UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 29, 2025 at 11:30 a.m.

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1. 25-21706-E-13 FWP-1 | **CAROL MCEACHERN** **Pro Se** | **CONTINUED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 4-17-25 [9]**

DEBTOR DISMISSED: 05/09/25

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on April 18, 2025. By the court's calculation, 18 days' notice was provided. The court set the hearing for April 18. Dckt. 12.

The Motion to Confirm the Absence of Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 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 no opposition was presented.

The Motion to Confirm the Absence of Stay is xxxxxxx.

May 29, 2025 Hearing

The court continued the hearing on this Motion to afford Debtor extra time to file documents in the case and otherwise prosecute the case. However, the case was dismissed on May 9, 2025, with nothing new having been filed in the case since. Docket 24.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

On April 10, 2025, Debtor Carol McEachern filed a Petition to commence this voluntary Chapter 13 Case (the "Current Case"). Dckt. 1 In it, Debtor states that she has had one prior bankruptcy case filed within this last 18 months, with that being filed in the Eastern District of California on December 12, 2025. (The 2025 year reference appears to be a clerical error.) Petition, ¶ 9; Dckt. 1. No case number is given for this referenced prior case.

On April 17, 2025, Creditor Stephen Pezzullo ("Movant") filed an *Ex Parte* Application for Order Confirming That No Stay is in Effect. Dckt. 9. Federal Rule of Bankruptcy Procedure 4001 provides the basic procedure for filing Motions seeking relief from the automatic stay. Such relief includes entering an order confirming that no automatic stay went into effect due to the provisions of 11 U.S.C. § 362(c)(4)(A). *See,* 11 U.S.C. § 362(c)(4)(A)(ii), as cited by the Movant.

On April 18, 2025, the court entered an order setting a hearing on this Motion for May 6, 2025. Order; Dckt. 12.

Congress provides in 11 U.S.C. § 362(c)(4)(A)(i) that if a debtor who is an individual files a bankruptcy case (the "latter case"), and that debtor had two prior bankruptcy cases that were pending and dismissed the year preceding the filing of the latter case, then no automatic stay pursuant to 11 U.S.C. § 362(a) goes into effect in the latter case.

In the *Ex Parte* Motion, Movant states that Debtor has had the following prior bankruptcy cases that were pending and dismissed within one year of the April 10, 2025 filing of the Current Case:

Chapter 13 Case 24-25449	Filed December 5, 2024	**Dismissed** **January 8, 2025**
Chapter 13 Case 24-25500	Filed December 5, 2024	**Dismissed** **February 4, 2025**
Chapter 13 Case 25-20041	Filed January 7, 2025	**Dismissed** **February 4, 2025**

In the Motion, Movant states that in the prior cases the bankruptcy court entered an order consolidating Cases 24-5499, 24-25500, and 25-2041. Motion, p. 2:3-4; Dckt. 9. The Motion further states that the consolidated cases were dismissed on February 4, 2025, the Debtor having failed to file any Schedules or Statement of Financial Affairs. *Id*.; p. 2:9-11.

Review of Consolidation and Prior Cases

As stated by Movant, on January 13, 2025, the Bankruptcy Judge in Case 24-25500 issued an "Order Consolidating Chapter 13 Cases." 24-25500; Dckt .14. That Order states:

> It is hereby ordered:
>
> > 1. the foregoing three cases [the Case Nos. 24-25500, 24-25449, and 25-20041 are listed in the caption] are hereby consolidated, Fed. R. Bankr. P. 1015(a);
> >
> > 2. case number 24-25500 shall be the lead case; and
> >
> > 3. all cases shall be assigned to Department A, Judge Clement

Id., p. 2. The Order appears to have been issued *sui sponte*, with there being no motion to consolidate appearing on the Docket and no minutes or ruling relating to the Order consolidating the cases. The Consolidation Order is filed in Case 24-25499, but is not filed in Case 25-20041.

