debtor in Possession. Mr. Dexter continues to identify himself as a "shareholder" of the Debtor limited liability company. He states that "Shareholders" collect rents from the Property that is property of the Bankruptcy Estate. His testimony appears to show that the fiduciary duties of the Responsible Representative and the Debtor/Debtor in Possession Debtor in Possession are being violated, and the Shareholders are treating the property of the Bankruptcy Estate as their own.

This "confusion" that somehow the "Shareholders" are separate actors is shown in Mr. Dexter's testimony in which he states:

8. I am the Managing Member of the Debtor, and am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor's payment.

Declaration, ¶ 8; Dckt. 97.

The Debtor/Debtor in Possession is the entity exercising all the rights and powers, and has the fiduciary duties and obligations of a bankruptcy trustee. Mr. Dexter, as the managing member and Responsible Representative is the person through which the Debtor/Debtor in Possession fulfills its fiduciary duties. Mr. Dexter is not responsible for mere "administrative duties," but the Responsible Representative to fulfill the fiduciary duties, and exercise the rights and powers of the Debtor/Debtor in Possession.

If the Debtor is merely capable of being "responsible" for the payments due the Creditor, and cannot fulfill its fiduciary duties, and exercise the rights and powers of a bankruptcy trustee as the Debtor/Debtor in Possession, the court can remove it as having control over property of the Bankruptcy Estate and have the Subchapter V Trustee take control, exercising the rights and powers of a Chapter 11 trustee.

At the hearing, **XXXXXXX**

## **REVIEW OF THE MOTION**

The Motion to Approve Loan Modification filed by Lafleur Way, LLC ("Debtor/Debtor in Possession") seeks court approval for Debtor/Debtor in Possession to incur post-petition credit. Plaza Home Mortgage c/o PHH Mortgage ("Creditor") has agreed to a loan modification that will modify Debtor/Debtor in Possession's mortgage payment from the current \$3,063.12 per month at 5.375% interest for 358 months to \$3,052.89 per month at 5.375% interest for 480 months. Exhibit B, Docket 65 p. 7. The modification will defer principal in the amount of \$170,518.67 and will mature on June 1, 2064. *Id.* at p. 8.

The Motion is supported by the Declaration of Carl dexter on behalf of Debtor/Debtor in Possession. Docket 64. The Declaration affirms Debtor's desire to obtain the post-petition financing.

## **Prior Discussion Re Loan Documents**

At the April 4, 2024 Status Conference in this Case, the court reviewed this Motion and Supporting Documents, expressing some concern about the blurring of the lines between the pre-petition

Debtor, the fiduciary Debtor/Debtor in Possession in this Subchapter V Case, and Carl Dexter, the Responsible Representative for the Debtor/Debtor in Possession. The Civil Minutes from the April 4, 2024 Status Conference include the following on this point:

On March 25, 2024, the counsel for the Debtor (in the upper left hand corner he is identified as “Attorney for Debtor Lafleur Way, LLC” and not the Debtor/Debtor in Possession) filed a Motion for Order Approving Trial Loan Modification. Dckt. 62. In the Motion, the Attorney for Debtor states that the Debtor is to make payments, and that the Debtor understands the modified loan terms, and that multiple “Debtors” (even though the sole debtor in this case is Lafleur Way, LLC) continue to meet all eligibility requirements of the modification program. Motion, ¶ 5, 8, 4; Dckt. 62.

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration “on behalf of” the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony “on behalf of” another entity). *Id.*; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

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FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.  
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In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

Looking at the exhibits provided by the Debtor/Debtor in Possession, the fiduciary to the Bankruptcy Estate, the court begins with the Letter from Plaza Home Mortgage which Mr. Dexter testifies that “I have been offered a trial loan modification from our lender Plaza Mortgage co / o PHH, Mortgage.”<sup>Fn.2.</sup> The court

summarizes or “quotes” the information provided in the Letter; Exhibit A, Dckt. 65 at 2-3; as follows:

- A. The Letter, dated February 29, 2024, is addressed to “Carl Dexter” personally, and not to LaFleur Way, LLC via a managing member.
- B. The Letter makes reference to a death and Mr. Dexter having acquired an ownership interest in the La Fleur Way Property.
- C. A Death Certificate is required by the borrower’s death.
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- G. Documentation if Carl Dexter acquired title through intestate succession.
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There is nothing in this Letter indicating that anything is being done involving the Debtor Lafleur Way, LLC as the owner or with Lafleur Way, LLC, the fiduciary Debtor/Debtor in Possession.

