UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 26, 2025 at 10:00 a.m.

1.	**24-23905-E-12 BJ-3**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION** **David Goodrich**	**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY , MOTION FOR ADEQUATE PROTECTION** **5-14-25 [481]**

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on May 14, 2025. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

June 26, 2025 Hearing

The court continued the hearing on this Motion as Movant noticed the Motion pursuant to Local Bankruptcy Rule 9014-1(f)(2), and Debtor in Possession opposed the Motion. A briefing schedule was set. Debtor in Possession, if they wanted to add additional grounds in opposition, were to file their supplemental opposition pleadings by June 12, 2025. Order, Docket 511. Prudential was to file supplemental reply pleadings by June 20, 2025. *Id.* Debtor in Possession did not file any supplemental pleadings, resting their case on their Opposition filed on May 22, 2025. Opp'n, Docket 494.

Debtor in Possession states in their Opposition:

1. The Motion fails because no adequate protection is required for an undersecured creditor. *Id.* at 2:14-16.

    a. Undersecured debts do not require adequate protection because there is no collateral or value securing those debts. *Id.* at 4:4-5.

    b. Prudential is a junior lienholder on the only asset of Deaver Ranch with value – the right to grow, harvest and sell wine grapes under an oral lease, pursuant to the Subordination Agreement between AgWest and Prudential. *See* Ex. 1, Docket 496.

2. Moreover, Prudential is adequately protected, to the extent necessary, by the annual increase in value of the grapes Deaver Ranch sells in the fall/winter of each year. *Id.* at 2:16-18.

    a. Adequate protection in the Chapter 12 context need only be sufficient to protect the value of property, not the value of the creditor's interest in its collateral. *Id.* at 5:21-24.

    b. The value of Deaver Ranch's interest in the grapes to be harvested in the fall will only increase from May 2025 to November/December 2025. Prudential will not suffer a demonstrable loss in its lien rights asserted against Deaver Ranch's rights to grow, harvest and sell the grapes. *Id.* at 6:8-13.

3. Finally, the right to grow, harvest and sell grapes is an integral funding source of the Deaver Ranch chapter 12 plan. As such, grape production at the vineyard is necessary for an effective reorganization. *Id.* at 2:19-21.

Debtor in Possession files the Declaration of Ken Deaver in support of the Opposition. Decl., Docket 495. Mr. Deaver testifies that the grapes are currently growing and will not be ready for harvest until October or November of 2025, and therefore, Movant's collateral is only growing in value. *Id.* at ¶ 9.

MOVANT'S REPLY

Movant filed a Reply to the Opposition on May 27, 2025, Docket 497, and a supplemental Reply on June 18, 2025, Docket 520. Movant states:

1. It is not realistic to believe that the value of Deaver Ranch's interest in the grapes to be harvested in the fall will only increase from May 2025 to November/December 2025 given the consistent delay and mishandling of assets in this case. Reply 2:17-3:2.

2. The majority of the grape crop for the 2024 year rotted, causing substantial loss to the Estate. There is no evidence of contracts for the 2025 year and it appears the crop will rot again. *Id.* at 4:2-14.

3. Debtor in Possession is not economically viable and has been living rent free, not paying the rent to the individual Deavers. *Id.* at 5:17-24.

4. The leasehold having been rejected, the leasehold is surrendered to the individual Deavers by operation of law. Suppl. Reply 2:20-24.

DISCUSSION

The only assets of value in this bankruptcy Estate are the grape vines and grapes they produce. It is undisputed Movant has been subordinated to the interests of AgWest in the vines and grapes. Ex. 1, Docket 496. Motions for relief are summary proceedings where the court makes findings of value of collateral securing claims [that being done pursuant to 11 U.S.C. § 506(a)]; however, for purposes of a motion for relief from the stay the court has to make a determination of value and equity in the collateral for the limited purpose of such motion.

For this Motion, it appears that the value of AgWest's lien exhausts any potential equity for Prudential's claim to attach. It appears Prudential would be undersecured or even wholly undersecured in regard to the vines and grapes. Given Mr. Deaver's testimony, the highest amount Debtor in Possession could earn from selling the grapes this year would be $900,000, but AgWest's claim is not less than $800,706.10. POC 11-1. Moreover, grape sales have been far lower than $900,000 in recent years, grossing less than $300,000. Decl. ¶ 8.

Creditors with unsecured claims are not entitled to adequate protection. 11 U.S.C. § 361. Assuming Prudential is wholly undersecured in the vines and grapes, Prudential is not entitled to adequate protection.

Prudential argues that because the oral lease has been rejected, the vines and grapes have been surrendered back to the lessor, the individual Deavers. Suppl. Reply at ¶ 1, Docket 520. Prudential cites to 11 U.S.C. § 365(d)(4) in support of this argument. 11 U.S.C. § 365(d)(4) states:

> (4)
>
> > (A)Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—
> >
> > > (i)the date that is 120 days after the date of the order for relief; or

(ii)the date of the entry of an order confirming a plan.