The Clerk of the Court entered an Order on January 8, 2025, stating that Case 24-25499 was dismissed due to the failure to file required documents. 24-25499; Dckt. 27. However, on January 13, 2025, the Bankruptcy Judge entered an order stating that Case 24-25499 was consolidated with Cases 24-2550 and 25-20041. *Id*.; Dckt. 29. Thus, notwithstanding the prior order entered by the Clerk of the Court, the Bankruptcy Judge consolidated Case 24-25449 with the other two Cases.

On February 4, 2025, the Clerk of the Court entered Orders Dismissing the consolidated cases due to the failure to file the required documents in Case 24-25500 (Dckt. 27) and 25-20041 (Dckt. 13).

Consolidation of Cases

In the Order Consolidating Cases, the Bankruptcy Judge cites to Federal Rule of Bankruptcy Procedure 1015(a), which provides:

> (a) Consolidating Cases Involving the Same Debtor. The court may consolidate two or more cases that are regarding or brought by or against the same debtor and that are pending in its district.

Federal Rule of Bankruptcy Procedure 1015(b) further provides for "Jointly Administering Cases" between related entities.

Here, while the Debtor filed multiple prior cases, and failed to prosecute them, it is not clear from the record whether the Debtor had three prior cases that were pending and dismissed within one year of the filing of the Current Case, or just one "Consolidated Case" that was pending and dismissed.

On April 29, 2025, Movant filed a Supplemental Document. Docket 20. Movant states it is not clear that just because the cases were consolidated, cases were not eliminated for purposes of 11 U.S.C. § 362(c)(4). Movant cites to 11 U.S.C. § 301, stating that a case is "commenced" by the filing of a petition, and Federal Rule of Bankruptcy Procedure 1015, stating that the court may consolidate two or more cases.

What Movant does not address is when several cases are consolidated into one case and dismissed, is there just one case dismissed or multiple cases dismissed.

APPLICABLE LAW

11 U.S.C. § 362(c)(4) states:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—
. . .
(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. . .

Collier's Treatise states regarding consolidation cases against the same debtor:

Federal Rule of Bankruptcy Procedure 1015(a) authorizes the court to consolidate separate cases by, regarding, or against the same debtor. The separate filings could occur because both voluntary and involuntary petitions were filed, because separate involuntary petitions were filed, or because a separate petition was filed in another court and transferred to a court in which a petition had already been filed. In some cases, a debtor may have filed a second voluntary petition while an earlier case is still pending. The use of the term "regarding" makes clear that petitions seeking recognition of a foreign proceeding under chapter 15 are included within the scope of the rule.

Use of the permissive "may" in Federal Rule of Bankruptcy Procedure 1015(a) indicates that the court is not required to consolidate the cases. In these situations, however, it is likely that the court will do so unless consolidation is inappropriate. Consolidation may be inappropriate in some cases in which two separate involuntary

> petitions have been filed against the same debtor. However, the court may generally protect against any problems posed by the consolidation of two involuntary cases by entering appropriate protective orders under Rule 1015(c).

9 COLLIER ON BANKRUPTCY ¶ 1015.02

> The advisory notes to this Rule states:
>
> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Creditor argues that 11 U.S.C. § 362(c)(4) is still in effect despite the consolidation. However, the language of 11 U.S.C. § 362(c)(4) requires the cases be pending and then dismissed. Prior to the individual cases being dismissed, they were consolidated, being joined together and in effect becoming one case.

May 6, 2025 Hearing

At the hearing, counsel for Movant reported that this matter may be rendered moot by the dismissal of this Case. The court extended the deadline for Debtor to file Documents (including Schedules and Statement of Financial Affairs) to May 5, 2025. The Debtor has not filed such documents, but the Order dismissing the case has not been entered.

The hearing on the Motion to Confirm the Absence of Stay is continued to 11:30 a.m. on May 29, 2025 (Specially Set Day and Time).

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 Confirm Absence of the Automatic Stay filed by Creditor Stephen Pezzullo ("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 Motion to Confirm the Absence of Stay is **XXXXXXX**.

