**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Bankruptcy Judge
Sacramento, California

**May 29, 2025 at 10:30 a.m.**

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**1. 24-20145-E-7 DONALD DUPONT**

**STATUS CONFERENCE RE: MOTION TO COMPEL ABANDONMENT**
**4-15-25 [257]**

Debtor's Atty: Pro Se

Notes:
Set by order filed 5/15/25 [Dckt 266]. Status Conference statements may be made orally at the status conference.

**The Chapter 7 Status Conference is xxxxxxx**

**MAY 29, 2025 STATUS CONFERENCE**

On April 15, 2025, Debtor Donald F. DuPont, Jr., in pro se, filed a Motion titled Debtor Request for Trustee to Abandon Property Pursuant to 11 U.S.C. § 554. Dckt. 257. No hearing has been set on this Motion. No Certificate of Service has been filed. The Chapter 7 Trustee has not responded to this Motion.

At a recent hearing in an unrelated matter, the Debtor, Trustee, and court discussed whether the Debtor needed to seek a pre-closing order abandoning some personal property from the Bankruptcy Estate so that the Debtor could proceed with using such personal property.

In the Motion, the Debtor states that there are no non-exempt assets of value to the Bankruptcy Estate, except possibly an unimproved parcel of land in "San Felite," Mexico. Motion, ¶ 1; Dckt. 257. However, the Motion only request that the Trustee abandoned "this flawed parcel" and the Chapter 7 Case be closed. This is not the personal property that the Debtor was discussing at said prior hearing that he was seeking to use.

Debtor has not filed any evidence in support of the Motion.

**Chapter 7 Trustee's Motion to Abandon**

On May 26, 2025, the Chapter 7 Trustee filed a Motion to Abandon the Assets of the Bankruptcy Estate. Motion; Dckt. 269. The Trustee seeks to abandon all personal property (as disclosed in the

Amended Schedules) and the interest in the real property in "San Felepe," Mexico. The hearing on the Motion to Abandon is set for July 10, 2025.

At the Status Conference, **xxxxxxx**

**2. 24-23905-E-12 DEAVER RANCH, INC., A CALIFORNIA CORPORATION**
**24-2211 CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT**
**CAE-1 12-26-24 [16]**
**AGWEST FARM CREDIT, PCA V. DEAVER ET AL**
**Item 2 thru 5**
**Item 2 thru 3 on 10:00 the Calendar**

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

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

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

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

Notes:
Continued from 4/24/25

**The Status Conference is xxxxxxx**

**MAY 29, 2025 STATUS CONFERENCE**

As of the court's May 28, 2025 review of the Docket, no Stipulation to Dismiss this Adversary Proceeding has been filed. The Kenneth and Mary Deaver Chapter 12 Bankruptcy Case has been dismissed.

At the Status Conference, **xxxxxxx**

**APRIL 24, 2025 STATUS CONFERENCE**

The court has, pursuant to a separate order, dismissed the Chapter 12 Bankruptcy Case filed by Kenneth and Mary Deaver. With that case dismissed, the Parties advised the court that this Adversary Proceeding will be dismissed.

The court continues the Status Conference for administrative purposes to allow the Parties to file their Stipulation dismissing this Adversary Proceeding.

The Status Conference is continued to 10:30 a.m. on May 29, 2025.

**SUMMARY OF COMPLAINT**

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

**SUMMARY OF ANSWER**

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

**FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (I), and (O). Amd. Complaint ¶ 2, Dckt. 16. In the Answer, Defendant Debtors admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 18.

| | | | |
|---|---|---|---|
| **3.** | **24-23905-E-12 DMW-12** | **DEAVER RANCH, INC., A CALIFORNIA CORPORATION**<br>**David Goodrich** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIMARCO WARSHAW, APLC FOR MARTHA A. WARRINER, DEBTORS ATTORNEY(S)**<br>**4-17-25 [453]** |

**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 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, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

DiMarco Warshaw, APLC ("Applicant," "Firm") for Kenneth and Mary Jean Deaver, the Debtors and Debtors in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 30, 2024, through April 3, 2025. The order of the court approving employment of Applicant was entered on September 25, 2024. Dckt. 61. Applicant requests fees in the amount of $125,469.00 and costs in the amount of $1,084.71.

**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)).

This case was filed on August 30, 2024. No Plan was ever confirmed. In fact, the case never even made it to a hearing on plan confirmation. The case was dismissed on April 28, 2025 due to debt limit eligibility reasons. Debt eligibility seems to the court an important threshold inquiry made before filing and endeavoring to prosecute a case as complicated as this one.

There were bumps in the road at every stage of the case. Counsel is seeking a large amount of fees. There is no question that Debtor in Possession had an uphill battle throughout the case, spending time addressing oppositions from creditors along the way. However, the court must engage in a reasonableness of services provided analysis in awarding fees. The billing records contain clear descriptions of tasks performed, but they are not broken up into specific billing categories. Ex. A, Docket 457.

At the hearing, **xxxxxxx**

**CREDITOR AGWEST OPPOSITION**

AgWest Farm Credit, PCA ("AgWest") filed an Opposition on May 13, 2025. Docket 479. AgWest does not oppose the reasonableness of fees, but AgWest opposes permitting Debtor in Possession use its cash collateral to pay the fees. AgWest cites to *In re Proalert, LLC*, 314 B.R. 436 (B.A.P. 9th Cir. 2004) to support its position.

**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 67.9 hours in this category. Applicant continued to confer with Debtors frequently and to communicate with Debtors and bankruptcy counsel for their related business entities to discuss the details of his bankruptcy case, legal strategy, employment of the Firm and other professionals, operations of related businesses, and administrative matters including compliance with the requests of the UST, the UST 7-Day Package, relations with creditors, and appearance at the Initial Debtor Interview. The Firm also prepared and filed several Status Reports. Mot. 6:10-16.

Cash Collateral: Applicant spent 38.3 hours in this category. Applicant finalized and filed a motion for order shortening time and a cash collateral motion, along with Debtors' declaration and supporting exhibits. In cooperation with counsel for the Ranch and SIP, the Firm negotiated a stipulation between the three debtors and AgWest with respect to the use of cash collateral, prepared and filed a motion to approve the stipulation; and responded to objections filed by Prudential. The Order approving the stipulation was entered on December 6, 2024. *Id.* at 6:23-7:7.

Monthly Operating Reports: Applicant spent 9.5 hours in this category. Applicant assisted Debtors in the review of monthly financial data and bank statements and filed the Monthly Operating Reports. *Id.* at 7:9-10.

Compliance with Guidelines Issued by the UST: Applicant spent 3.9 hours in this category. Applicant advised Debtors on compliance issues, provided information requested by the U.S. Trustee, reviewed correspondence from the UST, and implemented modifications requested by the UST and the Court. *Id.* at 7:13-16.

Motions: Applicant spent 111.8 hours in this category. Applicant prepared and filed first day motions to: (a) prohibit utilities from terminating service and establishing deposit amounts and other procedures; and (b) authorizing Debtors to maintain an existing bank account. The Firm also obtained orders shortening time for all three motions and gave notice to creditors, as well as other various Motions in prosecuting the case. *Id.* at 7:18-8:12.

Plan of Reorganization: Applicant spent 59.5 hours in this category. Applicant prepared the proposed Plan, including financial projections and other exhibits, and a proposed scheduling order. The Plan was timely filed, and a scheduling order was entered. *Id.* at 8:14-20.

Adversary Proceeding: Applicant spent 12.4 hours in this category. Applicant prepared and filed Debtors' Answer, raising various affirmative defenses, including that the complaint failed to state a cause of action for fraud. The parties have agreed to continue the status conference in that matter until at least April 24, 2025. *Id.* at 8:22-9:2.

Employment Application: Applicant spent 16.2 hours in this category. Applicant finalized and filed the Firm's Employment Application, The Firm's employment was approved by Order entered on September 25, 2024. The Firm also prepared an application to employ Debtors' real estate broker, California Outdoor Properties, Inc., and responded to the objection filed by Prudential. That employment was also approved. *Id.* at 9:4-8.

Fee Application: Applicant spent 6.3 hours in this category. Applicant began preparing this fee application. *Id.* at 9:9-10.

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** |
|---|---|---|---|
| Andy C. Warshaw, Attorney | 51.70 | $400.00 | $20,680.00 |
| Martha A. Warriner, Attorney | 245.30 | $400.00 | $98,120.00 |
| Martha A. Warriner Paralegal | 32.20 | $195.00 | $6,279.00 |
| Darren DiMarco Paralegal | .30 | $195.00 | $58.50 |
| Paralegal | 1.70 | $195.00 | $331.50 |

| | |
|---|---|
| **Total Fees for Period of Application** | $125,469.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,084.71 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Court Call | | $316.50 |
| Fed. Ex | | $19.62 |
| Certificate of Service | | $748.59 |
| **Total Costs Requested in Application** | | $1,084.71 |

The court does not reimburse the cost of court call. The attorneys are free to appear in person, and by availing themselves of court call, they can bill at their desk without the included expense of traveling. Therefore, the cost of $316.50 is not allowed as part of this application.

**Supplemental and Final Motion Filed**

DiMarco Warshaw, APLC ("Applicant," "Firm") for Kenneth and Mary Jean Deaver, the Debtors and Debtors in Possession ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 4, 2025, through April 28, 2025. The order of the court approving employment of Applicant was entered on September 25, 2024. Dckt. 61. Applicant requests fees in the amount of $7,571.50 and costs in the amount of $140.46.

The Debtors in Possession filed this using the same Docket Control Number as the Interim Application.

**DISCUSSION**

Creditor's objection is well taken. In *In re Proalert, LLC*, 314 B.R. 436 (B.A.P. 9th Cir. 2004), the Ninth Circuit Bankruptcy Appellate Panel discussed the notion of using a creditor's cash collateral to pay attorney's fees. The Bankruptcy Appellate Panel in *Proalert* held:

> Most of the § 363 cases cited by the parties do not discuss directly the relationship between § 363 and § 506(c), but a careful reading of most of these cases confirms that the key consideration in deciding whether to allow the use of cash collateral is whether the secured creditor's interest is adequately protected. *See In re James Wilson*

*Assocs.*, 965 F.2d 160, 171 (7th Cir.1992)(permitting debtor to use cash collateral to pay attorney fees because secured creditor adequately protected); *In re Ranch Partners, Ltd.*, 146 B.R. 833 (D.Colo.1992)(stating that a debtor may not use cash collateral to pay reorganization-related attorney fees absent compliance with § 363(c)(2)); *In re Atrium Dev. Co.*, 159 B.R. 464 (Bankr.E.D.Va.1993)(§ 363(c) permits a debtor to use cash collateral if court finds secured creditor adequately protected); *In re Precast Structures, Inc.*, 122 B.R. 304 (Bankr.S.D.Tex.1990) (allowing use of cash collateral to pay debtor's counsel where creditor over collateralized and thus adequately protected); *In re Triplett*, 87 B.R. 25, 27 (Bankr.W.D.Tex.1988)(cash collateral may be used "for the general benefit of the estate and need not be devoted exclusively to the protection of the creditor or the collateral").