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FN. 2. From the plain language of Mr. Dexter’s testimony under penalty of perjury, there appear to be multiple persons involved in this loan modification given that he states that Plaza Mortgage is “our lender.”  
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Exhibit B (Dckt. 65 at 4-23) is identified as the Plaza Home Mortgage Trial Loan Modification. The provisions of the proposed Modification include (identified by page number on Dckt. 65):

- A. The Loan Modification, dated February 22, 2024 (well after the transfer of the property to the Debtor), is addressed to “Frank Allen.” Dckt. 65 at 4.
- B. The Monthly Payment is to be \$3,052.89. *Id.*

No reference is made to the Debtor, Lafleur Way, LLC in either of these two letters with respect to an offered loan modification.

Reference is made in the Letters to a Frank Allen, who appears to be stated by Carl Dexter to having been deceased. The court cannot identify any grant deed or other documents by which the La Fleur Way Property made its way from Frank Allen to Lafleur Way, LLC.

The court appreciates that the April 4, 2024 Status Conference is only eleven (11) days prior to the court's review of the Docket on April 15, 2024 in preparing the ruling on this Motion. However, no updated documents or further supportive pleadings have been filed by the Debtor/Debtor in Possession.

## DISCUSSION

The Debtor/Debtor in Possession has provided the court with documents from the lender for which "Mortgagor(s): Allen Frank,. . ." is to provide his contact information. Exhibit A, Plaza Home Mortgage Acknowledgment letter; Dckt. 65. As noted above, the letter to which the contact confirmation is attached is dated February 28, 2024. It states that "Carl Dexter" contacted the lender "indicating you acquired an ownership interest in the "La Fleur Way" property." *Id.*, first paragraph of the letter. It then provides condolences to Mr. Dexter "for the loss of your loved ones." *Id.* It then states that Mr. Dexter has represented to the lender that Mr. Debtor is the successor interest to their borrower.

### Recent Bankruptcy Filings by a Frank Allen

A review of the court's files show that a Frank Allen has filed two recent Chapter 13 cases that were dismissed in the past six months. The court provides the following summary of these two cases.

#### A. Chapter 13 Case; 23-22632

1. Filed.....August 7, 2023
2. Dismissed.....August 25, 2023
3. Address of Debtor Frank Allen Listed on the Petition

1078 LaFleur Way  
Sacramento, California 95831

23-22623; Petition, § 5, at 2.

4. The first Chapter 13 Case was dismissed on August 25, 2023, due to the failure of Frank Allen to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and related documents.

#### B. Chapter13 Case; 23-23659

1. Filed.....October 16, 2024
2. Dismissed.....November 3, 2023
3. Address of Debtor Frank Allen Listed on the Petition

23-22659 Petition, § 5, at 2.

4. The second Chapter 13 Case was dismissed on November 3, 2023, due to the failure of Frank Allen to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and related documents.

#### Filing of Current Chapter 11 Case

The Chapter 11 Petition was filed in this case for the Debtor Lafleur Way, LLC on December 23, 2023.

On the Amended Statement of Financial Affairs, the Debtor states having \$1,000 in income for the prior years operation. Stm Fin Affairs, Question 1; Dckt. 30 at 2.

Counsel for the Debtor, who has now been authorized to represent the Debtor/Debtor in Possession fiduciary in this case, states that Counsel received \$5,000.00 on December 22, 2023 for legal service provided with respect to this case. *Id.*; Question 11. It states that the money was paid to Counsel from “Carl Dexter/Arbitrage, LLC.”

As the court discusses in the Minutes from the April 4, 2024 Status Conference (Dckt. 69), the February 2024 Monthly Operating Reports shows that the Debtor/Debtor in Possession had \$0.00 of cash as of March 1, 2024. In the Monthly Operating Reports filed for January and February 2024, the Debtor in Possession states it has \$3,900 in monthly receipts, \$0.00 in expenses, and has \$0.00 cash. Dckts. 57, 58.