(B)

(i)The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii)If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

The language of 11 U.S.C. § 365(d)(4) states that nonresidential real property shall immediately be surrendered to the lessor if the lease is not timely assumed or rejected. 11 U.S.C. § 365(d)(4) says nothing of crops and related produce on the nonresidential real property. It may be the vines and grapes are still assets of the Estate, if Debtor in Possession owns the vines themselves. It is not immediately clear from the Schedule A/B if Debtor in Possession owns the vines themselves or if they were leased to Debtor in Possession as part of the oral lease with the individual Deavers.

In the Opposition, as part of arguing that Prudential is not entitled to adequate protection, the Debtor in Possession states (emphasis added) :

> Here, Prudential is a junior lienholder on the only asset of Deaver Ranch with value – **the right to grow, harvest and sell wine grapes under an oral lease**. As the Motion appears to admit, **Deaver Ranch owns no land and "farms" the vineyards orally leased by the Deavers to Deaver Ranch. Motion,** 7:10-12. Deaver Ranch has filed a motion to reject the oral lease. Dckt. No. 447. Upon rejection of the lease, all accrued rental arrears will be become an unsecured claim. See 11 U.S.C. § 365(g)(1). Deaver Ranch and the Deavers are negotiating a new lease to replace the oral lease. *See* Ken Deaver Declaration. **If a lease is negotiated and the Court approves the new lease, Deaver Ranch plans to harvest and sell its wine grape crops in the fall/winter of 2025 and winter of 2026**; it may do so even if the lease is not approved by the Court because Deaver Ranch remains in possession of the vineyards as a tenant and even a foreclosure sale cannot terminate Deaver Ranch's possession as a tenant.

Opposition, p. 4:7-18; Dckt. 494.

The Opposition first admits that the Debtor's, and now the Debtor in Possession's, right to grow, harvest and sell wine grapes was based on an oral lease. That lease has now been rejected. As pointed out by Prudential, the Debtor in Possession (serving in the place of a trustee and controlling property of the Bankruptcy Estate) shall (not may or might) immediately surrender that nonresidential real property to the lessor.

The Debtor in Possession asserts that even if there is no lease, the Debtor in Possession "remains in possession of the vineyards as a tenant and even a foreclosure sale cannot terminate [the Debtor in Possession's] possession as a tenant." No legal authority is provided for the arguments that: (1) even if a tenant's rights to possession of the property are terminated, the then former tenant can continue to maintain

possession of the property in perpetuity against the owner of the land, and (2) that even if a foreclosure occurs on the property, a person without a lease/rental/possessory agreement that is senior to the foreclosing lien can maintain possession of the property in perpetuity against the owner of the land.

At the hearing, **xxxxxxx**

Relief Requested in Motion

Also, in re-reviewing Prudential's Motion it begins by clearly stating against whom and which automatic stay relief is being sought. This information is stated as:

A. Debtor and Debtor in Possession Deaver Ranch, Inc.

B. Non-Debtors Kenneth and March Deaver, Shenandoah Investment Properties, Inc., and Sean Lyons, as Trustee, to the extent that the co-debtor stay arises pursuant to 11 U.S.C. § 1201.

C. Lilian Tsang, the Chapter 12 Trustee.

It is not clear from the Motion what portion of the automatic stay that is applicable to the Chapter 12 Trustee is at issue, as well as what action, litigation, or other proceedings Prudential intends to take against the Chapter 12 Trustee.

D. All collateral of Movant, whether real property or personal property.

Motion, p. 2:18-28; Dckt. 481.

Prudential then summarizes the scope of the relief requested to be:

> (1) the commencement, prosecution, and completion of judicial and/or nonjudicial foreclosure proceedings against all borrowers and grantors and all of Movant's collateral, whether real property or personal property, pursuant to applicable law, which may include the appointment of a receiver and/or writs of possession pursuant to applicable non-bankruptcy law and/or the applicable loan documents, and to obtain possession thereof including following the sale in accordance with applicable non-bankruptcy law;
>
> (2) the exercise of its rights and/or remedies under the applicable loan documents and/or under the applicable law, including federal and state law;
>
> (3) against all Borrowers and grantors including Debtor, and non-debtors the Deavers, SIP and the Deaver Trust, defined below, to the extent the co-debtor stay applies; and
>
> (4) such other relief that the Court determines is just and proper.

Id.; p. 3:1-10.

The relief requested appears to be to allow Prudential to exercise any and all rights it may have against anyone and everything that has any obligations under Prudential's various loan documents and agreements, which could include anyone who has representative responsibility duties for anyone or anything that would have such obligations – which could income the Chapter 12 Trustee in this Case, Lillian Tsang. Again, this brings the court back to the point as to why relief from the Stay has been requested as to the Chapter 12 Trustee.