*Proalert*, 314 B.R. at 444. Collier's Treatise on Bankruptcy states in regard to using cash collateral to pay attorney's fees:

> In certain instances, a trustee or debtor in possession may seek to pay professional fees and expenses from a secured creditor's collateral. In *In re Flagstaff Foodservice Corp.*, the Court of Appeals for the Second Circuit held that, in general, the claims of professionals, including those for compensation, may not be satisfied out of encumbered assets. The *Flagstaff* court recognized two instances in which such expenses are chargeable against a lender's collateral:
>
> > •when the expenses are for the direct and primary benefit of a creditor holding a security interest in the particular collateral as provided for in section 506(c), or
> >
> > •when the secured lender consents to the application or charge.
>
> Pursuant to section 506(c), a secured creditor's cash or other collateral may be used to compensate professionals only if, inter alia, their services were of direct benefit to the creditor.
>
> In *In re Ranch Partners, Ltd.*, the district court held that cash collateral may not be used to pay reorganization-related professional fees unless the value of the assets subject to the security interest is more than the secured creditor's claim. The Ranch Partners court limited the debtor's use of cash collateral to the payment of professional fees incurred solely in managing and preserving the secured property. Other courts have held that cash collateral may be used to pay reorganization-related professional fees even if the secured creditor is undersecured, so long as the secured creditor's interest is adequately protected.
>
> Regardless of any benefit to the secured creditor, courts have permitted the payment of estate professionals' fees from cash collateral when a secured creditor has impliedly or expressly consented to allowing such payment. This consent is often provided for in a negotiated "carve out" from a secured lender's liens and claims, which is commonly set forth as part of a debtor-in-possession financing order or agreed cash collateral order. For example, in *In re Evanston Beauty Supply, Inc.,* the

> court observed that such carve outs were essential in order to ensure that all parties in interest were adequately represented. The *Evanston Beauty Supply* court explained that such negotiated carve outs "are used in order to avoid skewing the necessary balance of debtor and creditor protection needed to foster the reorganization process."

3 COLLIER ON BANKRUPTCY ¶ 330.05[1].

In the contested matter before the court, there has been no showing AgWest is adequately protected, and any funds the Deavers may have are cash collateral of AgWest. The court cannot authorize any use of AgWest's cash collateral without the consent of AgWest, or a finding that AgWest is adequately protected. It may be that the fees are reasonable but this court is without authority to compel the Deavers to pay the award.

**Dismissal of Kenneth and Mary Deaver Bankruptcy Case**

The Kenneth and Mary Deaver Bankruptcy Case was dismissed on April 28, 2025. 242-23905; Order, Dckt. 465. The basis for the requested dismissal was that Kenneth and Mary Deaver exceeded the debt limit to qualify as Chapter 12 Debtors. In addressing the Opposition to the Motion to Dismiss that was based on Kenneth and Mary Deaver's debts exceeding the Chapter 12 limits, the court's summary of Opposition as stated in the Civil Minutes includes the following:

> The Debtors in Possession state that a significant portion of the secured debt owed by the Debtors relates to Kenneth Deaver buying out other family members' interest in the land and farm on which the grapes are grown. The Debtors in Possession argue that since this money used to buy out Mr. Deaver's other family members' interests, then this constitutes "farm related debt" since it was done to maintain the farming operation.
>
> . . .
>
> > 2. Regarding debt limit eligibility, Debtors scheduled a total of $8,059,615 in secured claims, $34,000 in priority unsecured claims, and $1,888,471 in general unsecured claims, for a total of $9,982,086. The claims bar date in this case was November 8, 2024, for non-governmental claims and February 26, 2025, for governmental claims. The proofs of claim that were timely filed total $6,922,441.54. Id. at 3:11-15.
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> . . .
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> > 5. The obligations of Deaver's sister, FSA and the SBA listed by Prudential as examples of Debtors' bad faith are obligations that were personally guaranteed by Debtors. The obligations are in default, but no lender has sought payment from Debtors. Failure to list those obligations is therefore not evidence of bad faith. Id. at 5:1-4.
>
> **The Debtors in Possession do not appear to dispute that they have a liability for these debts, as guarantors, but do not offer an explanation as to why these debts were not listed on Schedule E/F**. It appears that the argument may be that since the creditors have not yet made demand for payment on said loans, then the

Debtors believed that they do not have to disclose that such a liability exits**. (The court notes that while not listed on the Schedules as an unsecured debt, the Debtors did list this creditor, the Small Business Administration, on the Verification of Master Address List, Dckt. 8 at 5-6, insuring that this creditor had notice of, and would be subject to, the proceedings in the Debtors' individual bankruptcy case.**

. . .

**Debtor in Possession states in their Opposition to the Motion that they did not include the debts of Deaver's sister, FSA and the SBA because those debts are not being actively pursued. Such an excuse is not sufficient to fail to schedule the obligations.** The court does not include satisfied or forgiven debts in the calculation, but there is no evidence these debts were satisfied or forgiven. **Failing to schedule such debt could be an omission made in bad faith. Debtor in Possession did not schedule the SBA claim at all. See Schedule D, Docket 1.**

However, the SBA's proofs of claim 3-1, 4-1, and 23-1 total $1,682,255.54, which should be added to the debt limit calculation. That brings the total to $11,264,341 when calculating the SBA claims into the scheduled debt. This amount already exceeds the debt limits for Chapter 12.

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

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

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. . .

The court declines to side with the ruling in *Perkins* [a Sixth Circuit B.A.P. Decision cited to by the Debtors in Possession], the Ninth Circuit precedent directing the court to look beyond what is depicted in the Schedules; however, even if the court were to side with the rule in Perkins, Debtors in Possession would still fail eligibility. **The Schedules intentionally omit debts based on the fact that the lenders have not sought payments from Debtors. Opp'n at 5:1-4. Debtors in Possession offer no case law or statutory provisions in support of their proposition that a debt need not be scheduled if creditors are not actively pursuing the debt.** That is likely because there is no supporting authority for such a proposition. A debt must be listed on the Schedules unless it is forgiven or satisfied. 11 U.S.C. § 521.

*Id.*; Civil Minutes, Dckt. 461 at 4, 5, 12 [emphasis added].

Here, the Debtors, who subsequently became the Debtors in Possession with fiduciary duties to the Bankruptcy Estate, and their counsel, who was subsequently employed to represent the Debtor in

Possession as the fiduciary representatives of the Bankruptcy Estate, knowingly and consciously filed this Chapter 12 case with the knowledge that the Debtors did not meet the debt limitations for being Chapter 12 debtors.

The Schedules, which failed to list the SBA Claim, were filed with the Bankruptcy Petition on August 30, 2025. 24-23923; Dckt. 1. From the moment the Petition was filed in the Kenneth and Mary Deaver Case, these two Debtors and their bankruptcy counsel, who subsequently was employed to be counsel for the fiduciary Debtors in Possession, knew they did not meet the debt limits to file a Chapter 12 Case.

The Kenneth and Mary Deaver Chapter 12 Case was doomed from the beginning. Possibly, Kenneth Deaver, Mary Deaver, and their bankruptcy attorney believed that none of the creditors or the U.S. Trustee would discover this absent debt and raise the issue for the court because the coordinated reorganization through the Mary and Kenneth Deaver Chapter 12 Case, the Shenandoah Investment Properties, Inc. Chapter 12 Case (24-23909; which Bankruptcy Case was dismissed due to Shenandoah Investment Properties, Inc. not having farm income; 24-23905, Order and Civil Minutes, Dckts. 396-397), and the Deaver Ranch, Inc. Chapter 12 Case.

Such did not happen.

The Kenneth and Mary Deaver Case was destined for dismissal from the moment it was filed. No productive, legal, Chapter 12 reorganization could be prosecuted. Rather, Kenneth and Mary Deaver improperly obtained the protection of the automatic stay and cause creditors to incur otherwise unnecessary legal fees and expenses.

Additionally, when the existence of the additions debts were disclosed and dismissal was imminent, Kenneth and Mary Deaver did not swiftly convert their case to one under Chapter 11 and productively muscle that Chapter 11 Case forward to continue in a good faith, productive, prosecution of a reorganization in tandem with the Chapter 12 Case of Deaver Ranch, Inc. Instead, they "accepted" the dismissal and slipped away from the scrutiny of the bankruptcy process.

Here counsel for the fiduciary Debtors in Possession seeks to be paid fees of $125,469.00 in fees and $1,084.71 in expenses, plus supplemental fees of $7,571.50 final fees in light of the court dismissing the Bankruptcy Case, for this Chapter 12 Case that was doomed to dismissal from the moment it was filed. The attorneys representing the fiduciary Debtors in Possession are experienced bankruptcy practitioners. The court does note that the two experienced attorneys working on this substantial Chapter 12 case with major business issues to addressed billed for their time at "only" $400 an hour. Motion for Interim Fees; Dckt. 453 at 10. The court states "only" a $400 an hour rate, as it is lower than even non-Bay Area Northern California business bankruptcy attorneys currently charge. It is less that this judge charged more than 15 years ago when he was still practicing.

While the billing rate was "only" $400 an hour, the two attorneys managed to bill 51.70 hours and 245.00 hours for legal services in this doomed Chapter 12 Case.

Other than getting first day motions heard and hearing for use of cash collateral, little productive action occurred in the Kenneth and Mary Deaver Case, as well as the two related Cases. No coalition building occurred, with the Debtors in Possession, and their counsel, remaining at odds with the creditors, and their counsel, appearing in these Bankruptcy Cases. As experienced Chapter 11 and 12 practitioners

learn, bankruptcy reorganization is not "death litigation" and fighting at all costs, but alliance building, with the debtor in possession "picking off" a creditor or group of creditors at a time, with the creditors helping the debtor in possession "understand" the reasonable business points that need to be addressed in the reorganization. Then the unreasonable, hardball creditor(s) are left isolated and subject to having the plan crammed down their throats.

For the court to conclude that there was a *bona fide* error as to the Debtors eligibility for Chapter 12, and it was not merely to try and sneak a legally improper Chapter 12 plan past the court or subject creditors to an improper bankruptcy stay and cost them to run up unnecessary expenses to try and obtain their capitulation, the court would have to conclude that the attorneys billing time to this Case would not have a $400 an hour billing rate. Rather, it would be a billing rate of an inexperienced bankruptcy attorney, who heard the work "bankruptcy" in law school and thought it sounded interesting. That attorney's billing rate would be $225.00 an hour.

It is unclear what productively has been done in this Bankruptcy Case.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by DiMarco Warshaw, APLC ("Applicant," "Firm") for Kenneth and Mary Jean Deaver, the Debtors and Debtors 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 the Motion is **xxxxxxx**.