In the Monthly Operating Reports the Debtor/Debtor in Possession then provides conflicting information as to there being (\$3,900) of cash disbursements each month that exhausts all receipts. But then on the last page of the January and February 2024 Monthly Operating Reports is a ledger statement for each month stating that the Debtor/Debtor in Possession had \$3,950.00 in Rental Income and \$0.00 in Expenses. *Id.*

#### Declaration of Carl Dexter

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration “on behalf of” the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony “on behalf of” another entity). *Id.*; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

3. The subject real property is commonly known as 1078 La Fleur Way< [sic] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [sic] trial modification.

[Second ¶ 3]

3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [sic] PHH, Mortgage.



4. That the first payment of \$3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The exhibits are true and correct copies of the documents received from Plaza Home Mortgage. <sup>FN.1.</sup>

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FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.  
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In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

#### Review of Subchapter V Plan

The Subchapter V Plan provides the following information about this Debtor and the plan of how this Bankruptcy Case will be prosecuted. This information includes:

- A. Lafleur Way, LLC as the Debtor/Debtor in Possession advances this Plan.
- B. Carl Dexter owns the Debtor, which is stated to be a “closely held corporation.” Plan, p. 1:23-24; Dckt. 61.

In reality, as the court has pointed out previously, the Debtor and the Debtor/Debtor in Possession is a limited liability company, not a corporation.

- C. It is stated that the 1078 LaFleur Way, Sacramento, California property is rented to “persons and 1 corporation.” *Id.*; p. 1:27.
- D. The Plan then states:

Debtor filed the instant case, after the rights to the property just prior to foreclosure.

*Id.*; 2:1-2. While the court could guess what this sentence means to say, something like, “the Debtor was created on the eve of foreclosure, then had the Property transferred into it; and then filed this single real estate asset case to stop the foreclosure sale;” the court will not provide such editing services to the Debtor/Debtor in Possession, its managing member, and its counsel.

- E. The Plan states that the “Debtor” has been approved for a trial loan modification. *Id.*; p. 3:15-16.

As shown by the evidence provided by the Debtor/Debtor in Possession, no trial loan modification has been offered to the Debtor/Debtor in Possession, but apparently only personally to Carl Dexter, upon his documenting the death of Frank Allen and Carl Dexter acquiring title through the late Frank Allen.

- F. Debtor has no creditors other than the creditor having a lien on the Real Property. *Id.*; p. 3:1-5.
- G. Counsel for the Debtor/Debtor in Possession received no retainer and projects his fees to be \$7,500.00 for this Subchapter V Case. *Id.*; p. 4:23-26.
- H. Under the Plan, it is the Debtor/Debtor in Possession who must make the payments on the claim secured by the Real Property. *Id.*; p. 5:16-26.
- I. Carl Dexter shall serve as the Chief Executive Office for the limited liability company Debtor/Debtor in Possession. *Id.*; p. 9:1-2.

There is no financial information provided with the Subchapter V Plan, no projections of operations, or anything showing that the Debtor/Debtor in Possession can actually perform a Plan. As noted above, the Monthly Operating Reports are riddled with inconsistencies and Carl Dexter states under penalty of perjury on each that while the prior month ends with a cash balance of \$3,900, that money has disappeared before the start of the next month.

Looking at Schedule A/B, Debtor/Debtor in Possession does not provide a description of the nature of the 1078 La Fleur Way Property. As shown on Schedule A/B, Debtor/Debtor in Possession is devoid of any personal property assets to care and maintain a property (which the court is being told is a rental property). The Debtor/Debtor in Possession appears to have no way to fund the mortgage payment, property taxes, property insurance, landlord insurance, repairs, maintenance, legal fees, and the like.

The Debtor/Debtor in Possession has not presented the court with any proposed loan modification agreement to which the Debtor/Debtor in Possession is a party. Even if it did, the Debtor/Debtor in Possession has documented that it has no revenues or cash monies to pay any such obligation.

The Motion states that the Debtor, not the Debtor/Debtor in Possession, is to make \$3,052.89 monthly payments under the Trial Loan Modification. There is no evidence that the Debtor/Debtor in Possession can make such payments.

### **Prior Bankruptcy Case Filings by a “Carl Dexter”**

In reviewing the court’s files, several prior bankruptcy filings by a “Carl Dexter” have been identified. These are:

- A. Chapter 13 Case; 09-23601
  - 1. Debtor.....”Carl Dexter”
  - 2. Filed.....March 2, 2009
  - 3. Dismissed.....April 7, 2009
    - a. Chapter 13 Trustee moved to dismiss the case for failure of “Carl Dexter” to file Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 09-23601; Mtn., Dckt. 11.