2.	**19-22025-E-12 CAE-1**	**JEFFREY DYER AND JAN WING-DYER**	**CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 4-1-19 [1]**

Item 2 thru 3
Item 8 on the 10:30 Calendar

Debtors' Atty: Stephen M. Reynolds

Notes:
Continued from 4/16/25. Counsel for Debtor in Possession reported that they have a contingent offer to purchase property.

Operating Report filed: 5/8/25

[RLC-27] Motion to Authorize Borrowing filed 5/12/25 [Dckt 539]; set for hearing 5/29/25 at 10:30 a.m.

The Status Conference is xxxxxxx

MAY 29, 2025 STATUS CONFERENCE

At the Status Conference, xxxxxxx

APRIL 16, 2025 STATUS CONFERENCE

No updated Status Conference Report has been filed with the court. At the Status Conference counsel for the Debtor in Possession reported that they have a contingent offer to purchase property. That buyer has offered to lend the Plan $750,000, which will pay all claims except Rabo AgriFinance.

The Chapter 12 Trustee reports that the Parties have been meeting, with there being three options at this point in time.

The Post-Confirmation Status Conference is continued to 11:30 a.m. on May 29, 2025.

NOVEMBER 14, 2024 STATUS CONFERENCE

At the Status Conference, the Chapter 12 Trustee addressed the follow up by the Trustee under the Amended Plan. Specifically, having the authority to seek authorization for the Chapter 12 Trustee replace the Debtor-Plan Administrator for the marketing and sale of the Lamb Property.

Additionally, the Trustee requested that a Joint Status Report be filed by the Debtor and Trustee by the end of January 2025.

The Status Conference is continued to 2:00 p.m. on April 16, 2025.

OCTOBER 3, 2024 STATUS CONFERENCE

The Status Conferences is continued to 11:30 a.m. on November 14, 2024, to be conducted in conjunction with the continued hearing on the Motion to Confirm Modified Plan. The Debtor in Possession is attempting to further modify the Plan to extend the time for the marketing and sale of the Lamb Property.

3.	**19-22025-E-12 RLC-26**	**JEFFREY DYER AND JAN WING-DYER Stephen Reynolds**	**MOTION TO DISMISS CASE AND/OR MOTION TO MODIFY CHAPTER 12 PLAN 4-16-25 [531]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on April 16, 2025. By the court's calculation, 20 days' notice was provided. 43 days' notice is required.

The Motion to Dismiss or Modify Plan 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 is xxxxxxx .

Jeffrey E. Dyer and Jan Wing-Dyer, Debtors and Debtors in Possession (" Debtor in Possession") moves this court for an order either dismissing this case or further modifying the Chapter 12 Plan. The Debtor in Possession seeks, by separate motion to borrow funds to pay off junior lien creditor on the Lamb Property, make a partial payment to the senior deed of trust holder, and cure the property tax defaults on the Lamb Property. The Debtor in Possession is seeking the agreement of the senior deed of trust holder, Rabo AgriFinance LLC to agree to allow the Debtor in Possession three more years to market the Lamb Property. provides no exhibits or evidence in support of the Motion that show the details of the proposed financing. Mr. Dyer testifies in his Declaration in the related Motion to Borrow:

> 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.

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 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 (Dckt. No. 362). With current interest the estimated payoff amount is $440,500. The proposed lender requires the satisfaction of Citizens Business Bank 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, Docket 539.

SUTTER COUNTY'S REPLY

Sutter County Tax Collector ("Sutter County") filed a Reply on May 15, 2025. Docket 543. 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).

The court also notes that the Debtor in Possession has, contrary to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rules has unilaterally joined a motion to dismiss with a motion to modify a Chapter 12 Plan. Such joinder is not permitted unless it is authorized by the court, which it has not been.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss or Modify Plan 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** .

4. **24-23053-E-7** **NICHOLAS/KIMBERLY CORNETT** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
24-2187 **9-23-24 [1]**
CAE-1
SCHAMBER V. CORNETT

Plaintiff's Atty: Robert D. Hillshafer; Kevin P. Carter
Defendant's Atty: Pro Se

Adv. Filed: 9/23/24
Answer: 10/23/24

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

Notes:
Continued from 5/8/25. Counsel for Plaintiff reported that there are tentative settlement terms being exchanged. The Parties requested a continuance to allow them to work on the settlement documents and getting these matters dismissed.