Similar to how the Debtor in Possession does not explain how the Debtor in Possession, whose lease has been terminated, and the right to raise and harvest grapes was based on that lease, can retain possession in perpetuity against the owner of the property or creditors who have liens on the property, Prudential does not explain what it intends to do with the grapes that are subject to the senior lien of AgWest, whose senior lien claim exhausts any value of the grapes.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Prudential Insurance Company of America ("Movant", "Prudential") seeks relief from the automatic stay with respect to Deaver Ranch, Inc.'s ("Debtor in Possession") real and personal property subject to Prudential's Deed of Trust, Security Agreement, Crop Filing and Fixture Filing with Assignment of Rents and Proceeds, Leases and Agreements made by Debtor in Possession to Placer Title Company, as trustee, for the benefit of Prudential, on March 15, 2018 and recorded on March 19, 2018 in the Official Records of Amador County as Document Number 2018-0001933-00. Ex. 3, Docket 484. The property subject to this Motion is:

1. Real property commonly known as: (a) 21643 Shenandoah School Road, Plymouth, CA (house with vineyards and farmland on approximately 88 acres); (b) 19940 Shenandoah School Road, Plymouth, CA (vineyards, farmland on approximately 41.86 acres, 2 modular homes); (c) 21424 Shenandoah School Road, Plymouth, CA (Vineyards, house, barns pasture on approximately 108.3 acres); (d) 19944 Shenandoah School Road, Plymouth, CA (approximately 40 acres, 6-8 acres of pasture with the remaining land on vineyards); and (e) 11850 Shenandoah School Road, Plymouth, CA (raw land [approximately 10 acres]. Mot. 6:18-24.

2. The leasehold interests under the Commercial Lease Agreement dated May 10, 2017 between Mary Jo Bigwood as Lessor and Shenandoah Investment Properties, a California Corporation, as lessee, for the real property consisting of a winery facility, twelve acres of vineyards and related facilities commonly known as 12455 Steiner Road, Amador County, California; (b) Water Rights; (c) the Rents and Proceeds; and (d) any lease, whether written or oral, in favor of Debtor of any of Movant' s real property collateral. Mot. 6:25-7:2.

3. Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of [the] Deed of

> Trust; and any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and [Prudential] as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of [the] Deed of Trust)." Mot. 7:4-9. Ex. 10, Docket 484.

(collectively, "Property").

Prudential excludes the following assets from this Motion:

1. Vehicles, rolling stock, farm machinery (including tractors, combines and other farm machinery), or any other "equipment", as defined in Article 9 of the Uniform Commercial Code, that is not part of the Improvements; or

2. portable irrigation motors on wheels customarily towed by a motorized vehicle; or

3. any mobile or manufactured home that may be located on the Land.

Mot. 6:12-16.

Movant has provided the Declaration of Sean Kolb to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 483.

Movant argues Debtor in Possession defaulted under the terms of its loan for the August 1, 2023 payment and the February 1, 2024 payment. Mot. 7:13-14. The delinquency was never cured and Prudential accelerated the entire amount of the loan on May 5, 2024. As of May 8, 2025, there was due, owing and unpaid to Prudential pursuant to the Loan the sum of $5,499,313.96, which includes unpaid principal of $4,206,500.48, accrued and unpaid interest (including default interest) of $804,609.36, late charges of $15,517.84, prepayment of $67,542.93, and other charges and fees, including portions of attorney fees incurred and appraisal fees. Interest is currently accruing at the default rate of 15% per annum under the terms of the Loan, and at a rate of$1,789.15 per day after May 8, 2025. Decl. ¶ 10, Docket 483.

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

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

or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Co-Debtor Stay

Movant, out of an abundance of caution, requests a waiver of the Co-Debtor stay as provided in 11 U.S.C. § 1201. 11 U.S.C. § 1201 states:

> (a)Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—
>
> (1)such individual became liable on or secured such debt in the ordinary course of such individual's business; or
>
> (2)the case is closed, dismissed, or converted to a case under chapter 7 of this title.

There have been no facts to support the idea that this loan is a consumer debt. The loan appears strictly business related, which would not give rise to the Co-Debtor stay.

MAY 29, 2025 HEARING

The Motion was set for hearing using the 14 day notice provisions of Local Bankruptcy Rule 9014-1(f)(2), which allows opposition to be stated orally at the hearing.

On May 22, 2025, the Debtor in Possession filed its "preliminary opposition" to the Motion. The court states "preliminary" in that the court did not note that an opposition pleading had been filed for the 9014-1(f)(2) Motion and had not reviewed it prior to the hearing.

In the Opposition, the Debtor in Possession states that a new lease of the real property will be obtained. Further, even if not obtained the Debtor in Possession holds the rights to the crops on the Property and to grow crops on the Property.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on June 26, 2025. Opposition pleadings shall be filed and served on or before June 12, 2025, and Reply Pleadings, if any, shall be filed and served on or before June 20, 2025.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

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

The Motion for Relief from the Automatic Stay filed by Prudential Insurance Company of America ("Movant", "Prudential") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is **XXXXXXX**.

2. 25-90259-E-11 HBG-1 | **DUAL ARCH INTERNATIONAL, A CALIFORNIA CORPORATION David Johnston** | **MOTION FOR RELIEF FROM AUTOMATIC STAY 6-5-25 [49]**

JASWINDER KAUR VS.

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

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

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 27, 2025. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

However, Movant filed the Motion on June 5, 2025. Docket 49. That would provide only 21 days' notice, which is seven days short of the 28 day requirement. At the hearing, **XXXXXXX**

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

The Motion for Relief from the Automatic Stay is XXXXXXX .