- b. That debtor “Carl Dexter” requested the dismissal of his Chapter 13 case. *Id.*; Dckt. 17.
- 4. On the Petition, debtor “Carl Dexter” listed his street address as:

1078 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

B. Chapter 13 Case; 08-36063

- 1. Debtor.....”Carl Dexter”
- 2. Filed.....November 3, 2008
- 3. Dismissed.....December 18, 2008
  - a. Chapter 13 Trustee moved to dismiss the case for failure of “Carl Dexter” to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-36063; Mtn., Dckt. 11.
- 4. On the Petition, debtor “Carl Dexter” listed his street address as:

1078 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

C. Chapter 13 Case; 08-31041

- 1. Debtor.....”Carl Dexter”
- 2. Filed.....August 8, 2008
- 3. Dismissed.....August 21, 2008
  - a. Chapter 13 Trustee moved to dismiss the case for failure of “Carl Dexter” to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-31041; Mtn., Dckt. 9.
  - b. That debtor “Carl Dexter” requested the dismissal of his Chapter 13 case. *Id.*; Dckt. 14.
- 4. On the Petition, debtor “Carl Dexter” listed his street address as:

1076 La Fleur Way  
Sacramento, CA.

*Id.*; Dckt. 1.

The “Carl Dexter” debtor in the three cases from 2008 and 2009 filed and prosecuted those cases in *pro se*.

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## **APRIL 18, 2024 CONTINUED HEARING**

The April 18, 2024 continued hearing on this Motion was conducted in conjunction with the Status Conference. As addressed in the Minutes and the hearing, the court has identified serious deficiencies in that Motion and its supporting pleadings, as well as statements made in documents filed under penalty of perjury and subject to the Federal Rule of Bankruptcy Procedure 9011 certifications.

### **Supplemental Pleadings Filed by Debtor/Debtor in Possession**

In attempting to address the evidentiary shortcomings, the Debtor/Debtor in Possession filed a Supplemental Declaration of Carl Dexter (Dckt. 86) and Exhibit (Dckt. 88). In the Declaration, Mr. Dexter summarizes the exhibits filed, but does not provide for his basis of having personal knowledge of most of the exhibits.

Some of the Exhibits are merely additional copies of the inadequate documents filed previously. In his Declaration, Mr. Dexter provides some hearsay testimony concerning communications with PPH, which are not consistent with the Exhibits.

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 Loan Modification filed by Lafleur Way, LLC (“Debtor/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**.

DEBTORS DISMISSED: 03/29/24

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

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

Sufficient Notice not Provided. There is no Certificate of Service form (EDC 007-005 Form) filed in this case, so the court is unaware of which parties, if any, were served. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, **XXXXXXX**

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

**The Motion for Allowance of Professional Fees is granted.**

Stephen M. Reynolds, the Attorney ("Applicant") for Wesley Earl Woolery and Ruth A. Woolery, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 6, 2023, through March 29, 2024. The court entered an Order approving employment of Applicant on May 24, 2023. Docket 46. Applicant requests fees in the amount of \$27,160 and costs in the amount of \$191.09. Mot., Docket 178 p. 1:18-23. Applicant sought, and was granted, authority to withdraw as counsel on March 4, 2024. Docket 161. The case was dismissed on March 29, 2024. Docket 170. Applicant received a \$20,000 retainer prepetition and withdrew \$1,719.25 prior to filing the case, leaving \$18,280.75 in the client trust account. Mot., Docket 178 p. 6:10-11.

## 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 Applicant’s services for the Estate include communicating with Debtor in Possession regarding case strategy, filing Motions for Compensation, communicating with the Chapter 12 Trustee(s), filed Motions to Employ, reviewed claims, obtained authority to use cash collateral, assisted in filing Monthly Operating Reports, and drafted and worked with creditors regarding a Chapter 12 Plan. Mot., Docket 178 p. 2:15-27. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 42.4 hours in this category. *Id.* at p. 3:11.

Claims: Applicant spent .6 hours in this category. *Id.* at p. 3:12.

Fee Application: Applicant spent 5.7 hours in this category (including the five hours spent on this present Motion). *Id.* at p. 3:13.

Financing: Applicant spent 15.1 hours in this category. *Id.* at p. 3:14.