The Status Conference is xxxxxxx

The court's 8:05 p.m. on May 28, 2025 review of the Docket showed nothing further having been filed by the Parties.

At the Status Conference, **XXXXXXX**

MAY 8, 2025 STATUS CONFERENCE

No new pleadings have been filed since the April 16, 2025 Status Conference. No substitution of attorney has been filed.

At the Status Conference, counsel for Plaintiff reported that there are tentative settlement terms being exchanged, and it looks like both the Adversary Proceeding and the State Court proceeding being dismissed.

The Parties requested a continuance to allow them to work on the settlement documents and getting these matters dismissed.

The Status Conference is continued to 11:30 a.m on May 29, 2025.

APRIL 16, 2025 STATUS CONFERENCE

No updated Status Conference Statement has been filed and no counsel has substituted in to represent Defendant-Debtor.

MARCH 5, 2025 STATUS CONFERENCE

At the Status Conference the Defendant-Debtor addressed with the court his health issues, upcoming procedures, and his active efforts to obtain counsel. Upon such information Plaintiff agreed to continue the Status Conference to allow Defendant-Debtor to get counsel on board, discussion possible mediation, and make sure that the proceeding was advancing properly.

The Proposed Schedule pre-trial schedule for this Adversary Proceeding is:

i. Close of Fact Discovery: On or about June 3, 2025
ii. Expert Disclosure Deadline: On or about July 3, 2025
iii. Close of Expert Discovery: On or about August 4, 2025
iv. Dispositive Motion Filing Deadline: On or about September 3, 2025
v. Pretrial Conference: November 17, 2025
vi. Trial: Per the Court's schedule

Plaintiff's Status Conference Statement; Dckt. 45.

The Status Conference is continued to 2:00 p.m. on April 16, 2025.

SUMMARY OF COMPLAINT

The Complaint filed by Dayna Schmaber ("Plaintiff"), Dckt. 1, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A).

SUMMARY OF ANSWER

Nicholas Cornett ("Defendant-Debtor"), in *pro se*, filed an Answer, Dckt. 10. In it Defendant-Debtor provides denials of the allegations of fraud and misrepresentation.

STATUS REPORTS FILED BY THE PARTIES

The Plaintiff and Defendant-Debtor have filed Status Conference Reports. Dckts. 45, 47, respectively.

Defendant-Debtor states that he has been contacting counsel to represent him in this Adversary Proceeding. Due to upcoming surgery (scheduled for March 19, 2025), Defendant-Debtor projects having counsel retained by May 1, 2025.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Schamber 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)(2)(I). Complaint ¶¶ 2, 3, Dckt. 1. In the Answer, Defendant does not directly admit or deny the Federal Court jurisdiction, and request relief from the court.

Federal Court jurisdiction for an action to determine the nondischargeability of debt (11 U.S.C. § 523) exists pursuant to 28 U.S.C. § 1334 and § 157, and this is a core matter proceeding for with the bankruptcy judge issues all final orders and judgment, 28 U.S.C. § 157(b)(2)(I).

5. 25-20053-E-11 CAE-1 **MOORE HOLDINGS, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 1-7-25 [1]**

Item 5 thru 6
Item 5 on the 10:00 Calendar

Debtor's Atty: Stephan M. Brown; Muhammed Yakup Altun

Notes:
Continued from 4/24/25 to be conducted in conjunction with the hearing for approval of disclosure statement.

Status Report filed 5/15/25

[MJM-1] Poppy Bank's Motion for Relief from Automatic Stay filed 5/1/25 [Dckt 112]; set for hearing 5/29/25 at 10:00 a.m.

The Status Conference is xxxxxxx

MAY 29, 2025 STATUS CONFERENCE

On May 15, 2025, the Debtor in Possession filed an updated Status Report. Dckt. 131. The Report summarizes the actions being taken to address concerns of the U.S. Trustee and creditors.