Parkash Pabla and Jaswinder Kaur ("Movant") seek relief from the automatic stay to allow a pending action in Merced County Superior Court, Case No. 20CV03476 (the "State Court Litigation") to be concluded. Movant has provided the Declarations of Harry Gill, Movant's attorney, and Jaswinder Kaur

to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Dual Arch International, a California corporation (" Debtor in Possession"). Decls., Dockets 41, 43.

Movant argues that there is cause to grant relief because the State Court Litigation deals with issues of wrongful foreclosure, which are state law issues. Declaration ¶ 4, Dckt. 43. Ms. Kaur further testifies that the State Court Litigation has been ongoing since December 8, 2020, with the Parties investing substantial time and energy in the state court proceedings. Ms. Kaur recently prevailed on appeal with further proceedings remanded to the state court, but Movant is not able to continue the litigation because of this bankruptcy case, which is resulting in prejudice and undue harm. *Id.* at ¶ 9.

Walter Dahl, the Chapter 11 Subchapter V Trustee ("Trustee"), does not oppose granting the Motion so the Parties may reach a final judgment in state court. Docket 51. Trustee would oppose enforcement of a final judgment without the bankruptcy court's approval.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

~~The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been largely litigated already with the Parties investing substantial resources in prosecuting their claims. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.~~

~~The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.~~

~~No other or additional relief is granted by the court.~~

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

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

The Motion for Relief from the Automatic Stay filed by Parkash Pabla and Jaswinder Kaur ("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 **xxxxxxx** ~~automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Dual Arch International, a California corporation ("Debtor in Possession") to allow Movant, its agents, representatives and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in the pending action in Merced County Superior Court, Case No. 20CV03476 .~~

~~**IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.~~

~~No other or additional relief is granted.~~

3. 24-25180-E-11 CAE-1 **KAMALJIT KALKAT** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 11-14-24 [1]**

Item 3 thru 5

Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

Notes:
Continued from 6/1/25 to be conducted in conjunction with motions for relief from stay.

The Chapter 11 Status Conference is xxxxxxx

4. 24-25180-E-11 LNJ-1 | **KAMALJIT KALKAT** | **MOTION FOR RELIEF FROM AUTOMATIC STAY**
Robert Marticello | **5-29-25 [121]**

APC CS TRUST VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 30, 2025. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion for Relief from the Automatic Stay is ~~granted.~~

APC CS TRUST ("Movant") seeks relief from the automatic stay with respect to Diamond K, LLC's ("Debtor in Possession") real property commonly known as 5762 Bellevue Avenue, La Jolla, California 92037 ("Property"). Movant has provided the Declaration of Stephanie Box to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 124.

Movant argues Debtor has not made any post-petition payments, and the obligation has been in default since May 1, 2024. Declaration, Docket 124; Mot. 5:11-13. Movant also argues the equity cushion continues to sink, Movant's claim totaling $5,019,286.62. Decl. ¶ 9.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for an effective reorganization. Movant asserts secured claims against the Property exceed $6,089,091.67, and so there is no equity in the Property even at a generous listing price of $5,500,000. Mot. 6:9-19.

Movant further points out that no effective reorganization is imminent as Debtor in Possession has not filed a Plan or Disclosure Statement, and Debtor in Possession has had the Property on the market

for four months now without accepting any offers. Mot. 6:6-23. Moreover, the individuals who own Debtor in Possession are almond farmers based in Northern California. This Property is unfinished residential property in San Diego. It is not necessary to an effective reorganization. *Id.*

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 12, 2025. Docket 144. Debtor in Possession asserts:

1. Debtor in Possession has equity in the Property and the Property is necessary to the Debtor in Possession's overall rehabilitation strategy to maximize the value of its assets, generate surplus proceeds, and minimize any deficiency claims. *Id.* at 2:7-9.

2. Movant's argument that there is no equity depends on the existence of the junior secured mortgage held by Austin Tarzana Group ("ATG"), securing a note valued as of the Petition Date (according to its proof of claim) at $1,242,280.52. This same debt is also secured by the Debtor in Possession's Caminito Property and four properties owned by Debtor in Possession Kalkat. With respect to two of those properties, one of which is listed for sale, ATG is the sole secured creditor. As part of an overall sale program, the ATG debt is expected to be paid upon the sale of one or more of these properties. That debt should not be included in the calculation here. *Id.* at 3:2-8.

3. Debtor in Possession remains in consultation with its broker (Oppenheim Group) and believes that it can sell the Property for an amount that is more than Lender's debt, even with costs of sale. *Id.* at 3:18-22.

MOVANT'S REPLY

Movant filed a Reply on June 20, 2025. Docket 153. Movant states:

1. The listing agreement for the sale of the Property has expired. The Debtors' exclusivity period has expired too and they have not filed a disclosure statement or plan. In short, the Debtors are no closer to executing on their so-called restructuring strategy today than they were when they filed their first bankruptcy cases ten months ago. *Id.* at 2:7-18.