Plan Statement: Applicant spent 4.1 hours in this category. *Id.* at p. 3:15.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Stephen M. Reynolds	67.9	\$400.00	\$27,160.00
<b>Total Fees for Period of Application</b>			\$27,160.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$191.09 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mailing, mileage, and parking	-----	\$191.09
<b>Total Costs Requested in Application</b>		<b>\$191.09</b>

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$27,160 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid. Applicant is authorized to withdraw the remaining \$18,280.75 from the client trust account and apply that sum to his fees approved here. The Debtor in Possession is authorized to pay the remaining amount.

### **Costs & Expenses**

First and Final Costs in the amount of \$191.09 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession.

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

Fees	\$27,160
Costs and Expenses	\$191.09

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case. Applicant is authorized to withdraw the remaining \$18,280.75 from the client trust account and apply that sum to his fees approved here.

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 Stephen M. Reynolds, the Attorney (“Applicant”) for Wesley Earl Woolery and Ruth A. Woolery, the Debtor in Possession (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that Stephen M. Reynolds is allowed the following fees and expenses as a professional of the Estate:

~~Stephen M. Reynolds, Professional employed by Debtor in Possession~~

~~Fees in the amount of \$27,160~~

~~Expenses in the amount of \$191.09;~~

~~as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession. Applicant is authorized to withdraw the remaining \$18,280.75 from the client trust account and apply that sum to his fees approved here. The Debtor in Possession is authorized to pay the remaining amount.~~

4. [24-20265](#)-E-12      **HARDAVE/SUKHBINDER DULAI**      **MOTION TO ASSUME LEASE OR**  
[RCW](#)-4      **Ryan Wood**      **EXECUTORY CONTRACT**  
5-6-24 [88]

**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 Lease Parties, Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors that have filed claims, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 7, 2024. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

-----  
**The Motion to Assume Lease or Executory Contract is granted.**

Hardave Singh Dulai and Sukhbinder Kaur Dulai, Debtor in Possession, (“Movant”) move to assume the lease of real property use / rent with Jim Suver, pursuant to the Suver Lease Agreement filed as Exhibit 1 at Docket 30. The lease is for agricultural use of the real property commonly known as 5798 Larkin Road, Live Oak, Ca 95953 (“Lease”). The Lease terms are that Movant pays Jim Suver 22% of proceeds net of packing and marketing costs related to growing and selling kiwis. Mot., Docket 88 p. 3: 17-19. Debtor testifies that the Lease is beneficial and necessary for the successful reorganization under Chapter 12. Decl., Docket 91 p. 2:19-22.

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that the Lease is disclosed on Schedule G at Line 2.2, Docket 33.

## **APPLICABLE LAW**

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

The court has not found a case directly discussing the legal standard for assuming a lease, so the court applies the business judgment rule regarding assumption of a lease. *See also* 3 COLLIER ON BANKRUPTCY ¶ 365.03[2] (“Under the Code, most courts have applied a ‘business judgment’ test to trustees’ decisions to assume or reject contracts or leases.”); *In re Astria Health*, 640 B.R. 758, 767 (E.D. Wash. 2022) (holding motions to assume are also dependent on whether the trustee satisfied the business judgment rule).

## **DISCUSSION**

Here, Movant has demonstrated sound business judgment reasons for assuming the Lease. The Lease is paid purely through proceeds, so Debtor in Possession will not be forced to pay rent they cannot afford in the event the kiwifruit vines do not produce well in a given year. Debtor in Possession also testified that the Lease has historically benefitted Debtor in Possession’s farm, Dulai Farms. Decl., Docket 91 p. 2:18.

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to assume the Lease. Therefore, the Motion is granted, and Movant is authorized to assume the Lease pursuant to 11 U.S.C. § 365(a).

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

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

The Motion to Assume Lease or Executory Contract filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai, Debtor in Possession, ("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 Movant is authorized to assume the lease of real property use / rent with Jim Suver, pursuant to the Suver Lease Agreement filed as Exhibit 1 at Docket 30. The lease is for agricultural use of the real property commonly known as 5798 Larkin Road, Live Oak, Ca 95953 ("Lease") and is listed on Schedule G at Line 2.2, Docket 33.