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|---|---|---|---|
| **4.** | **24-23905-E-12 DMW-12** | **DEAVER RANCH, INC., A CALIFORNIA CORPORATION**<br>**David Goodrich** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIMARCO WARSHAW, APLC FOR MARTHA A. WARRINER, DEBTORS ATTORNEY(S)**<br>**5-6-25 [470]** |

**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)(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 6, 2025. By the court's calculation, 23 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 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

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

DiMarco Warshaw, APLC ("Applicant," "Firm") for Kenneth and Mary Jean Deaver, the Debtors and Debtors in Possession ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 4, 2025, through April 28, 2025. The order of the court approving employment of Applicant was entered on September 25, 2024. Dckt. 61. Applicant requests fees in the amount of $7,571.50 and costs in the amount of $140.46.

**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)).

This case was filed on August 30, 2024. No Plan was ever confirmed. In fact, the case never even made it to a hearing on plan confirmation. The case was dismissed on April 28, 2025 due to debt limit eligibility reasons. Debt eligibility seems to the court an important threshold inquiry made before filing and endeavoring to prosecute a case, especially one as complicated as this case.

There were bumps in the road at every stage of the case. Counsel is seeking a large amount of fees. There is no question that Debtor in Possession had an uphill battle throughout the case, counsel for Debtor in Possession spending time addressing oppositions from creditors along the way. However, the court must engage in a reasonableness of services provided analysis in awarding fees. The billing records contain clear descriptions of tasks performed, but they are not broken up into specific billing categories. Ex. A, Docket 457.

At the hearing, **xxxxxxx**

**CREDITOR AGWEST OPPOSITION**

AgWest Farm Credit, PCA ("AgWest") filed an Opposition on May 13, 2025. Docket 479. AgWest does not oppose the reasonableness of fees, but AgWest opposes permitting Debtor in Possession use its cash collateral to pay the fees. AgWest cites to *In re Proalert, LLC*, 314 B.R. 436 (B.A.P. 9th Cir. 2004) to support its position.

**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 2.7 hours in this category. Applicant continued to confer with Debtors frequently and to communicate with Debtors and bankruptcy counsel for their related business entities to discuss the details of their bankruptcy cases and legal strategy. Mot. 4:22-24.

Monthly Operating Reports: Applicant spent 9.5 hours in this category. Applicant assisted Debtors in the review of monthly financial data and bank statements and filed the Monthly Operating Reports. *Id.* at 4:25-28.

Motions: Applicant spent 3.5 hours in this category. Applicant reviewed the Court's tentative ruling on the Prudential motion to dismiss the Chapter 12 case and discussed it with Debtors. The Firm appeared at the hearing (telephonically) and argued against the Court's tentative ruling.. *Id.* at 5:2-5.

Adversary Proceeding: Applicant spent .6 hours in this category. Applicant monitored the status of the Adversary in the wake of dismissal. *Id.* at 5:13-21.

Fee Application: Applicant spent 11.4 hours in this category. Applicant finalized and filed its First Interim Fee Application. *Id.* at 5:23.

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

| Names of Professionals and Experience | Time | Hourly Rate | Total Fees Computed Based on Time and Hourly Rate |
|---|---|---|---|
| Andy C. Warshaw, Attorney | .4 | $400.00 | $160.00 |
| Martha A. Warriner, Attorney | 19.4 | $400.00 | $7,411.50 |
| **Total Fees for Period of Application** | | | $7,571.50 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,084.71 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|---|---|
| Court Call | | $30.25 |
| Certificate of Service | | $110.21 |
| **Total Costs Requested in Application** | | $140.46 |

The court does not reimburse the cost of court call. The attorneys are free to appear in person, and by availing themselves of court call, they can bill at their desk without the included expense of traveling. Therefore, the cost of $30.25 is not allowed as part of this application.

**DISCUSSION**

Creditor's objection is well taken. In *In re Proalert, LLC*, 314 B.R. 436 (B.A.P. 9th Cir. 2004), the Ninth Circuit Bankruptcy Appellate Panel discussed the notion of using a creditor's cash collateral to pay attorney's fees. The Bankruptcy Appellate Panel in *Proalert* held:

> Most of the § 363 cases cited by the parties do not discuss directly the relationship between § 363 and § 506(c), but a careful reading of most of these cases confirms that the key consideration in deciding whether to allow the use of cash collateral is whether the secured creditor's interest is adequately protected. *See In re James Wilson Assocs.*, 965 F.2d 160, 171 (7th Cir.1992)(permitting debtor to use cash collateral to pay attorney fees because secured creditor adequately protected); *In re Ranch Partners, Ltd.*, 146 B.R. 833 (D.Colo.1992)(stating that a debtor may not use cash collateral to pay reorganization-related attorney fees absent compliance with § 363(c)(2)); *In re Atrium Dev. Co.*, 159 B.R. 464 (Bankr.E.D.Va.1993)(§ 363(c) permits a debtor to use cash collateral if court finds secured creditor adequately protected); *In re Precast Structures, Inc.*, 122 B.R. 304 (Bankr.S.D.Tex.1990)

(allowing use of cash collateral to pay debtor's counsel where creditor over collateralized and thus adequately protected); *In re Triplett*, 87 B.R. 25, 27 (Bankr.W.D.Tex.1988)(cash collateral may be used "for the general benefit of the estate and need not be devoted exclusively to the protection of the creditor or the collateral").

*Proalert*, 314 B.R. at 444. Collier's Treatise on Bankruptcy states in regard to using cash collateral to pay attorney's fees:

> In certain instances, a trustee or debtor in possession may seek to pay professional fees and expenses from a secured creditor's collateral. In *In re Flagstaff Foodservice Corp.*, the Court of Appeals for the Second Circuit held that, in general, the claims of professionals, including those for compensation, may not be satisfied out of encumbered assets. The *Flagstaff* court recognized two instances in which such expenses are chargeable against a lender's collateral:
>
> > •when the expenses are for the direct and primary benefit of a creditor holding a security interest in the particular collateral as provided for in section 506(c), or
> >
> > •when the secured lender consents to the application or charge.
>
> Pursuant to section 506(c), a secured creditor's cash or other collateral may be used to compensate professionals only if, inter alia, their services were of direct benefit to the creditor.
>
> In *In re Ranch Partners, Ltd.*, the district court held that cash collateral may not be used to pay reorganization-related professional fees unless the value of the assets subject to the security interest is more than the secured creditor's claim. The Ranch Partners court limited the debtor's use of cash collateral to the payment of professional fees incurred solely in managing and preserving the secured property. Other courts have held that cash collateral may be used to pay reorganization-related professional fees even if the secured creditor is undersecured, so long as the secured creditor's interest is adequately protected.
>
> Regardless of any benefit to the secured creditor, courts have permitted the payment of estate professionals' fees from cash collateral when a secured creditor has impliedly or expressly consented to allowing such payment. This consent is often provided for in a negotiated "carve out" from a secured lender's liens and claims, which is commonly set forth as part of a debtor-in-possession financing order or agreed cash collateral order. For example, in *In re Evanston Beauty Supply, Inc.,* the court observed that such carve outs were essential in order to ensure that all parties in interest were adequately represented. The *Evanston Beauty Supply* court explained that such negotiated carve outs "are used in order to avoid skewing the necessary balance of debtor and creditor protection needed to foster the reorganization process."

3 COLLIER ON BANKRUPTCY ¶ 330.05[1].

In the contested matter before the court, there has been no showing AgWest is adequately protected, and any funds the Deavers may have are cash collateral of AgWest. The court does not authorize any use of AgWest's cash collateral without the consent of AgWest, or a finding that AgWest is adequately protected. It may be that the fees are reasonable but this court is without authority to compel the Deavers to pay the award.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by DiMarco Warshaw, APLC ("Applicant," "Firm") for Kenneth and Mary Jean Deaver, the Debtors and Debtors 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 the Motion is **xxxxxxx**.

| | | | |
|---|---|---|---|
| **5.** | **24-23905-E-12 GG-10** | **DEAVER RANCH, INC., A CALIFORNIA CORPORATION David Goodrich** | **MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 4-16-25 [447]** |

**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—[No Opposition Filed / 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, 43 days' notice was provided. 28 days' notice is required.

The Motion to Reject Lease or Executory Contract 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 Reject Lease or Executory Contract is granted.**

Deaver Ranch, Inc., Debtor in Possession, ("Movant") moves to reject the oral lease involving Movant leasing the four parcels of real property:

a. 19940 Shenandoah School Road, Plymouth, CA;

b. 21424 Shenandoah School Road, Plymouth, CA;

c. 19944 Shenandoah School Road, Plymouth, CA; and

d. 21643 Shenandoah School Road, Plymouth, CA.

("Lease"). Movant asserts that the Lease should be rejected because it is unable to make rent payments given the downturn in demand for wine grapes and Deaver Ranch's lack of concrete future agreements to sell its grapes. Mot. 4:15-17.

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 executory contract is disclosed on Official Form Schedule G at Line 2.1. Dckt. 1.

PRUDENTIAL'S REPLY

Prudential filed a Reply on May 22, 2025. Docket 494. Prudential does not oppose the Motion but suggests the case should be dismissed as there is no longer meaningful activity in the case.

**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).

**DISCUSSION**

Here, Movant has demonstrated sound business judgment reasons for rejecting the Lease. Movant is unable to afford rent payments or cure the arrearage owed, and so rejection will be of benefit to the Estate.

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 reject the Lease. Therefore, the Motion is granted, and Movant is authorized to reject 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 Reject Lease or Executory Contract filed by Deaver Ranch, Inc., 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 reject the oral lease involving Movant leasing the four parcels of real property:
>
> a. 19940 Shenandoah School Road, Plymouth, CA;

b. 21424 Shenandoah School Road, Plymouth, CA;

c. 19944 Shenandoah School Road, Plymouth, CA; and

d. 21643 Shenandoah School Road, Plymouth, CA.

("Lease"), listed on Official Form Schedule G at Line 2.1 (Dckt. 1).

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

| | | | |
|---|---|---|---|
| **6.** | **25-21517-E-7**<br>**MJD-1** | **ERIKA BOUIE**<br>**Matthew DeCaminada** | **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13**<br>**5-5-25 [15]** |

**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 5, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.**

Erika Danae Bouie ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because when she originally filed under Chapter 7, she was attempting to modify her loan with her mortgage lender, First Tech Federal Credit Union. Mot. 2:15-16. After the filing of the bankruptcy petition, Debtor was no longer offered loss mitigation options. Debtor is approximately $29,366.25 in arrears on her mortgage. *Id.* at 2:16-18. Therefore, debtor would like to convert in order to protect her assets and pay down her arrearage.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

At the hearing, **xxxxxxx**

The Motion is granted and the case is converted to one under Chapter 13.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Erika Danae Bouie ("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 Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

| | | | |
|---|---|---|---|
| **7.** | **24-24023-E-11 RJ-2** | **NEXT HILL ENTERPRISES, LLC Richard Jare** | **MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTORS ATTORNEY(S) 4-24-25 [80]** |

**Item 3 thru 4 on the 10:00 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.

**NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

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

At the hearing, **xxxxxxx**

The Motion for 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 ~~denied without prejudice.~~**

Richard Jare, the Attorney ("Applicant") for Next Hill Enterprises, LLC, Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 9, 2025, through April 24, 2025. The order of the court approving employment of Applicant was entered on October 2, 2025. Dckt. 26. Applicant requests fees in the amount of $9,576.00 and no costs.