At the Status Conference, **xxxxxxx**

APRIL 24, 2025 STATUS CONFERENCE

On April 18, 2025, the Debtor in Possession filed an updated Status Report. Dckt. 93. The Debtor in Possession intends to proceed with the marketing and sale of the Property of the Bankruptcy Estate.

With respect to the prosecution of this case, the court notes that many of the Pleadings filed for the Debtor in Possession are not signed by the counsel for the Debtor in Possession, but instead the managing member. An example of such is the Supplemental Pleading to Extend Use of Cash Collateral. Dckt. 101. This is not a declaration, but a pleading being filed to advance rights, claims, and interests of the Debtor in Possession and Bankruptcy Estate. Debtor in Possession's counsel has not signed this, but it has been signed by Mark Moore, as the Managing Member of the Debtor in Possession.

There is nothing provided to show that Mark Moore is a licensed attorney. It is unclear how a person who is not licensed an attorney is signing pleadings for the Debtor in Possession.

Other examples of Mark Moore signing pleadings rather then the licenses attorneys for the Debtor in Possession include:

A. Notice of Withdrawal of supplemental pleading. Dckt. 105.

B. Supplemental Pleading to Extend Use of Cash Collateral. Dckt. 98.

C. Exhibits in Support of Monthly Operating Reports. Dckt. 96.

At the Status Conference, counsel clarified how the above occurred. Counsel for Creditor expressed frustration in communication with the Debtor in Possession, though their counsel have been responsive. With respect to the marketing of the Property, it has been at the same price for the past ten months.

Based on a recently provided appraisal from the Debtor in Possession, the value is approximately $2,300,000, not the $3,500,000 that it is being listed for. Creditor Poppy Bank will be filing a Motion for Relief From the Stay and a Motion For Appointment of Chapter 11 Trustee.

The Status Conference is continued to 11:30 a.m. on May 29, 2025, to be conducted in conjunction with the hearing for approval of disclosure statement.

MARCH 5, 2025 STATUS CONFERENCE

This voluntary Chapter 11 Case was commenced on January 7, 2025, by Moore Holdings, LLC, which is serving as the Debtor in Possession. On February 19, 2025, the U.S. Trustee filed a Motion to Convert or Dismiss this Case. Dckt. 5. The basis for the requested relief is that the Debtor in Possession has failed to provide the U.S. Trustee with evidence of the appropriate insurance coverage for the Bankruptcy Estate's real property.

Poppy Bank has filed a "Joinder" in which it states that it supports the U.S. Trustee's Motion. The hearing on the Motion is set for March 27, 2025.

On February 27, 2025, the Debtor filed an Amended Schedule A/B. Dckt. 31. The major asset of the Bankruptcy Estate is real property identified as the 2nd Floor at 2151 Professional Drive, Roseville, California. Dckt. 41 at 5. However, in response to the question to state the Nature and Extend of the Debtor's Interest in this real property, the response by Debtor is "None." The Debtor does list several Commercial Leases on Amended Schedule G. Id. at 8.

At the Status Conference, counsel for the Debtor in Possession reported that it has a commercial building in Roseville, California.

Counsel for Poppy Bank continues to have concerns, including the unauthorized use of cash collateral and penalty interest on unpaid property taxes.

The Status Conference is continued to 11:30 a.m. April 24, 2025 (Specially Set Day and Time).

6. **25-20053-E-11** **MOORE HOLDINGS, LLC** **MOTION FOR APPROVING ADEQUACY OF DISCLOSURE STATEMENT TO ACCOMPANY DEBTOR IN POSSESSION'S PLAN OF LIQUIDATION DATED APRIL 7, 2025**
TBG-4 **Stephan Brown** **4-8-25 [88]**

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

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 partes in interest on April 8, 2025. By the court's calculation, 51 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement 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 Approve Disclosure Statement is denied.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: January 7, 2025

Background: Moore Holdings, LLC, Debtor and Debtor in Possession, is a limited liability company. The Debtor is the co-owner of commercial real estate located at 2151 Professional Drive, Roseville, CA (the "Real Property") and is engaged in renting commercial units in the Real Property to generate income. The latest appraisal values the Real Property at $3,500,000.00, while secured claims against it total approximately $2,026,622.45. Discl. Statement 5:2-6.