2. The evidence shows that secured claims against the Property exceed $6,419,286.62 against a value of, at most, $5,500,000 and perhaps as low as $5,000,000. The calculations do not even include the costs of sale, which are likely to total more than $250,000. The Debtors have no equity in the Property. *Id.* at 3:7-10.

3. The Supreme Court has been clear:

> What [section 362(d)(2)] requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means . . . there must be a reasonable possibility of a successful reorganization within a reasonable time.

United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 375-76 (1988) (emphasis in original) (internal quotation marks and citation omitted). Reply at 8:16-25.

4. Debtors have been given seven months to develop a plan. The Lender worked with the Debtors to ensure that the Property was listed with a competent broker and allowed the Debtors ample time to sell the Property. The Property has been listed for sale for five months without the Debtors accepting an offer. *Id.* at 8:26-9:1.

DISCUSSION

Debtor in Possession would have the court ignore the $1,242,280.52 secured debt owed to ATG for purposes of calculating the debt secured by the Property. Debtor in Possession states because ATG is secured by other properties that will apparently be sold in the future, the court should not add that debt to the calculation. Mot. 3:2-12.

Debtor in Possession cites the court to no law to support the idea that the court can ignore secured debts in the debt calculation if those secured debts are going to be paid from the speculative sale of other properties securing its claim. Collier's Treatise on Bankruptcy states with regard to calculating debt and any equity:

> The majority of courts correctly follow the standard equation for equity under section 362(d)(2) and hold that even if junior lienholders object to stay relief, their liens must be counted in determining whether the debtor has equity in the property for purposes of a section 362(d)(2) calculation. As the Court of Appeals for the Ninth Circuit explained:
>
> > The language of the statute simply refers to the debtor's "equity," which has been defined as "the amount or value of a property above the total liens or charges." The statute does not refer to the debtor's equity as against the only plaintiff-lienholder seeking to lift the stay or persons holding liens senior to that of the plaintiff-lienholder. The minority view improperly focuses upon the interests of junior lienholders as opposed to the interests of the debtor or senior lienholder. *Stewart v. Gurley*, 745 F.2d 1194, 1196, 11 C.B.C.2d 435, 437–38 (9th Cir. 1984).
>
> These courts explain that the statute refers to the debtor's equity, not to the equity over the interests of the moving creditor. Further, they observe that it is not the debtor but junior lienholders who benefit from a denial of relief from the stay when the

> debtor has no equity in the property. They can discern no reason to benefit junior lienholders at the expense of a senior lienholder in the context of a proceeding that is intended for the benefit of the debtor and its unsecured creditors.

3 COLLIER ON BANKRUPTCY ¶ 362.07[4][a][i].

While stating that the junior lienholder's claim is also secured by other properties, the Debtor in Possession offers no legal principles (such as marshaling of assets securing the claim) or provide evidence and an analysis of how there is equity to be preserved through the multiple properties securing the claim.

The court considers that ATG may be paid through other sales of assets in the case. That could create equity in the Property for Movant, and this Motion would be denied pursuant to 11 U.S.C. § 362(d)(2). However, there is not sufficient evidence showing the case is being prosecuted and these other properties securing ATG's claim are being sold. The situation is such that equity in the Property would depend on reorganization efforts, which, as discussed more below, have not been readily apparent to the court.

At the hearing, **xxxxxxx**

~~Therefore, from the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $6,261,567.14 (Declaration ¶ 9, Docket 124; POC 18-1), while the value of the Property is determined to be $5,500,000, as stated in Schedules A/B and D filed by Debtor.~~

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Based upon the evidence submitted to the court, and no showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate.

Moreover, the court finds the Property is not necessary for an effective reorganization. Collier's states in regard what is necessary for an effective reorganization:

> In a chapter 11 reorganization case, most of the property of the debtor in possession is likely to be "necessary" for the debtor's business and ultimate reorganization. Consequently, it is often difficult for a party to obtain relief under section 362(d)(2). However, it is not sufficient that property be necessary for any possible reorganization. Instead, the property must be necessary for an *effective* reorganization. This means there "must be a reasonable possibility of a successful reorganization within a reasonable time," and that the property at issue is necessary to that reorganization. Under this test, therefore, relief from the stay should be

> granted if the debtor has no reasonable likelihood of reorganization. This might occur, for example, because reorganization of the business is not feasible or because creditor dissent makes a successful plan unlikely. A debtor also fails to show necessity of the property for an effective reorganization if the debtor's plan is unsupported by credible assumptions and projections that offer some basis for confidence that the plan could succeed.

3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b]. In this case, Debtor in Possession has not filed a Plan or disclosure Statement despite the case having been filed in November of 2024. Debtor in Possession moved to have a competent broker market and sell the Property which the court granted on February 14, 2025. Order, Docket 91. Nothing has come from these efforts over four months later. Debtor in Possession has not adjusted the price. It appears the listing agreement has expired as well. It is unclear how Debtor in Possession plans to move forward, either by taking a refinance or completing a sale. Debtor in Possession would assert that having multiple options open in moving forward is a strategic reorganization effort. However, the fact remains there has not been meaningful progress in the case while secured creditors are not being paid.