**U.S. TRUSTEE'S OPPOSITION**

Tracy Hope Davis, United States Trustee for Region 17 ("U.S. Trustee") filed an Opposition on May 15, 2025. Docket 92. U.S. Trustee states:

1. Counsel's time records are too vague to allow the Court to make a meaningful assessment of the necessity and reasonableness of Counsel's services and fees. The records contain unclear abbreviations and appear incomplete. Opp'n 2:1-10.

2. If the Application is not denied, then counsel's fees should be reduced by at least $269.50. Although Counsel's fee request is $9,576, the fees associated with the post-petition time entries appear to total only $9,306.50. *Id.* at 2:15-18.

**APPLICANT'S RESPONSE**

Applicant filed a Response on May 23, 2025. Docket 96. Applicant provides the following legend for deciphering the time entries:

A. tac = think about case

B. smsd = text message to debtor

C. dsms = debtor text message to attorney

D. smsd "xx" = text message to debtor " subject"

Resp. 1:23-26. Applicant also states he is not opposed to the reduction in fees in the amount of $269.50, totaling $9,306.50 in fees to be awarded.

**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)).

**FEES AND COSTS & EXPENSES REQUESTED**
**Fees**

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** |
|---|---|---|---|
| Richard JAre, Attorney | 39.52 | $350.00 | $13,576.00 |

| | |
|---|---|
| **Total Fees for Period of Application** | $13,576.00 |

Applicant explains that $4,000 was paid by Client as a pre-petition retainer, and Applicant applied all of those funds toward compensation for pre-petition work. Therefore, Applicant is only seeking $9,576 as compensation under this Application.

The U.S. Trustee's Opposition is well taken. Applicant does not provide a task billing analysis for the services provided. The time records appear vague and incomplete. For example, there are entries that state:

1. tac more instruct D:;

2. long dsms today, tac reflect.;

3. Le, tac, act. smsd insurance?

Ex., Docket 83. There are also entries that are not clear, either being not complete or cut-off as shown.

The legend Applicant provides does very little to assist the court in understanding services provided. For example, if "tac" should be understood to mean "think about case," what was exactly thought about? Similarly, two of the largest time entries are described as "case development." What in the case was being developed? Were there strategies or plans being made? There is no way to assess the reasonableness of these entries as they are too vague. Descriptions such as "work on case" or "advise" do not meet the mark. Applicant must keep better records in detailing exact services provided. If better records are not kept, the court is unable to award fees because it cannot assess reasonableness.

The Motion is denied without prejudice to allow Applicant an opportunity to supplement the record and amend time sheets to accurately reflect tasks performed.

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 Richard Jare, the Attorney ("Applicant") for Next Hill Enterprises, LLC, Debtor in Possession ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is ~~denied without prejudice~~.

| | | | |
|---|---|---|---|
| **8.** | **19-22025-E-12**<br>**RLC-27** | **JEFFREY DYER AND JAN WING-DYER**<br>**Stephen Reynolds** | **MOTION TO BORROW**<br>**5-12-25 [539]** |

**THIS MATTER WILL BE HEARD ON THE COURT'S 11:30 A.M. CALENDAR IN CONJUNCTION WITH OTHER MATTERS PRESENTED IN THIS BANKRUPTCY CASE**

**Item 2 thru 3 on the 11:30 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.

**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 9, 2025. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The Motion to Borrow is xxxxxxx .**

Jeffrey E. Dyer and Jan Wing-Dyer, the Debtors in Possession (" Debtor in Possession") move this court for an order authorizing them to borrow new funds pursuant to the terms of the Confirmed Modified Plan or in conjunction with the dismissal of this Bankruptcy Case. The loan proceeds will distributed as provided below.

The Declaration of Jeffrey Dyer, a debtor and debtor in possession, is filed in support of the Motion, and Mr. Dyer's testimony incomes:

> I have received a commitment to make a loan in the amount of $750,000 from Grower Direct Nut Company, Inc. to be secured by a second priority deed of trust secured by the Lamb Ranch, approximately 215 acres, APN 020-040-014. Interest

at 7.0% annually with annual payments of interest only due on the anniversary of the loan closing. All due and payable in three years.

Decl. ¶ 1, Docket 541. Proceeds of the loan would be used as follows:

A. Pay the first priority lien of Rabo AgriFinance LLC ("Rabo"), Class 5 in the Plan the sum of $125,000. This is a partial payment on its secured claim.

B. Satisfy the second priority lien of Citizens Business Bank, Class 4 in the Plan, in the approximate amount of $124,803.60. The proposed lender requires the satisfaction of Citizens Business Bank in full as a condition precedent to the proposed borrowing.

C. Pay the third priority lien of John Roth held by John Roth and authorized by this Court's Order entered August 19, 2022 (Dkt. No. 362). With current interest the estimated payoff amount is $440,500. The proposed lender requires the satisfaction of Roth claim as a condition precedent to the proposed borrowing.

D. Pay Sutter County Property Taxes owing in the estimated amount of $26,543.00, escrow fees in the estimated amount of $9, 153.40 and Chapter 12 Trustee Fees in the estimated amount of $25,000.

Mot. 1:21-2:5.

**SUTTER COUNTY'S REPLY**

Sutter County Tax Collector ("Sutter County") filed a Reply on May 15, 2025. Docket 546. Sutter County argues it is actually first priority by virtue of being a tax lien that has priority over all other liens on the property, regardless of when the liens came into existence. Sutter County does not oppose being paid in full with proceeds of the loan.

**RABO'S OPPOSITION**

Rabo filed an Opposition on May 15, 2025. Docket 549. Rabo states:

1. Debtor in Possession is now on the Sixth Amended Plan that called for a sale of the Lamb Ranch by June 30, 2025. Debtor in Possession concedes another default is imminent, and so ignoring terms of the Sixth Amended Plan, Debtor in Possession proposes to pay Rabo in full within three years. This fails because Debtor in Possession is effectively seeking to extend the Plan beyond five years, all the way to eight years, which is prohibited under 11 U.S.C. § 1222(c). Opp'n 7:5-12.

    a. The first payment under the Original Plan was due June 30, 2020. The Sixth Amended Plan requires the Debtors to pay Rabo by June 30, 2025—exactly five years after the Original Plan payment was due. Now, the Dismissal Motion seeks to modify the Sixth

Amended Plan to allow the Debtor to pay unsecured creditors in full on December 31, 2025—six months after the Original Plan payment was due. *Id.* at 10:25-11:1.

2. The Motion should also be denied because it violates the absolute priority rule. Debtor in Possession is proposing to leverage Rabo's collateral to pay other creditors, including unsecured creditors, after failing to timely sell Lamb Ranch as required by the Plan and then stretch out repayment to Rabo by an additional three and one-half years. *Id.* at 10:8-12. Rabo cites *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017) in support of this position.

**DISCUSSION**

Rabo raises the issue that the proposed borrowing agreement and structured dismissal violates the absolute priority rule. The Supreme Court has held:

> The Code also sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate. Secured creditors are highest on the priority list, for they must receive the proceeds of the collateral that secures their debts. 11 U.S.C. § 725. Special classes of creditors, such as those who hold certain claims for taxes or wages, come next in a listed order. §§ 507, 726(a)(1). Then come low-priority creditors, including general unsecured creditors. § 726(a)(2). The Code places equity holders at the bottom of the priority list. They receive nothing until all previously listed creditors have been paid in full.
>
> The Code makes clear that distributions of assets in a Chapter 7 liquidation must follow this prescribed order. §§ 725, 726. It provides somewhat more flexibility for distributions pursuant to Chapter 11 plans, which may impose a different ordering with the consent of the affected parties. But a bankruptcy court cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class. §§ 1129(a)(7), (b)(2).

*Jevic*, 580 U.S. at 457.

In this contested matter, Debtor in Possession is not proposing to use proceeds of the collateral securing Rabo's debts. Rabo will retain its priority status and be entitled to payment in full. It may be that absolute priority is not necessarily violated here where Rabo retains priority and its claim is entitled to payments in full. However, the court need not decide the matter of absolute priority because Debtor in Possession's proposal violates another rule: Fed. R. Bankr. P. 7001.

The Motion does not request that the new loan prime Rabo's lien or that the order extend the time for payment of the Rabo Bank secured claim. With respect to Rabo's claim, the Motion states:

> The proposed borrowing in the amount of$750,000 will be used as follows:
>
> 1. Pay the first priority lien of Rabo AgriFinance LLC, Class 5 in the Plan the sum of $125,000. [This is a partial payment.]

Motion, p. 1:20-22; Dckt. 539.

Going to the related Motion to either modify the Confirmed Modified Plan or dismiss this Bankruptcy case, that Motion states with respect to the Rabo secured claim:

> Because it is unlikely that a sale will be accomplished by June 30, 2025 as contemplated by the existing Plan, Debtor seeks to, in the alternative, modify the Plan to allow for the payment of nearly all creditors through the Plan or to dismiss the case after the payment of loan proceeds by the Chapter 12 Trustee to pay all creditors other than Classes 5 [Rabo secured claim], 6 [Banner Bank secured claim] and 9 [Yolo County Realty secured claim].
>
> This is essentially the treatment earlier versions of Debtor's Plan accomplished. Debtor intends to pay Rabo in full within three years, **it is Debtor's hope that Rabo will accept such treatment**. Rabo maintains as senior secured creditor on the Lamb Ranch.
>
> . . .
>
> 1225(a)(5) Secured Creditors will retain their liens and will receive the value of their claim.
>
> Remaining creditor Classes Six [Rabo], Seven, Eight, Nine and Ten will receive payments per the original terms of those obligations directly by the Debtors. **Of these Classes Six [Rabo]** and Eight **will have the term of their obligations extended.** All other classes will be paid by the Trustee during the Plan term.
>
> All secured creditors have agreed to the treatment proposed in the Chapter 12 Plan.
>
> . . .
>
> **WHEREFORE**, Debtors respectfully request that the Court modify the Chapter 12 Plan as proposed or in the alternative dismiss the case in a manner that allows the Chapter 12 Trustee to pay the remaining Class 2, 4 and 12 claims from the proposed refinance of the Lamb Ranch.

Motion, p. 2:17-3:2, 5:11-17, 6:4-7; Dckt. 531.