The assumption of the above lease is effective upon issuance of this order, no further act of Debtor in Possession required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors and parties in interest, attorneys of record who have appeared in the case, and Office of the United States Trustee on April 22, 2023. By the court’s calculation, 31 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Abandonment 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, -----  
-----.

<b>The Motion to Compel Abandonment is granted.</b>
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After notice and a hearing, the court may order a trustee to abandon Vehicle of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Vehicle 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 Taher Aminiafshar (“Debtor”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon Vehicle identified as a 2018 Volvo tractor truck, VNL64T300 (“Vehicle”). The court notes Debtor states the VIN number on the Vehicle is VNL64T630 (Mot., Docket 28 p. 1:21-23), but the Schedules all describe the VIN number as VNL64T300. Schedule A/B, Docket 1 p. 12 line 3.2. At the hearing, **XXXXXXX**

Debtor and the Chapter 7 Trustee entered into an Agreement to sell the equity in the Vehicle back to Debtor in the amount of \$18,150. Notice of Intent to Sell Equity, Docket 24 ¶ 1, p. 2:3-4 (“The debtor provided payment to the trustee in full of \$18,150 for the Volvo on February 13, 2024.”).

The court has not approved the sale of the Bankruptcy Estate’s interest in the Vehicle, contrary to Debtor’s assertion in the Motion. The Chapter 7 Trustee elected to just provide Notice to creditors and other parties in interest of his intention to make such a sale. No oppositions were filed and no hearing was conducted. No motion has been presented to the court and no order has been issued by the court pursuant thereto.

This Motion is Debtor’s second attempt at compelling abandonment of the Vehicle, the court denying the previous Motion at Docket 23 for procedural issues as well as confusion surrounding nonexempt equity in the Vehicle. Debtor has now apparently purchased the nonexempt equity from the bankruptcy estate without an Order from the court approving such a sale, Chapter 7 Trustee opting to use the 11 U.S.C. § 9014(k)(2) procedure.

The court determines that the Vehicle is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the Vehicle.

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

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

The Motion to Compel Abandonment filed by Taher Aminiafshar (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Vehicle identified as a 2018 Volvo tractor truck, VNL64T300 (“Vehicle”) and listed on Schedule A/B, Docket 1 p. 12 line 3.2 by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards (“Trustee”) to Taher Aminiafshar by this order, with no further act of the Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors and parties in interest, parties requesting special notice, other parties in interest, and Office of the United States Trustee on May 2, 2024. 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, -----

-----.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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J. Michael Hopper, the Chapter 7 Trustee ("Applicant") for the bankruptcy estate of Enrique Quiles, makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of Applicant's attorney, Desmond, Nolan, Livaich & Cunningham ("DNLC").

Fees are requested for the period October 15, 2014, through April 29, 2024. The order of the court approving employment of Applicant was entered on November 10, 2014. Docket 23. Applicant requests fees in the amount of \$43,043.33 and costs in the amount of \$1,952.17. These are the capped fees and costs requested in this case, reduced from the actual amount of earned fees of \$56,140.00.

#### APPLICABLE LAW

## Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

## Lodestar Analysis

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

## Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include filing various motions related to the administration of this case, recovering items of real property (including an item of real property in Puerto Rico that involved a protracted process), selling these items of real property, employing special counsel, and seeking payment for special counsel. Mot., Docket 235 ps. 2:23-3:5. The Estate has \$62,157.44 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

With respect to the value of these legal services in light of the benefit to creditors, Applicant noted **XXXXXX**

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: DNLC communicated with Applicant regarding the investigation and strategy for liquidating assets. DNLC prepared all fee and employment applications of professionals employed in the estate that assisted in liquidating real and personal assets of the estate. Mot., Docket 235 p. 4:1-5.

Litigation & Contested Matters and Claims Administration & Objections: DNLC assisted Applicant in resolving community/separate property interests between the Debtor and former spouse. DNLC also reviewed the late filed claim of First National Insurance Company of America (“FNICA”) and communicated with counsel regarding the stipulation for judgment in the Western Insurance Company (“WIC”) dispute. DNLC assisted Applicant in resolving claims and disputes between the estate and various insurance companies. DNLC also assisted Applicant in obtaining turnover of \$1,400 in fees from Debtor’s first attorney, Tyson Takeuchi. *Id.* at p. 4:6-16.