Debtor commenced this Chapter 11 Bankruptcy Case on November 14, 2024.

Debtor filed a prior Chapter 12 Bankruptcy Case on August 8, 2024. 24-23664. As stated by Debtor's counsel for that Case, the attorneys filed it on an emergency basis to stop a pending foreclosure. The attorneys who filed the prior case did so, but advised the Debtor that they would not represent her as the Debtor in Possession. Civil Minutes; Dckt. 43 at 3-4. When Debtor's new counsel was obtained, the decision was made that the case would have to proceed under Chapter 11. The case could not be converted to one under Chapter 11. See 11 U.S.C. § 1208, which makes no provision to conversion to Chapter 11.

Given that the prior Bankruptcy Case, while giving the Debtor and the property of the Bankruptcy Estate automatic stay protection, Debtor was not represented by counsel who could prosecute either a Chapter 11 or Chapter 12 case of this size. Thus, in considering how and what good faith efforts the Debtor in Possession is making in prosecuting the current case, the court is looking at the conduct of the Debtor in Possession and her knowledgeable Chapter 11 counsel, and not shackling them with the prior Case.

The current Chapter 11 Case having been filed on November 14, 2025, seven months have passed for the Debtor in Possession to be moving forward. On January 21, 2025, the Debtor in Possession filed a Motion to Employ The Oppenheim Group as the Real Estate Broker to market the 5762 Bellevue, La Jolla, California and 7546 Caminito Avola, La Jolla, California single family residence properties for sale. Motion; Dckt. 67. In the Motion, the grounds includes the following statement:

> The Debtor [actually the fiduciary Debtor in Possession is the one authorized to seek employment of professionals] wishes to employ The Oppenheim Group ("Oppenheim" or the "Broker"), by and through its brokers Jason Oppenheim and Vidi Revelli, to list the La Jolla Properties for sale. The Debtor hopes to sell the La Jolla Properties through a focused and structured sale process, thereby maximizing the value received, repaying the secured debt, and generating excess proceeds for the estate. The listing of the La Jolla Properties with the Broker is consistent with these goals. Any sale of the La Jolla Properties will be subject to further motion before the Court.

Id.; p. 2:16-22.

Debtor in Possession Kamaljit Kalkat filed a Motion to employ Chico Gineter & Brown as the Real Estate Broker for the marketing and sale of the 127.4 acres of farmland located at 7071 River Road, Colusa, California. Dckt. 76.

The court entered the two Orders authorizing the employment of the Real Estate Brokers on February 14, 2025. Dckts. 91, 92.

There are no motions seeking authorization to sell any of the three above listed properties that have been filed with the court.

On June 20, 2025, six days before the hearing on this Motion for Relief, the Debtors in Possession in the jointly administered Cases filed a Motion to Employ GBB Advisors as a Real Estate Broker. Dckt. 155. The Motion states that the Debtors in Possession seek to employ GBB Advisors for the marketing and sale of the 7071 River Road, Colusa, California property. This is the same property for which the court authorized the employ of Chico Ginter & Brown as the Real Estate Broker for the Debtor in Possession.

In the Opposition the Debtor in Possession states that;

> The Debtor intends to sell the Property. The Debtor retained a broker and the property is listed. The sale of the Property for its highest and best price as part of a competitive sale could result in equity for this estate.

Opposition, p. 2:12-14; Dckt. 144. In filing Motions to Employ, the Debtor in Possession has specified specific properties for which the employment is made in each Motion. The court cannot find one for the 7456 Caminito Avola, San Diego, California property. In its order granting the Motions to Employ the Real Estate Brokers the court did not specify the properties.

The Debtor in Possession states also that it is well established law (citing to a 1988 Bankruptcy Court Decision from the Eastern District of California) that a Debtor in Possession should be allowed a reasonable time to diligently prosecute a Chapter 11 plan in good faith.

In the Opposition, the Debtor in Possession explains that the Bankruptcy Case is being prosecuted on dual tracks, with the Debtors in Possession seeking refinancing and, only as a backstop, the marketing and sale of property of the Bankruptcy Estate. *Id*.; p. 7:6-9.

In her Declaration filed in Opposition to the Motion, Kamaljit Kalkat, the Debtor in Possession and Responsible Representative for the Debtor in Possession in the second case testifies under penalty of perjury that she intends to sell the properties for the "highest and best price in order to repay the secured debt on those properties in anticipation of generating a surplus." Dec., ¶ 4; Dckt. 145. She also testifies that the sale is just a "back-stop" to her desire to obtain refinancing. *Id*.

There is no testimony as to the marketing steps being taken, the offers received, the interest in the properties, or adjustments make to listing prices if no offers or genuine interest is being generated for or in the properties. She only states, "I am currently consulting with the broker and my advisors on lowering the list price in an effort to entice multiple offers." *Id*.; ¶ 3. The Debtor in Possession and Responsible

Representative is only "consulting" and not taking action to adjust the asking price on properties that have been listed since February 2025 and for which no proposed sales have been brought to this court.