Though the language in the Motion states that all "secured creditors" have agreed to this modification extending the repayment period three years, Rabo's Opposition states that it does not so agree.

Without such agreement, even if the court could confirm a consensual Chapter 12 plan that goes beyond five years, the relief requested is the dismissal of this case in conjunction with allowing the Debtor in Possession to obtain a loan, secured by a lien junior to that of Rabo, which will make a partial payment to Rabo and pay off the junior liens (substituting in the lender , who is the entity identified as the potential buyer). In such a situation there would be nothing barring Rabo from proceeding with a foreclosure, forcing the lender/potential buyer to pay off Rabo or buy the property at the foreclosure sale (quite possibly for less than it would buy the Property from the Debtors post dismissal).

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 Borrow filed by Jeffrey E. Dyer and Jan Wing-Dyer, Debtors and Debtors in Possession (" 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**

**9. 25-20833-E-12 DCJ-1 — PATRICK/PATRICIA MCCAULEY, Pro Se — MOTION TO DISMISS CASE, 5-7-25 [23]**

**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 (*pro se*) and all creditors and parties in interest on May 7, 2025. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

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

**The Motion to Dismiss is granted.**

Secured Creditor Bette M. Dambacher and Gary P. Dambacher, Trustees of the Dambacher Family Trust ("Movant") moves this court for an order dismissing the case of Patrick Jay McCauley and Patricia L. McCauley ("Debtor in Possession"). Movant makes its request pursuant to 11 U.S.C. §§ 101(18)(A) and 109(g). Specifically, Movant states (with the court reformatting some of the text to make the elements more readable):

> A. Debtors' only income during the three years prior to the Petition Date has been from Social Security benefits. The Debtors' Schedule I discloses Debtor Patrick Jay McCauley receives $1,013.94 and Patricia L. McCauley receives $713.00 per month in Social Security benefits. Their Statement of Financial Affairs is not accurate. It shows income in 2023 of $18,622.00 and in 2022 of $16,544.00 from "operating a business." The Debtors testified at their meeting of creditors that these amounts were actually their Social Security benefits. Mot. 3:1-7.
>
> B. In the Debtors' Statement of Financial Affairs, they disclosed "Ag Sales Product" income of $17,464.00 in 2023, but that is less than 50% of their total income for 2023. (They disclosed "Refunds" of $1,158.00 in 2023, which if considered income from a farming operation, would show their 2023 farm income to be exactly equal to their income from "Operating a Business" but actually Social Security. The Code requires "more than 50%" of income to be from a farming operation. *Id.* at 3:10-15.
>
> C. They disclosed "Livestock Sales" of $2,000.00 and "Ag Program Pay" of $13,415.00 in 2022, but again, it is less 50% of their total income. *Id.* at 3:15-17.
>
> D. The Debtors have not farmed the Real Property since 2018. There has not been a farming operation as defined in 11 U.S.C. §101(21) for many years. *Id.* at 3:18-19.

Movant submit the Declarations of Gary P. Dambacher and Hans L. Marchy in support to authenticate the facts alleged in the Motion. Decls., Dockets 25-26. Mr. Dambacher testifies that Debtor in Possession does not even own the real property scheduled in the case, the rights being conveyed to Granger Canyon Ranch, LLC on May 19, 2022. Decl. ¶¶ 14-15, Docket 25; Ex. 10, Docket 27.

**APPLICABLE LAW**

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

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

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

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

11 U.S.C. § 101(18). A "Farming operation" is defined as:

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

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

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

The Eastern District of California in the Sacramento Division leans into the Seventh Circuit's definition. *See In re Gibson*, 355 B.R. 807, 810 (Bankr. E.D. Cal. 2006), with the Hon. Michael McManus

concluding that a rental of farmland is not a farming operation as it shifts the responsibility for farming to someone else and avoiding the risks inherent in farming). As Judge McManus explained:

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

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

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

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

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

> alone or in conjunction with relatives, more than 50 percent of the stock of the entity. For both individuals and entities, there is a further requirement that not less than 50 percent of the debtor's noncontingent, liquidated debts at the commencement of the case, other than debts for a dwelling used as a principal residence, must arise out of the debtor's farming operation.
>
> An individual debtor must fulfill one additional test. The individual debtor must have received from his or her farming operation at least 50 percent of such individual's gross income during the taxable year preceding the year in which the petition was filed or during each of the second and third taxable years preceding the year in which the petition was filed. . .
>
> For either an individual debtor or a corporate or partnership debtor to qualify as a family farmer, the debtor cannot have aggregate debts in excess of $11,097,350.9 The word "aggregate" is used in the definition of family farmer without qualification, in contrast to section 109(e) which sets forth the eligibility requirements for chapter 13. The indebtedness limitation in that section refers to "noncontingent, liquidated" debts. The lack of any qualification also stands in contrast to later language in the definition which uses the phrase "noncontingent, liquidated" to qualify the term "aggregate debts." The logical inference from this choice of language is that Congress explicitly intended that all of a person's debts be used in calculating the indebtedness ceiling. This would certainly include government farm program indebtedness if the debtor's obligation under the program is styled as a loan.
>
> If the validity of a debt is disputed, the court should make a preliminary determination with regard to the validity of the debt. If it is prima facie valid, it should be counted even though the debtor may have defenses to payment or rights of offset. The date on which the aggregate indebtedness limitation is to be calculated is the date of commencement of the case. Debts that have been forgiven or satisfied prior to filing should not be included. In determining the amount of the debtor's outstanding debts, the debtor's schedules should be accorded prima facie validity.

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

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

**DISCUSSION**

Debtor in Possession, bearing the burden of proof, has not established they operate a farming operation, and Debtor in Possession has not shown that their income meets the requirements of 11 U.S.C. § 109(f).

Debtor in Possession's Schedule I show that they receive only income from social security. Schedule I at 35-36, Docket 1. It appears Debtor in Possession does not operate a farming operation, Debtor in Possession not receiving any income besides the social security income.

Moreover, on Debtor's statement of Financial Affairs ("SOFA"), Debtor in Possession states their income for the year 2023 was from operating a business in the amount of $18,622. Debtor in Possession also stated their income for the year 2022 was from operating a business in the amount of $16,544. However, Movant explains Debtor in Possession testified at the 341 Meeting that this income was actually form social security, not operating a business. In response to question 5 on the SOFA, Debtor in Possession lists some additional income apparently from farming, but that additional income does not bring them over the 50% threshold. SOFA at 42, Docket 1.

For these reasons, the case is dismissed, Debtor in Possession not being eligible for relief under Chapter 12.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by Secured Creditor Bette M. Dambacher and Gary P. Dambacher, Trustees of the Dambacher Family Trust ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the Bankruptcy Case is dismissed.

**10. 23-23834-E-7 DNL-24** | **ANTONETTE TIN** **Peter Macaluso** | **MOTION TO SELL FREE AND CLEAR OF LIENS O.S.T 5-12-25 [332]**

**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)(3) 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, parties in interest, and Office of the United States Trustee on May 12, 2025. By the court's calculation, 17 days' notice was provided. The court set the hearing for May 29, 2025. Order, Docket 338.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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, **xxxxxxx**

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits Nikki Farris, 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 779 Skylake Way, Sacramento, CA 95831 ("Property").

The proposed purchaser of the Property is Emily Chen and Fei Sha ("Buyer"), and the terms of the sale are:

(a) the Trustee shall sell and the Buyer shall buy the Subject Property for the purchase price of $725,800.00;

(b) all Buyer contingency periods have been removed;

(c) escrow shall close within 21 days of the filing of the signed Court's order approving the sale;

(d) the Buyer shall take the Subject Property as-is and where-is, with all its faults and in its present condition;

(e) the sale is without representation of condition or warranties, expressed or implied, of any kind by the Trustee;

(f) the Trustee will make no repairs nor give any credits to offset cost of repair;

(g) the Buyer shall pay for the home warranty plan;

(h) the Trustee shall pay for the Natural Hazard Zone Disclosure Report, smoke alarms, CO detectors and water heater bracing;

(i) Escrow fees will be split equally between the Trustee and the Buyer;

(j) the Trustee shall pay for the Owner's title insurance policy, county transfer tax;

(k) the city transfer tax shall be split equally between the Trustee and the Buyer;

(l) the Bankruptcy Court has full jurisdiction to determine and resolve all disputes between the parties;

(m) and the Buyer has remitted a $21,774.00 deposit into escrow.

Mot. 3:14-25.

**Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of the liens of Solarcity Finance Company, LLC ("Solar City"), pursuant to a UCC-1 Fixture Filing ("UCC-1"), recorded in Sacramento County, recorded document number 20150513 page 0792. Tesla, Inc. ("Tesla"), successor to SolarCity has provided a UCC-1 Amendment ("UCC-1 Termination"), indicating a "Termination" of the UCC-1. Ex. B, Docket 334.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant seeks relief pursuant to 11 U.S.C. § 363(f)(2) as the UCC-1 states as it collateral:

> All energy systems and associated components at any time provided by SolarCity Corporation to the Debtor. The Secured Party is not taking a security interest in the real property (except solely to the extent the forgoing is a fixture). The Secured Party's only security interest is in the specific collateral described in this section.

Ex. B at 50. Moreover, Tesla, as the successor in interest to this UCC-1, filed an Amendment terminating the UCC-1. Ex. B at 52. The court finds that lien is not in effect and does not encumber the Property, Tesla having terminated the security interest in fixtures.

The court grants the relief, and the sale is free and clear of any interests that could be asserted by Solarcity or Tesla.

**Overbidding Procedures**

Trustee requests approval of overbid procedures that require a proposed overbidder, prior to or at the hearing on this motion, to provide the Trustee with a deposit by cashier's check in the amount of $26,774.00 ($21,774.00 deposit + first overbid of $5,000.00) and provide proof of funds for the balance of the purchase price. Any overbidding shall proceed in increments of at least $5,000.00. Mot. 4:12-16. The court finds these requested procedures to be reasonable and adopts them for purposes of this Motion.

**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 Trustee will realize funds of $193,643.37 after paying costs associated with the sale and liens. This is a substantial return for the Estate.

Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately $39,919.00. 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 5.5 percent commission to be paid to Reed Block Realty.

**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 so the sale can move forward immediately. Mot. 6:1-2.

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.

**Counsel for the Trustee shall prepare and lodge with the court a proposed order consistent with this Ruling.**

**11. 25-21441-E-7 PSB-1 — DAVID SANDOVAL SERRATO AND SARITA SANDOVAL — Pauldeep Bains — MOTION TO COMPEL ABANDONMENT — 5-12-25 [21]**

**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 12, 2025. By the court's calculation, 17 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, ----------.