Asset Analysis & Recovery and Asset Marketing & Sales: DNLC investigated and resolved issues relating to the Puerto Rico Property. The investigation necessitated employing special counsel in complying with local land laws. DNLC also assisted Applicant in auctioning the vehicles and investigating and researching the community and separate property issues of the Puerto Rico Property. *Id.* at p. 4:17-26.

Tax Issues: DNLC communicated with the Applicant and prospective accountants regarding whether the estate would be required to file taxes. *Id.* at p. 4:27-28.



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:

<b>Names of Professionals</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russell Cunningham	18.10	\$495.00	\$8,959.50
J. Russell Cunningham	30.70	\$425.00	\$13,047.50
J. Russell Cunningham	15.70	\$400.00	\$6,280.00
Benjamin C. Tagert	1.10	\$325.00	\$357.50
Benjamin C. Tagert	2.20	\$275.00	\$605.00
Benjamin C. Tagert	7.50	\$225.00	\$1,687.50
Benjamin C. Tagert	0.20	\$175.00	\$35.00
J. Luke Hendrix	2.70	\$275.00	\$742.50
Nicholas L. Kohlmeyer	12.80	\$275.00	\$3,520.00
Nicholas L. Kohlmeyer	15.20	\$225.00	\$3,420.00
Gabriel P. Herrera	33.90	\$225.00	\$7,627.50
Gabriel P. Herrera	12.40	\$195.00	\$2,418.00
Mikayla E. Kutsuris	12.00	\$195.00	\$2,340.00
Josh A. Dalavai	2.00	\$195.00	\$390.00
Josh A. Dalavai	31.40	\$150.00	\$4,710.00
<b>Total Fees for Period of Application</b>			\$56,140.00
<b>Total Fees Requested for Period of Application</b>			\$43,043.33

Applicant is requesting to pay DNLC the capped amount of fees in the amount of \$43,043.33.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,956.67 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
----------------------------	-------------------------------------	-------------

Photocopies	\$0.10	\$103.00
Postage	-----	\$259.81
Fax Charges	-----	\$4.00
Recording, Filing, Certification & Delivery Costs	-----	\$1,585.36
<b>Total Costs Requested in Application</b>		<b>\$1,952.17</b>

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$43,043.33 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$1,952.17 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	\$43,043.33
Costs and Expenses	\$1,952.17

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 J. Michael Hopper, the Chapter 7 Trustee (“Applicant”) for the bankruptcy estate of Enrique Quiles, makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of Applicant’s attorney, Desmond, Nolan, Livaich & Cunningham (“DNLC”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$43,043.33  
Expenses in the amount of \$1,952.17,

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

7. [23-21899-E-12](#)      **JAKOB/GLADYS WESTSTEYN**      **CONTINUED STATUS CONFERENCE RE:**  
[WF-10](#)           **OBJECTION TO CLAIM OF GEH**  
7 thru 10           **FARMS, CLAIM NUMBER 13-2**  
9-27-23 [[120](#)]

Debtor's Atty: Daniel L. Egan; Jason Eldred

Notes:

Continued from 4/18/24 to be heard in conjunction with the motion to approve stipulations addressing the Objection to Claim of GEH Farms and Objection o Claim of Greg Hawes.

Operating Report filed 5/14/24

<b>The Status Conference is <del>concluded and removed from the Calendar.</del></b>
---

### **MAY 23, 2024 STATUS CONFERENCE**

The Debtor in Possession has filed a Motion to Approve a Settlement that fully resolves the issues in this Objection to Claim.

~~The Settlement having been approved, the Status Conference is concluded and removed from the 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, Chapter 12 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on April 18, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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.

<p><b>The Motion for Approval of Compromise is granted.</b></p>
---

Jakob G. Weststeyn and Gladys Y. Weststeyn, Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with creditor Greg Hawes ("Settlor"). Settlor is the owner and Chief Executive Officer of GEH Farms d/b/a Hawes Ranch and Farm Supply, Inc. ("GEH Farms"). The claims and disputes to be resolved by the proposed settlement involved Proofs of Claim 12-2 of Greg Hawes and 13-2 of GEH Farms.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Docket 206):

- A. Settlor agrees to withdraw Objection to Claim 13-2 from the claims register. *Id.* at ¶ 1.
- B. Movant will withdraw their pending Objection to Claim 12-2 and will not later objection to Proof of Claim 12-2. *Id.* at ¶ 2.