Historically, the Debtor has had sufficient rental income from its tenants to cover ongoing expenses, however, a drastic rise in Debtor's mortgage interest rate, SBA 7(a) mortgage interest rate, increased from 3% to 10.5% in 2024, significantly raising monthly loan obligations from $12,000 to $20,000. When the loan payment was $12,000 a month with 50% of the building leased Debtor were able to make the monthly loan payments. Additionally, Tenant occupancy declined in 2024 due to economic downturns, reducing cash flow and impairing Debtor's ability to pay the mortgage. *Id.* at 5:11-17.

Creditor/Class	Treatment	
Class 1: Secured Claim of Poppy Bank	**Claim Amount**	$1,953.480.68
	Impairment	Impaired
	No claim has been filed. This claim was scheduled as claim 2.4 in Debtor's petition. The claim is valued in the amount of $1,953.480.68 and is secured by a first priority deed of trust against the real property commonly known as 2151 Professional Drive, Roseville, CA (APN: 048-420-011-000). This class is impaired due to receiving deferred payment under the proposed Plan. Postpetition interest shall accrue pursuant to the underlying loan documents filed. The value of 2151 Professional Drive, Roseville, CA is estimated at $3,500,000.00 per Debtor in Possession's schedules. Dckt. 1, p. 10-11. Debtor anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 1 Secured Claim will be paid through escrow upon Court approval of a Motion to Sell the 2151 Professional Drive, Roseville, CA.	
Class 1: Secured Claim of Douglas/Professional Owners Association	**Claim Amount**	$26,947.02
	Impairment	Impaired
	No claim has been filed. This claim was scheduled as claim 2.1 in Debtor's petition. This claim is valued in the amount of $26,947.02 secured by a tax lien against the real property commonly known as 2151 Professional Drive, Roseville, CA (APN: 048-420-011-000). This class is impaired due to receiving deferred payment under the proposed Plan. Debtor anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 1 Secured Claim will be paid through escrow upon Court approval of a Motion to Sell the 2151 Professional Drive, Roseville, CA.	
Class 2: Unsecured Priority Claim of Internal Revenue Service	**Claim Amount**	$3,411.39
	Impairment	Impaired
	Claim No. 1 filed on February 14, 2025. The claim was filed in the amount of $3,411.39. This class is impaired due to receiving deferred payment under the proposed Plan. Proof of Claim 1, pp. 4. The value of 2151 Professional Drive, Roseville, CA, is estimated at $3,500,000.00 per Debtor in Possession's schedules. Dckt. 1, p. 10-11. Debtor in Possession anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 1 Secured Claim will be paid through escrow upon Court approval of a Motion to Sell the 2151 Professional Drive, Roseville, CA.	

Class 3: General Unsecured Creditor Gunster, Cooper-Marquez & Freitas (Allowed)	**Claim Amount**	$2,057.00
	Impairment	Unimpaired
	No claim has been filed. This claim is scheduled as claim 3.1 in Debtor's amended Schedule F, filed March 14, 2025. Dckt. 61. This class is unimpaired due to the claim being a security deposit. Debtor anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 3 claim will be paid in full within 30 days of the estate receiving the proceeds from the Court-approved sale.	
Class 3: General Unsecured Creditor Sehatu, Inc. (Allowed)	**Claim Amount**	$5,383.00
	Impairment	Unimpaired
	No claim has been filed. This claim is scheduled as claim 3.2 in Debtor's amended Schedule F, filed March 14, 2025. Dckt. 61. This class is unimpaired due to the claim being a security deposit. Debtor anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 3 claim will be paid in full within 30 days of the estate receiving the proceeds from the Court-approved sale.	
Class 3: General Unsecured Creditor The Logan Group (Allowed)	**Claim Amount**	$2,635.00
	Impairment	Unimpaired
	No claim has been filed. This claim is scheduled as claim 3.2 in Debtor's amended Schedule F, filed March 14, 2025. Dckt. 61. This class is unimpaired due to the claim being a security deposit. Debtor anticipates selling the real property commonly known as 2151 Professional Drive, Roseville, CA. Each holder of a Class 3 claim will be paid in full within 30 days of the estate receiving the proceeds from the Court-approved sale.	
Class 4: General Unsecured Creditors (Not Allowed)	**Claim Amount**	----------
	Impairment	Unimpaired
	No claims have been filed.	