**The Motion to Compel Abandonment is granted.**

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

The Motion filed by David Sandoval Serrato and Sarita Elena Sandoval ("Debtor") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon the following property listed on line 44 of the Amended Schedule A/B:

a. DSS Landscape

b. Dump Trailer

c. Rototiller

d. Sod Cutter

e. Power Broom

f. Pressure Washer

g. Pics 7 Shovels

("Property"). The Property has a fair market value of $9,525 as listed on the Amended Schedule A/B. Docket 18. Debtor exempted the entire amount of the Property on the Amended Schedule C. *Id.*

The Chapter 7 Trustee filed a Non-Opposition on May 22, 2025.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

**CHAMBERS PREPARED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by David Sandoval Serrato and Sarita Elena Sandoval ("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 following property listed on line 44 of the Amended Schedule A/B:
>
> a. DSS Landscape
>
> b. Dump Trailer
>
> c. Rototiller
>
> d. Sod Cutter
>
> e. Power Broom

f. Pressure Washer

g. Pics 7 Shovels

is abandoned by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") to David Sandoval Serrato and Sarita Elena Sandoval by this order, with no further act of the Trustee required.

**12. 25-21142-E-11 UST-1**
**HANOVER PROPERTIES LLC**
**Stacie Power**
**MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE**
**4-24-25 [33]**

**Item 12 thru 14**

**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 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 24, 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 dismissed.**

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. Hanover Properties, LLC (" Debtor in Possession") failed to provide evidence to the UST that it has general liability insurance or property insurance for the structures on its real property. 11 U.S.C. § 1112(b)(4)(C) and (H). Mot. 2:9-11.

2. Debtor in Possession also had not filed the "small business case" documents required by 11 U.S.C. §§ 1116(1) and 1187(a). See 11 U.S.C. § 1112(b)(4)(F). Mot. 2:16-18.

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 36.

**No Opposition to Motion Filed**

The Debtor/Debtor in Possession has not filed an Opposition to this Motion.

**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].

> The types of insurance that may be necessary to protect the estate and the public, depending on the debtor's business, may include all or some combination of fire and extended liability insurance, general liability insurance, worker's compensation and unemployment insurance, employee health insurance, malpractice insurance, product liability insurance and liquor or dramshop insurance. The United States trustee, who is charged with responsibility for supervising chapter 11 cases, also requires the debtor to maintain appropriate insurance coverage. "The dollar amount of the insurance coverage must be sufficient to cover the fair market value of the estate's property. . ."
>
> 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][C] & [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), (C), and (H). Debtor in Possession has not maintained insurance on the property, nor has Debtor in Possession timely filed the small business documents. Therefore, there is cause to dismiss or

convert. There being no unsecured creditors in the case, dismissal is in the best interest of creditors. The Motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss 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 dismissed.

**13. 25-21142-E-11 CAE-1** **HANOVER PROPERTIES LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-14-25 [1]**

Debtor's Atty: Stacie L. Power

Notes:
Continued from 5/8/25 to be heard in conjunction with other matters on the calendar.

**The Status Conference is xxxxxxx**

**MAY 8, 2025 STATUS CONFERENCE**

This voluntary Subchapter V Case was commenced on March 14, 2025. Petition; Dckt. 1. On April 25, 2025, the Debtor/Debtor in Possession filed a Status Report. Dckt. 39. In the Status Report the Debtor/Debtor in Possession states that a consensual plan is anticipated in this case, with the Debtor/Debtor in Possession communicating with the creditors having secured claims and a preliminary agreement for a Plan reached.

The U.S. Trustee has filed a Motion to Dismiss or Convert this Case. Dckt. 33. The main grounds stated are: (1) The Debtor/Debtor in Possession confirmed that it did not have liability and property insurance at the 341 Meeting of Creditors and has not provided evidence of such insurance having been obtained, and (2) the Debtor/Debtor in Possession has not filed the required small business case documents by 11 U.S.C. §§ 1116(1) and 1187(a).

At the Status Conference, counsel for the Debtor/Debtor in Possession is looking for resolution of the Motion to Dismiss before going on further.

The Status Conference is continued to 10:30 a.m. on May 29, 2025.

**14. 25-21142-E-11 RHS-1 HANOVER PROPERTIES LLC STATUS CONFERENCE RE: VERIFICATION AND MASTER EQUITY SECURITY HOLDERS ADDRESS LIST 5-12-25 [49]**

Debtor's Atty: Stacie L. Power

Notes:
Set by order of the court filed 5/15/25 [Dckt 51]. No status reports required, with comments, reports, and questions presented orally at the Status Conference.

**The Status Conference is xxxxxxx .**

In this Bankruptcy Case there has been some confusion concerning the Debtor's obligation to file the Master Equity Security Holders Address List as required by Local Bankruptcy Rules 1007-1. A recent example of the confusion appears in the Verification of Master Equity Security Holder Address List filed on May 12, 2025. Dckt. 49.

In the May 12, 2025 filed Master List, David Waite, the person identified in the Schedules as holding 100 percent of the member interests in the Debtor, is listed. Dckt. 49 at 2. However, then nine (9) other persons are listed, all of whom (except for Yvonne Patterson) are listed on Schedule D as creditors having secured claims. *Id*.

The term "equity security holder" is defined in 11 U.S.C. § 101(17) and the term "equity security" is defined in 11 U.S.C. § 101(16) as:

> (17)The term "equity security holder" means holder of an equity security of the debtor.
>
> (16)The term "equity security" means—
>
> (A)share in a corporation, whether or not transferable or denominated "stock," or similar security;
>
> (B)interest of a limited partner in a limited partnership; or

> (C)warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

The term "security" is defined in 11 U.S.C. § 49(a) to include, and is not limited to, the following, as identified by the subparagraph number used in § 49(a): (ii) stock, (xiii) interest of a limited partner in a limited partnership, and (xiv) other claim or interest commonly known as "security." For limited liability companies, it is the "members" who own the equity interest in the LLC and stand as the equity security holders.

It appears that the term "security" as used in the Bankruptcy Code in connection with equity security holder has been confused with the rights of a creditor's claim that is secured by a "security interest" in property of the Debtor.

As of the court's May 28, 2025 review of the Docket for this Bankruptcy Case, an amended Verification of Equity Security Holders Address List had not been filed.

At the Status Conference, **xxxxxxx**

**15. 24-24493-E-11 RDW-1** | **TOWN & COUNTRY WEST LLC** **Nancy Weng** | **CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **4-10-25 [107]**

**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 10, 2025. By the court's calculation, 28 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 or Convert Case is ~~granted, and the case is converted to one under Chapter 7.~~**

**May 29, 2025 Hearing**

The court continued the hearing on this Motion to afford Qualfax, PMF CA REIT, LLC ("PMF"), and Debtor in Possession an opportunity for supplemental briefing. Creditors were to file their briefing by May 15, 2025, and Debtor in Possession was to file their supplemental response by May 22, 2025. Creditors filed their briefs but Debtor in Possession did not file anything.

Qualfax states in its Supplemental Brief:

1. Debtor in Possession has not accurately reported rental incomes for the Fulton and White Rock Properties, characterizing capital contributions as rental income. This mis-characterization misled creditors, the Estate, and potential purchasers of the properties in violation of 11 U.S.C. § 1112(b)(4)(F) and (H). Suppl. Brief 4:8-25, Docket 137.

2. In an effort to buy more time, the Debtor in Possession provided the "Purchase Agreement" with the former owner of the Fulton Property. In addition to not appearing to being an "arm's length" transaction, the

purchase agreement only requires a minuscule deposit (.5% of purchase price) as well as numerous contingencies. When taking into account the misrepresentations regarding the rental income, it is doubtful those contingencies would be removed. *Id.* at 5:2-7.

3. The case should be converted to one under Chapter 7 as this is a liquidation case and a Chapter 7 Trustee would be best suited to preserve any equity that may exist for the Estate. *Id.* at 5:8-15.

PMF filed a Joiner on May 15, 2025 (Docket 133) and again on May 27, 2025 (Docket 146). The two versions of the Joinder appear identical. PMF states:

1. The case should be converted to one under Chapter 7 because the fair market value of the Fulton and White Rock properties is much lower than the Debtors in Possession have represented. Debtors in Possession marketed the properties based on the representation that White Rock generates $353,260 in annual income and Fulton generates $1,210,860. However, the Debtors' managing member has admitted that the rental income is far less than that represented in their marketing materials. Rather, per the Supplemental Declaration of Waqar Khan, the $353,260 for White Rock reflects $37,498 in rent for October 2024 to February 2025, and $112,000 in owner contributions. Joinder 3:12-19, Docket 133.

2. The current offer from Dr. Janak Mehtani lacks indicia of good faith, Dr. Mehtani being the former owner of the Fulton Property and only being required to put down a .5% deposit. Moreover, the offer contains too many contingencies that would allow Dr. Mehtani to cancel the transaction. For example, the Purchase Agreement provides 60 days to conduct due diligence and remove contingencies, including obtaining an appraisal, conducting environmental reviews, and reviewing title, survey, leases, permits, and other due diligence materials for the Properties. *Id.* at 5:4-13.

Here, PMF and Qualfax have supplemented the record. Debtor in Possession makes no response to the allegations. It appears the value of these properties is overstated by Debtor in Possession, the value being calculated from rental income that was actually capital contributions. There are also issues with the Purchase Agreement. Dr. Mehtani has a history with the Fulton Property and is only expected to put down .5% of the purchase price to conduct due diligence for 60 days.

At the hearing, **xxxxxxx**

~~The Motion is granted and the case is converted to one under Chapter 7.~~

**REVIEW OF MOTION**

Qualfax, Inc. ("Creditor," "Qualfax"), seeks dismissal of the jointly administered cases pursuant to 11 U.S.C. § 1112(b) on the basis that:

1. This is a jointly administered case with two Debtors in Possession, Town & Country West, LLC ("West Debtor") and Town & Country Event Center, LLC ("Event Debtor"). Both Debtors in Possession appear to be mismanaging their respective estates by not collecting rents, not reporting rents received, and not taking actions against non-paying tenants. In addition, the Debtors have either failed to file monthly operating reports, or filed incomplete reports. All of this negatively affects the value of the properties and diminishes the small amount of equity in the estates. Mot. 1:15-19.

2. First, the West Debtor's and Event Debtor's failure to file monthly operating reports is cause to dismiss or convert this case pursuant to 11 U.S.C. §1112(b)(F) and (H). No January or February 2025 monthly operating reports were filed in either case. Mot. 1:20-22.

3. Second, the West Debtor's and Event Debtor's failure to pay post-petition property taxes constitutes cause to convert this case pursuant to 11 U.S.C. §1112(b)(4)(A). The West Debtor has failed to pay $206,246.10 in tax obligations that have come due since the petition date. The Event Debtor has failed to pay $32,341.72. Mot. 1:25-2:2.