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### Probability of Success

Movant argues their legal arguments are strong, but this factor is neutral as it is unclear which party will ultimately prevail in litigation. Mot., Docket 203 ps. 2:23-3:2.

### Difficulties in Collection

Movant argues this factor is also neutral as the Settlement involves liquidation of claims against the estate. *Id.* at p. 3:3-4.

### Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor warrants settlement. The objections to Claims 12-2 and 13-2 will require significant factual analysis and would require dozens of hours of attorney time. Creditor would have been projected to recover \$3,211.59 for Claim 13-2, which would be drastically outweighed by the anticipated attorneys' fees and costs. This factor weighs in favor of settling. *Id.* at p. 3:5-15.

### Paramount Interest of Creditors

Movant argues this factor weighs in favor of settling, arguing the settlement does not materially affect other creditors in this matter. *Id.* at p. 3:16-21.

### Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Settlor retains Claim 12-2 without objection, realizing value there, but also withdraws Claim 13-2, realizing an added benefit to other general unsecured creditors of the estate. 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 Approve Compromise filed by Jakob G. Weststeyn and Gladys Y. Weststeyn, Debtor in Possession, (“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 for Approval of Compromise between Movant and Greg Hawes (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket 206).

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on April 18, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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.

<p><b>The Motion for Approval of Compromise is granted.</b></p>
---

Jakob G. Weststeyn and Gladys Y. Weststeyn, Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with creditor GEH Farms d/b/a Hawes Ranch and Farm Supply, Inc. ("Settlor," "GEH Farms"). Creditor Greg Hawes, the related creditor in Claim 12-2, is the owner and Chief Executive Officer of GEH Farms d/b/a Hawes Ranch and Farm Supply, Inc. The claims and disputes to be resolved by the proposed settlement involved Proofs of Claim 12-2 of Greg Hawes and 13-2 of GEH Farms.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Docket 211):

- A. Settlor agrees to withdraw Objection to Claim 13-2 from the claims register.  
*Id.* at ¶ 1.

- B. Movant will withdraw their pending Objection to Claim 12-2 and will not later objection to Proof of Claim 12-2. *Id.* at ¶ 2.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Movant argues their legal arguments are strong, but this factor is neutral as it is unclear which party will ultimately prevail in litigation. *Mot.*, Docket 208 ps. 2:23-3:2.

### **Difficulties in Collection**

Movant argues this factor is also neutral as the Settlement involves liquidation of claims against the estate. *Id.* at p. 3:3-4.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues this factor warrants settlement. The objections to Claims 12-2 and 13-2 will require significant factual analysis and would require dozens of hours of attorney time. Creditor would have been projected to recover \$3,211.59 for Claim 13-2, which would be drastically outweighed by the anticipated attorneys' fees and costs. This factor weighs in favor of settling. *Id.* at p. 3:5-15.

### **Paramount Interest of Creditors**

Movant argues this factor weighs in favor of settling, arguing the settlement does not materially affect other creditors in this matter. *Id.* at p. 3:16-21.



## Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Settlor retains Claim 12-2 without objection, realizing value there, but also withdraws Claim 13-2, realizing an added benefit to other general unsecured creditors of the estate. 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 Approve Compromise filed by Jakob G. Weststeyn and Gladys Y. Weststeyn, Debtor in Possession, (“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 for Approval of Compromise between Movant and GEH Farms d/b/a Hawes Ranch and Farm Supply, Inc. (“Settlor,” “GEH Farms”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket 211).

10. <a href="#">23-21899-E-12</a> <a href="#">WF-9</a>	<b>JAKOB/GLADYS WESTSTEYN</b>	<b>CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF GREG HAWES, CLAIM NUMBER 12-2 9-27-23 [115]</b>
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Debtor’s Atty: Daniel L. Egan; Jason Eldred

Notes:

Continued from 4/18/24 to be heard in conjunction with the motion to approve stipulations addressing the Objection to Claim of GEH Farms and Objection o Claim of Greg Hawes.

Operating Report filed 5/14/24

**The Status Conference is ~~concluded and removed from the Calendar.~~**

**MAY 21, 2024 STATUS CONFERENCE**

Thursday, May 23, 2024 at 10:30 a.m.  
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The Debtor in Possession has filed a Motion to Approve a Settlement that fully resolves the issues in this Objection to Claim.

~~The Settlement having been approved, the Status Conference is concluded and removed from the Calendar.~~