With respect to selling 7546 Caminito Avola, San Diego property (at issue in this Motion) and the 5762 Bellevue, La Jolla, California, the Debtors in Possession are:

> [c]ontinuing its efforts to sell the Property and the Bellevue Property for the highest and best prices in order to repay the debt secured thereby and, hopefully, generate surplus proceeds for the estate.

Id.; p. 7:10-12.

This language used by the Debtor in Possession is concerning, in that it states that the Debtor in Possession's "mission" is to sell the property only for the highest and best price to generate surplus value for the Bankruptcy Estate. The fiduciary Debtor in Possession does not state that the property is being **marketed in a commercially reasonable manner for sale at the fair market value.** The language used by the Debtor in Possession could be construed to mean that the properties will only be sold for what the Debtors need them to be sold for to make money for the Debtors, **without regard to the fair market value of the properties.** Such action would be inconsistent with the fiduciary duties of the Debtor sin Possession and the fiduciary duties of their Responsible Representatives.

Now, more than seven months into these Chapter 11 Cases, there are no bankruptcy plans being prosecuted or information about getting plans filed and disclosure statement hearings set.

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, as there has been enough delay in the case as things are, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 7:24-8:4.

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 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by APC CS 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 is ~~granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5762 Bellevue Avenue, La Jolla, California 92037 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.~~

~~No other or additional relief is granted.~~

5. 24-25180-E-11 LNJ-2 | **KAMALJIT KALKAT** / **Robert Marticello** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **5-29-25 [127]**

APC CS TRUST VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 30, 2025. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period. At the hearing, **xxxxxxx**

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

The Motion for Relief from the Automatic Stay is ~~granted.~~

APC CS TRUST ("Movant") seeks relief from the automatic stay with respect to Kamaljit Kaur Kalkat's ("Debtor in Possession") real property commonly known as 7546 Caminito Avola, San Diego, California 92063 ("Property"). Movant has provided the Declaration of Stephanie Box to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 130.

Movant argues Debtor has not made any post-petition payments, and the obligation has been in default since May 1, 2024. Declaration, Docket 124; Mot. 4:16-17. Movant also argues the equity cushion continues to sink, Movant's claim totaling $4,040,483.06. Decl. ¶ 9.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for an effective reorganization. Movant asserts secured claims against the Property exceed $5,282,763.58 before even factoring in costs of sale, which are likely to exceed $250,000, and so there is no equity in the Property even at a generous listing price of $5,500,000. Mot. 6:1-13.

Movant further points out that no effective reorganization is imminent as Debtor in Possession has not filed a Plan or Disclosure Statement, and Debtor in Possession has had the Property on the market for four months now without accepting any offers. Mot. 7:1-15. Moreover, the individuals who own Debtor

in Possession are almond farmers based in Northern California. This Property is unfinished residential property in San Diego. It is not necessary to an effective reorganization. *Id.*

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 12, 2025. Docket 144. Debtor in Possession asserts:

1. Debtor in Possession has equity in the Property and the Property is necessary to the Debtor in Possession's overall rehabilitation strategy to maximize the value of its assets, generate surplus proceeds, and minimize any deficiency claims. *Id.* at 2:7-9.

2. Movant's argument that there is no equity depends on the existence of the junior secured mortgage held by Austin Tarzana Group ("ATG"), securing a note valued as of the Petition Date (according to its proof of claim) at $1,242,280.52. This same debt is also secured by the Debtor in Possession's Caminito Property and four properties owned by Debtor in Possession Kalkat. With respect to two of those properties, one of which is listed for sale, ATG is the sole secured creditor. As part of an overall sale program, the ATG debt is expected to be paid upon the sale of one or more of these properties. That debt should not be included in the calculation here. *Id.* at 3:2-8.

3. Debtor calculates Lender's debt as of the Petition Date at $3,662,528.43. On that amount, default interest at 18% would accrue at a per diem rate of $1,635.29. By June 26, 2025 – or 224 days from the Petition Date – the loan balance would total $4,028,833.39, not including legal fees. The Debtor, in consultation with its broker (Oppenheim Group), believes that the Property is worth substantially more than that. While the Property has not received a firm bid at its current asking price, the Debtor, in consultation with Oppenheim Group, intends to re-list the Property at a lower asking price to entice multiple offers. *Id.* at 3:13-20.

ATG'S OPPOSITION

Secured Creditor ATG filed an Opposition on June 12, 2025. Docket 150. ATG asserts:

1. Movant offers no evidence of a valuation contradicting the scheduled amount of $5,995,000 for the Property. *Id.* at 2:3-8.

2. There is an equity cushion. *Id.* at 2:20-28.

MOVANT'S REPLY

Movant filed a Reply on June 20, 2025. Docket 154. Movant states:

1. The listing agreement for the sale of the Property has expired. The Debtors' exclusivity period has expired too and they have not filed a disclosure statement or plan. In short, the Debtors are no closer to executing on their so-called restructuring strategy today than they were when they filed their first bankruptcy cases ten months ago. *Id.* at 2:8-19.