Class 5: The interests of the Debtors members in property of the estate	**Claim Amount**	
	Impairment	Unimpaired
	To be distributed upon successful completion of the Plan.	

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__Y__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

__N__Identity of the accountant and process used

__Y__Future management of Debtor

__Y__The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

U.S. TRUSTEE'S OPPOSITION

Tracy Hope Davis, the United States Trustee from Region 17 ("U.S. Trustee") filed an Opposition on May 14, 2025. Docket 125. U.S. Trustee asserts:

1. The Plan is unconfirmable. Specifically, to the extent that applicable law authorizes exculpation beyond 11 U.S.C. § 1125(e), the exculpation in Article V.F of the Plan is improper, because it covers conduct occurring after the Plan's effective date, in contravention of Ninth Circuit precedent. *Id.* at 5:9-13.

2. Apart from issues with the Plan's confirmability, the Disclosure Statement fails to provide adequate information in several important respects. Notably, the Disclosure Statement does not:

   a. adequately disclose the identity of the non-debtor beneficiaries of the Plan's exculpation. The list of exculpated parties includes a non-existent creditors' committee, a non-existent equity committee and the DIP's "past and present officers, directors, employees, members, agents, representatives, shareholders, attorneys, accountants, financial advisors, investment bankers, lenders, consultants, experts, and Professionals."

   b. adequately address the legal and factual bases for the permanent injunction in Article V.G of the Plan and, relatedly, whether the DIP is eligible for a discharge. The permanent injunction is tantamount to a discharge. But because the Plan provides for the liquidation of the DIP, it appears that the DIP is ineligible for a discharge under 11 U.S.C. § 1141(d)(3).

   c. adequately address whether the Plan would inappropriately subject quarterly fees under 28 U.S.C. § 1930(a)(6) to an allowance procedure. By virtue of the Plan's inclusion of quarterly fees in the definition of Administrative Claim, the Plan may require the UST to file a request for payment of unpaid fees.

   d. adequately address the legal basis for Plan provisions that would permit the Debtor in Possession to delay paying quarterly fees until the Initial Distribution Date, which would be after the Plan's effective date. Under 11 U.S.C. § 1129(a)(12), outstanding fees must be paid on or before the Plan's effective date.

   Id. at 5:14-6:4.

3. Finally, the Plan, the Disclosure Statement, and the Motion contain several inconsistencies. For instance, the Disclosure Statement describes Class 3 general unsecured claims as being both impaired and unimpaired. Also, the Motion seeks a voting deadline of May 15, 2025, and a confirmation hearing of May 29, 2025, even though the Court will not even consider approval of the Disclosure Statement until May 29, 2025. *Id.* at 6:5-11.

POPPY'S OPPOSITION

Creditor Poppy Bank ("Poppy") filed an Opposition on May 15, 2025. Docket 136. Poppy asserts:

1. Poppy's most notable objection is to Debtor in Possession's valuation of the Subject Property. The sole source of proposed payments to Debtor in Possession's creditors is the proceeds from the sale of the Subject Property.

Debtor in Possession has the Property valued at $3,500,000, but Poppy has obtained a recent appraisal report appraising the Property at $2,350,000. *Id.* at 4:5-18.

2. Debtor in Possession has provided no information about whether its co-owner, InnerScope Hearing Technologies ("IHT"), is willing to allow the sale of the Subject Property free and clear of its interest. In the absence of IHT's agreement, Debtor in Possession may need to file an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure Rule 7001(c) and 11 U.S.C. section 363. Debtor in Possession provides none of this crucial information in its Disclosure Statement. *Id.* at 5:7-11.