4. Third, there has been substantial loss to the estates, and there is no reasonable likelihood of rehabilitation. Neither estate has positive cash flow, and the debt on the estate assets, including tax debt, is increasing. While there was a proposal to liquidate assets with an April 15, 2025, deadline, that time has come and gone with no progress being made. *Id.* at 6:3-6.

    a. In their Status Conference Statements, the West Debtor and Event Debtor state that the rental income from the Properties is not sufficient to cover the mortgage payments. This is supported by the MORs (to the extent they can be relied upon), and the fact that the pre and postpetition property taxes are not being paid and Mr. Khan is making monthly contributions to the Debtors. The accumulation of debt at this rate will rapidly result in the depletion of any equity in the Properties. Mot. 15:6-11.

5. Fourth, the Debtors' gross mismanagement of the estates is grounds for dismissal or conversion. *Id.* at 6:7-8.

    a. Despite the fact that the 2961 Fulton Avenue, Sacramento, CA ("Fulton Property") is occupied by 22 tenants unrelated to Mr. Kahn, is being used by the Event Debtor for business, and is occupied by at least four (4) of Mr. Kahn's other entities, the MORs only provide for up to six (6) rental payments a month. This is of great concern. Either tenants, related and unrelated to Mr. Kahn, are not paying rent and should be removed from the Fulton Property so market rent tenants can replace them, or tenants are paying rent, and

those rents are not listed in the MORs and are being withheld or diverted to insiders. Mot. 16:4-10.

Creditor submitted the Declaration of counsel Reilly D. Wilkinson in support of the Motion to authenticate the facts alleged in the Motion and the attached Exhibits. Decl., Docket 109.

**Debtors' in Possession Opposition**

Debtors in Possession filed an Opposition to the Creditor's Motion on April 24, 2025. Docket 118. Debtors in Possession state:

1. This Chapter 11 case remains both viable and value-maximizing. The Disclosure statement and Plan of Reorganization as proposed will pay secured claims, priority claims, and unsecured claims a 100% dividend. Opp'n 2:23-28.

2. Debtors in Possession have made consistent adequate protection payments, currently 50% of its regular contractual obligations, and are able to increase that amount to 75% going forward. *Id.* at 3:2-3.

3. Importantly, the Debtors have cooperated fully as debtors in possession: filing monthly operating reports (the Debtors are now current), maintaining all necessary insurance, and responsibly managing the estate. *Id.* at 3:4-6.

4. The managing member of the debtors in Possession, Waqar Khan, is certain that the properties can sell if given no more than six (6) more months. *Id.* at 3:14.

5. The properties in these cases have been on the market since January 2025 and have begun to draw significant buyer interest, including physical tours, access to diligence data rooms, and early-stage negotiations. The Debtor anticipates receiving binding offers in the coming weeks. The concurrently filed declaration in support of this Opposition of David Herrera outlines what has been happening to date, the average sales time for these types of properties (~1 year) and how much more time (6 months) is needed to get reasonable, fair market offers to sell and effectuate the intended Chapter 11 Plan. *Id.* at 4:4-9.

6. The concern regarding the principal's direct payment of certain expenses was not ignored—it was promptly addressed. All such payments have ceased, and the Debtor will now make all payments directly through the DIP account. This ensures proper accounting, transparency, and consistency with Chapter 11 protocol. *Id.* at 5:11-15.

7. The estates hold substantial equity. *Id.* at 5:18.

8. If this case is converted now, the likely result will be fire-sale pricing, loss of broker continuity, collapse of buyer negotiations, and a significantly lower return for all creditors. *Id.* at 6:10-11.

Debtors in Possession submit the Declaration of David Herrera in support. Decl., Docket 119. Mr. Herrera is the commercial real estate broker employed in the case. Mr. Herrera testifies that he is receiving interest in selling the Properties. He states:

> In my professional judgment, an additional 6–9 months of marketing and diligence is commercially reasonable and necessary to realize full and fair value for the estate. The current offers are not mature and would not withstand standard scrutiny in non-distressed commercial transactions.

Decl. ¶ 9, docket 119.

Moreover, Mr. Khan filed a Supplemental Declaration in support of the Opposition on May 4, 2025. Mr. Khan testifies that a fully executed Purchase Agreement is in place, dated April 28, 2025, with a committed buyer and non-refundable deposits that will pay secured creditor, Qualfax, Inc., in full no later than August 11, 2025. Decl. ¶ 3, Docket 125. The Purchase Agreement is attached as Exhibit A, Docket 126. The qualified buyer is in contract, with proof of funds and a firm time line. The contract was negotiated at arm's length after wide marketing efforts. *Id.* at ¶ 15. All delinquent taxes are to be paid fully by close of escrow. *Id.* at ¶ 12.

In regard to Creditor's grounds for dismissal that Debtors in Possession are not collecting rent from their tenants, Mr. Khan testifies:

> Discrepancies in rent figures are based on improperly adding owner capital contributions to the figures -- which is not tenant rent. The monthly amounts of $29,438.33 (White Rock) and $100,905.00 (Fulton) were never represented as tenant rent. They are owner capital contributions committed to cover any rent shortfall and ensure full debt-service coverage during lease- up. Qualfax multiplies those figures by 12 to reach $353,260 and $1,210,860, but those totals have always appeared on MOR line 8("Capital Contributions"), not the "Rental Income" line. The Debtor through counsel explained this early to secured creditor's counsels back in Sept. and August of 2024. For October 2024–February 2025, the Event Debtor reported $37,498 in tenant rent and $112,000inownercontributions—totaling $149,498, virtually the pro-forma amount Qualfax expected. The MORs therefore reconcile when both columns are considered.

*Id.* at ¶ 11. Mr. Kahn testifies as to the following timeline in prosecuting these cases:

> a) May 7, 2025, March 2025 MORs will be filed;
>
> b) May 10, 2025, Adequate Protection Payments ($60,000.00) for the secured creditors;
>
> c) May 10, 2025, or prior, Motion to Authorize Sale (filed and set for hearing);

d) May 20, 2025, New Disclosure Statement and Chapter 11 Plan;

e) Anything else the Court would like addressed / completed.

*Id.* at ¶ 9.

**Creditor's Reply**

The Creditor filed a Reply to the Opposition on May 1, 2025. Docket 64. The Reply came in time before Mr. Kahn's Supplemental Declaration was on file. Creditor states the issues with the MORs have not been remedied, including failing to file the MOR for March of 2025. Creditor recommends dismissal or conversion in the event there is equity.

**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].

The example of subsection (b)(4)(B) focuses on the management of the estate and not on the debtor. Since the focus is on the bankruptcy estate, the inquiry cannot include mismanagement by the debtor prior to the bankruptcy filing. However, if mismanagement continues after the petition has been filed, it is not in the interest of creditors to permit continuance of gross mismanagement.

"A debtor in possession is vested with significant powers under the provision of the Bankruptcy Code. As is often the case, those powers come with certain responsibilities. Significantly, a debtor in possession owes a fiduciary duty to its creditors." Gross mismanagement may be found notwithstanding the debtor's management's good intentions. Failure to maintain an effective corporate management team has been held to constitute gross mismanagement. Mismanagement may include failure by debtor's manager to comply with the requirements of the Bankruptcy Code, including seeking approval for postpetition lending and borrowing, and the failure to keep the court and other parties in interest apprised of the debtor's business operations.

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

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].

> The ninth example of cause enumerated in section 1112(b)(4) is "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." Before the inclusion of this example of cause in section 1112(b), some courts held that the failure to pay postpetition taxes could constitute grounds for conversion or dismissal under section 1112(b). The example includes both the failure to pay postpetition taxes as well as the failure to file tax returns that come due postpetition. Courts have disagreed whether the timeliness requirement under the language of section 1112(b)(4)(I) applies solely to the payment of taxes or also to the filing of any postpetition return.

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

**DISCUSSION**

As an initial matter, this does not appear to be a case where a debtor is sitting idly and allowing assets to depreciate. Debtors in Possession have been actively marketing the assets in this case for sale and have presented to the court evidence that a sale is under contract. Debtors in Possession have presented facts that support a reasonable likelihood of rehabilitation.

The evidence also reflects that dismissal or conversion at this stage risks destroying progress toward the sale, as well as tenants potentially abandoning leases in a Chapter 7 case. The court does not find that Debtors in Possession have been grossly mismanaging the estates.

It is true that Debtors in Possession have not paid post-petition taxes that have come due, which is an enumerated ground for cause for dismissal under 11 U.S.C. § 1112(b)(4(I). However, while the court finds that there could potentially be cause to dismiss or convert this case, Debtors in Possession have presented evidence that there is a resolution in sight. A sale of the properties is in place that will pay all creditors in full, including the delinquent post-petition taxes.

**May 8, 2025 Hearing**

At the hearing, several creditors and the U.S. Trustee's counsel addressed additional facts and information relating to the Monthly Operating Reports and conduct of the Debtor and the Debtor in Possession.

The Parties agreed to a short continuance, the filing of Supplemental Pleadings by creditors, and the filing of Supplemental Response Pleadings by the Debtor in Possession.

Creditors shall file and serve Supplemental Pleadings on or before May 15, 2025; and the Debtor in Possession shall file and serve Supplemental Response Pleadings on or before May 22, 2025.

The hearing on the Motion to Dismiss Case is continued to 10:30 a.m. on May 29, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss or Convert filed by Qualfax, Inc. 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 converted to one under Chapter 7.~~

**16. 24-90528-E-11 BSH-7**

**HERITAGE HOME FURNISHINGS, LLC**
**Brian Haddix**

**CONTINUED 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**

**May 29, 2025 Hearing**

The court continued this hearing to allow Debtor in Possession a short amount of time to supplement the record and show the court how the transaction is commercially reasonable in both terms and marketing of the property. As of the court's review on May 27, 2025, nothing new has been filed in the case.

At the hearing, **XXXXXXX**

**REVIEW OF MOTION**

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.

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.

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.

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**.

# FINAL RULINGS

**17. 24-23715-E-7 BHS-3** | **SKY/JULENE SINCLAIR** | **MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES ATTORNEY(S)**
**Pauldeep Bains** | **4-18-25 [47]**

**Final Ruling:** No appearance at the May 29, 2025 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors and parties in interest, and Office of the United States Trustee on April 18, 2025. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

The Law Office of Barry H. Spitzer, the Attorney ("Applicant") for the Chapter 7 Trustee, Loris L. Bakken, and the Estate of Sky Palmer Sinclair and Julene Fawn Jensen Sinclair ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 25, 2024, through April 17, 2025. The order of the court approving employment of Applicant was entered on October 20, 2024. Dckt. 19. Applicant requests fees in the reduced amount of $3,400 and costs in the amount of $139.57.

**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 and having granted a Motion to Sell the Estate's interest in a vehicle. The Estate has $10,000 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

1. Reviewed the court file and Application for Employment;

2. Prepared for and attended the 341 Meeting;

3. Engaged in communication with Debtor's attorney regarding exemptions;

4. Prepared a sale agreement and motion to sell; and

5. Court appearance.

Mot. 3:1-8.