3. Debtor in Possession has no plan in the event the Property is not sold. Therefore, risks are not adequately explained to creditors. *Id.* at 5:13-18.

4. Debtor in Possession fails to provide adequate financial information, which is especially important in light of Debtor in Possession's overvaluation of the Subject Property and the risk of delayed sale. *Id.* at 7:6-7.

5. The Disclosure Statement is generally inaccurate, inconsistent, and confusing. *Id.* at 8:3-9:8.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed a Reply on May 22, 2025. Docket 143. Debtor in Possession does not contest U.S. Trustee's points of opposition and states it will file an Amended Disclosure Statement to address these issues. Debtor in Possession contests Poppy's allegations, stating the valuation of $3.5 million is proper and will pay Poppy's claim in full.

Debtor in Possession also states Poppy's concern over the Debtor's ownership structure impeding the sale is unfounded. Debtor in Possession is the 51% majority owner of the Property and has the authority to initiate a sale, and the co-owner, Innerscope, Inc, has not filed any objection and is in cooperation with the sale to discharge its own obligation to Poppy. *Id.* at 6:3-13.

That said, Debtor in Possession states it will still incorporate feedback from Poppy in the Amended Disclosure Statement that will be filed in the future.

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

In this case, the Disclosure Statement cannot be approved in its current form. Debtor in Possession itself acknowledges this fact and will be filing an Amended Disclosure Statement. Debtor in Possession should address the objections raised, including issues surrounding the exculpatory clause of the Plan, and whether Debtor in Possession would even be eligible for discharge under 11 U.S.C. § 1141(d)(3).

The exculpation provision in the Plan states:

> Except as expressly set forth in the Plan, on and after the Confirmation Date neither the Debtor, its successors or assigns, the members of the Creditors' Committee, the Equity Committee, the Plan Administrator, nor any of their respective past and present officers, directors, employees, members, agents, representatives, shareholders, attorneys, accountants, financial advisors, investment bankers, lenders, consultants, experts, and Professionals and agents for the foregoing shall have or incur any liability for, and are expressly exculpated, released, and discharged from, any claim (as defined in section 101(5) of the Bankruptcy Code) or any past or present actions taken or omitted to be taken under or in connection with, related to, effecting, or arising out of the following: (i) the Debtor's operations after the Petition Date or the Effective Date; (ii) the Chapter 11 Case; (iii) the postpetition administration of the Debtor's Cash, Assets, and real and personal property; (iv) the pursuit of Confirmation; (v) the formulation, preparation, dissemination, implementation, administration, confirmation, or Consummation of the Plan and the Disclosure Statement; (vi) the sale and liquidation of the Debtor's Assets, or the property to be distributed under the Plan; (vii) any other act taken or omitted to be taken in connection with the Debtor's business after the Petition Date or Effective Date; or (viii) any contract, instrument, release, or other agreement entered into or created in connection with the foregoing; except only for actions or omissions to act to the extent determined by a court of competent jurisdiction (in a Final Order) to be by reason of such party's gross negligence, willful misconduct, or fraud, and in all respects, such party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; it being expressly understood that any act or omission with the approval of the Bankruptcy Court will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation.

Plan, Article V.F. at 20, Docket 85.

The exculpation clause included in the Plan appears to protect actions taken after the effective date of the Plan, and potentially prior to filing the petition. The exculpation provision is also overly broad in who it attempts to protect, blurring the line of a third-party discharge. An exculpation clause must be both narrow in scope and time. *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081 (9th Cir. 2020). The provision must also be limited to "conduct that occurs between the Petition Date and the effective date." *In re Mallinckrodt PLC*, 639 B.R. 837, 883 (Bankr. D. Del. 2004).

The Disclosure Statement lacks adequate information.

The court shall issue a minute 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 Approval of the Disclosure Statement filed by Moore Holdings, LLC, Debtor and Debtor in Possession, having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.