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** |
|---|---|---|---|
| Barry H. Spitzer | 18.5 | $475.00 | $3,400 (reduced) |
| **Total Fees for Period of Application** | | | $3,400.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $139.57 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|---|---|
| Parking | ---------- | $5.00 |
| Copying | | $58.65 |
| Postage | | $75.92 |
| **Total Costs Requested in Application** | | $139.57 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**
**Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,400.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $139.57 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

| | |
|---|---|
| Fees | $3,400.00 |
| Costs and Expenses | $139.57 |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by The Law Office of Barry H. Spitzer, the Attorney ("Applicant") for the Chapter 7 Trustee, Loris L. Bakken, and the Estate of Sky Palmer Sinclair and Julene Fawn Jensen Sinclair ("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 The Law Office of Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

The Law Office of Barry H. Spitzer, Professional employed by the Chapter 7 Trustee

| | |
|---|---|
| Fees | $3,400.00 |
| Costs and Expenses | $139.57, |

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

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

**18. 25-21430-E-7** **SUZANNE PATTERSON**
**Kristy Hernandez**

**ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER**
**4-16-25 [14]**

**Final Ruling:** No appearance at the May 29, 2025 Hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on April 16, 2025. The court computes that 43 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's counsel's failure to maintain the same mailing 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 a change of address on April 21, 2025, that corrects the mailing address.

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.

**19. 23-21341-E-7 BLG-3** | **SAMUEL TURKS** **Chad Johnson** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S) 4-10-25 [62]**

**Final Ruling:** No appearance at the May 29, 2025 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on April 10, 2025. By the court's calculation, 39 days' notice was provided. 49 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Chad M Johnson, the Attorney ("Applicant") for Samuel Turks, the Chapter 7 Debtor ("Client"), makes a request for final approval of interim fees and expenses already awarded in the case in the amount of $4,391.08. Applicant does not seek an award of any additional fees or costs. The fees are requested for the period March 23, 2023, through September 12, 2023.

The case was converted to one under Chapter 7 on March 19, 2025. Docket 51. All fees have been paid in the case except the final amount of $549.08.

**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 General Case Administration. 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 Preparation and Administration: Applicant spent 7.5 hours in this category. Applicant consulted with Debtor, prepared the draft petition and accompanying schedules, reviewed and updated the petition and schedules with Debtor, communicated and coordinated with the Trustee, and attended the 11 U.S.C. § 341 meeting.

Motion to Value: Applicant spent 2.2 hours in this category. Applicant drafted, filed, and served the Motion to Value. Applicant reviewed the Tentative Ruling granting the Motion to Value and appeared by phone at the hearing.

First Interim Motion for Fees: Applicant spent 1.2 hours in this category. Applicant prepared an accounting and corresponding First Interim Motion for Fees.

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** |
|---|---|---|---|
| Chad M. Johnson | 10.9 | $400.00 | $4,360.00 |
| **Total Fees for Period of Application** | | | $4,360.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $31.08 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Printing and Envelopes | | $7.80 |
| Postage | | $16.38 |
| Printing and Envelopes | | $3.30 |
| Postage | | $3.60 |
| **Total Costs Requested in Application** | | $31.08 |

**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 $4,360.00 are approved on a final basis pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Costs & Expenses**

First and Final Costs in the amount of $31.08 are approved on a final basis and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

| | |
|---|---|
| Fees | $4,360.00 |
| Costs and Expenses | $31.08 |

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 Chad M Johnson, the Attorney ("Applicant") for Samuel Turks, the Chapter 7 Debtor ("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 Chad M Johnson is allowed the following fees and expenses as a professional of the Estate:

Chad M Johnson, Professional employed by the Chapter 13 Debtor

| | |
|---|---|
| Fees | $4,360.00 |
| Costs and Expenses | $31.08, |

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

The balance of the fees remaining to be paid in the case is $549.08 and is authorized to be paid by the Chapter 13 Trustee or the Chapter 7 Trustee from available funds of the Estate.

**20. 25-20045-E-7 JC-1** **OSMAN SYED** **Jake Cline** **CONTINUED MOTION TO REDEEM 4-3-25 [17]**

**Final Ruling: No appearance at the May 29, 2025 Hearing is required.**
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and other parties in interest on April 3, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 Redeem is granted.**

**May 29, 2025 Hearing**

The court continued the hearing on the Motion to Redeem as Debtor had not exempted the Vehicle pursuant to 11 U.S.C. § 522, which was a prerequisite for redemption. Debtor filed an Amended Schedule C on May 9, 2025, exempting the Vehicle. Am. Schedule C, Docket 24.

Therefore, the Motion is granted.

**REVIEW OF MOTION**

Debtor Osman Ali Syed ("Debtor") moves the court for an order valuing creditor Chase Bank, N.A.'s ("Creditor") claim in the amount of $27,827 and permitting Debtor to redeem the collateral securing Creditor's claim in the same amount. Creditor's claim is secured by a 2023 Tesla Model Y, Vin ending in 2275 ("Vehicle") and is asserted to be in the total amount of $57,700. Decl. ¶ 3, Docket 19.

Debtor seeks to value the Vehicle at a replacement value of $27,827 as of the petition filing date. Decl. ¶ 4, Docket 19. 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). Debtor explains he acquired the Vehicle for personal use. Decl. ¶ 1.

**APPLICABLE LAW**

11 U.S.C. § 722 is the statutory grounds for a debtor to redeem personal property that is collateral securing a debt in Chapter 7 cases, which states:

> **An individual debtor may**, whether or not the debtor has waived the right to redeem under this section, **redeem tangible personal property intended primarily for personal, family, or household use**, from a lien securing a dischargeable consumer debt, **if such property is exempted under section 522** of this title or has been abandoned under section 554 of this title, **by paying the holder of such lien the amount of the allowed secured claim** of such holder that is secured by such lien in full at the time of redemption.

Collier's Treatise states regarding redemption:

> Section 722 of the Bankruptcy Code provides that an individual debtor may redeem consumer goods from a lien securing a dischargeable consumer debt, if the property is exempted under section 522 or has been abandoned under section 554, by paying the lienholder the amount of the allowed claim secured by the lien, i.e., the value of the lienholder's collateral if he or she is undersecured. The right to redeem amounts to a right of first refusal for the debtor to purchase consumer goods that might otherwise be repossessed.

6 COLLIER ON BANKRUPTCY ¶ 722.01.

> The property redeemed must be intended primarily for "personal, family, or household" use. . . To be subject to redemption, the property must also be exempted under section 522 or have been abandoned under section 554. With respect to

> exempt property, section 722 is designed for use in cases in which the creditor's lien on the property cannot be avoided under section 522(f). . .
>
> Because the debtor has the right to redeem certain types of abandoned property, any motion for abandonment of such property should be served upon the debtor as a party in interest, and the court should not allow abandonment until it determines whether the debtor intends to redeem the property. Such a determination may be made based upon the debtor's statement of intention with respect to property securing consumer debts, filed pursuant to section 521(a)(2) of the Code. This statement must be filed, using Official Form 108, the Chapter 7 Individual Debtor's Statement of Intention, within 30 days of the filing of the petition or before the date of the meeting of creditors, whichever is earlier. Federal Rule of Bankruptcy Procedure 1007(b)(2) requires the debtor to serve a copy of this statement on the trustee and all creditors named in the statement. No abandonment should occur before that statement is filed, and if the debtor has stated an intent to redeem, the debtor must be given the opportunity to carry out that intent at least for the time period allowed by section 521(a)(2).

6 COLLIER ON BANKRUPTCY ¶ 722.02[1]-[3].

> When the debtor and the secured creditor agree on the amount of the allowed secured claim, redemption may be accomplished by the debtor simply paying that amount to the creditor in exchange for release or satisfaction of the lien. . .
>
> When there is a dispute as to value, the court must hear evidence on that issue. In cases of motor vehicles, many courts favor the presentation of standard industry guides, with some even establishing a presumption based on the published value of a used vehicle absent evidence that would justify an upward or downward adjustment based on the condition of the vehicle. As to both vehicles and other property, the debtor is also competent to testify as to his or her opinion on value.

6 COLLIER ON BANKRUPTCY ¶ 722.05[1] & [2].

There are essentially three prerequisites mentioned in 11 U.S.C. § 722 that must be met first for a Debtor to be able to exercise the right of redemption. These are:

1. the property subject to the Motion must be tangible personal property intended primarily for personal, family, or household use;

2. the lien must be securing a dischargeable consumer debt; and

3. the property is exempted under section 522 of this title or has been abandoned under section 554 of this title.

The court finds that two of the prerequisites have been met in this Motion. The evidence reflects that the Vehicle is tangible personal property intended primarily for personal use. The lien also secures a dischargeable consumer debt, this not being a business debt or otherwise nondischargeable obligation. *See* 11 U.S.C. §§ 727(b), 524.

However, the record does not reflect that the Vehicle has either been:

(1) exempted under Section 522 or

(2) has been abandoned under Section 554.

There is no Motion to Abandon on file by the Chapter 7 Trustee or the Debtor. In reviewing Schedule C filed by Debtor there has been no exemption claimed in the Vehicle. Sch. C; Dckt. 1 at 16-17. This may have occurred since Debtor notes that the debt secured by the Vehicle well exceeds the retail value of the Vehicle and presumed that there was no value to claiming an exemption in such over encumbered Vehicle.

California Code of Civil Procedure § 704.010 provides for a $7,500 exemption that can be claimed in the Vehicle.

Therefore, though it may have been a "clerical error" that the vehicle exemption is not listed on Schedule C, the court is unable to grant the Motion to Redeem at this stage.

At the hearing, counsel for the Debtor stated that clerical error would be promptly corrected.

The hearing on the Motion to Redeem is continuing to 10:30 a.m on May 29, 2025, for the court's administrative purposes of tracking the filing of the amended Schedule C.

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 Redeem filed by Osman Ali Syed ("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 Redeem is granted. Debtor is permitted to redeem the 2023 Tesla Model Y, Vin ending in 2275 ("Vehicle") in the amount of $27,827 pursuant to 11 U.S.C. § 722.

**21. 25-21393-E-7** **CHANCELLOR KIRVEN**
**Taras Kurta**

**ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**5-2-25 [19]**

**Item 10 on the 10:00 Calendar**

**Final Ruling:** No appearance at the May 29, 2025 Hearing is required.
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The Order to Show Cause was served by the Clerk of the Court on Toyota Motor Credit Corporation ("Creditor") as stated on the Certificate of Service on May 4, 2025. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $199 due on April 18, 2025.

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

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

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

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

**22. 25-21497-E-7** **DIANA AGUILAR**
**Diana Cavanaugh**

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

**Final Ruling:** No appearance at the May 29, 2025 Hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on April 17, 2025. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's counsel's failure to maintain the same e-mail 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 April 28, 2025, that corrects the e-mail address.

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.