2. The evidence shows that secured claims against the Property exceed $5,282,763.58 against a value of, at most, $5,500,000 and perhaps as low as $5,000,000. The calculations do not even include the costs of sale, which are likely to total more than $250,000. The Debtors have no equity in the Property. *Id.* at 3:8-14.

3. The Supreme Court has been clear:

> What [section 362(d)(2)] requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means . . . there must be a reasonable possibility of a successful reorganization within a reasonable time.

United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 375-76 (1988) (emphasis in original) (internal quotation marks and citation omitted). Reply at 8:25-9:7.

4. Debtors have been given seven months to develop a plan. The Lender worked with the Debtors to ensure that the Property was listed with a competent broker and allowed the Debtors ample time to sell the Property. The Property has been listed for sale for five months without the Debtors accepting an offer. *Id.* at 9:8-17.

DISCUSSION

Debtor in Possession would have the court ignore the $1,242,280.52 secured debt owed to ATG for purposes of calculating the debt secured by the Property. Debtor in Possession states because ATG is secured by other properties that will apparently be sold in the future, the court should not add that debt to the calculation. Mot. 3:2-12. Debtor in Possession cites the court to no law to support the idea that the court can ignore secured debts in the debt calculation if those secured debts are going to be paid from the speculative sale of other properties securing its claim. Collier's Treatise on Bankruptcy states with regard to calculating debt and any equity:

> The majority of courts correctly follow the standard equation for equity under section 362(d)(2) and hold that even if junior lienholders object to stay relief, their liens must be counted in determining whether the debtor has equity in the property for purposes of a section 362(d)(2) calculation. As the Court of Appeals for the Ninth Circuit explained:

> The language of the statute simply refers to the debtor's "equity," which has been defined as "the amount or value of a property above the total liens or charges." The statute does not refer to the debtor's equity as against the only plaintiff-lienholder seeking to lift the stay or persons holding liens senior to that of the plaintiff-lienholder. The minority view improperly focuses upon the interests of junior lienholders as opposed to the interests of the debtor or senior lienholder. *Stewart v. Gurley*, 745 F.2d 1194, 1196, 11 C.B.C.2d 435, 437–38 (9th Cir. 1984).
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> These courts explain that the statute refers to the debtor's equity, not to the equity over the interests of the moving creditor. Further, they observe that it is not the debtor but junior lienholders who benefit from a denial of relief from the stay when the debtor has no equity in the property. They can discern no reason to benefit junior lienholders at the expense of a senior lienholder in the context of a proceeding that is intended for the benefit of the debtor and its unsecured creditors.

3 COLLIER ON BANKRUPTCY ¶ 362.07[4][a][i].

Therefore, from the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $5,282,763.58 (Declaration ¶ 9, Docket 124; POC 18-1). There is some dispute as to the value of the Property. While Debtor in Possession has valued the Property at $5,995,000 on her Schedules A/B, Debtor in Possession has had the Property on the market for at least four months at a price of $5,500,000 without receiving a single bid. The value of the Property will be considered to be $5,500,000 for purposes of this Motion.

The court considers that ATG may be paid through other sales of assets in the case. That would create equity in the Property for Movant, and this Motion would be denied pursuant to 11 U.S.C. § 362(d)(2). However, there is not sufficient evidence showing the case is being prosecuted and these other properties securing ATG's claim are being sold. The situation is such that equity in the Property would depend on reorganization efforts, which, as discussed more below, have not been readily apparent to the court.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

Based upon the evidence submitted to the court, and no showing having been made by Debtor in Possession, the court determines that there is no equity in the Property for either Debtor in Possession or the Estate.

Moreover, the court finds the Property is not necessary for an effective reorganization. Collier's states in regard what is necessary for an effective reorganization:

> In a chapter 11 reorganization case, most of the property of the debtor in possession is likely to be "necessary" for the debtor's business and ultimate reorganization. Consequently, it is often difficult for a party to obtain relief under section 362(d)(2). However, it is not sufficient that property be necessary for any possible reorganization. Instead, the property must be necessary for an *effective* reorganization. This means there "must be a reasonable possibility of a successful reorganization within a reasonable time," and that the property at issue is necessary to that reorganization. Under this test, therefore, relief from the stay should be granted if the debtor has no reasonable likelihood of reorganization. This might occur, for example, because reorganization of the business is not feasible or because creditor dissent makes a successful plan unlikely. A debtor also fails to show necessity of the property for an effective reorganization if the debtor's plan is unsupported by credible assumptions and projections that offer some basis for confidence that the plan could succeed.

3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b]. In this case, Debtor in Possession has not filed a Plan or disclosure Statement despite the case having been filed in November of 2024. Debtor in Possession moved to have a competent broker market and sell the Property which the court granted on February 14, 2025. Order, Docket 91. Nothing has come from these efforts over four months later. Debtor in Possession has not adjusted the price. It appears the listing agreement has expired as well. It is unclear how Debtor in Possession plans to move forward, either by taking a refinance or completing a sale. Debtor in Possession would assert that having multiple options open in moving forward is a strategic reorganization effort. However, the fact remains there has not been meaningful progress in the case while secured creditors are not being paid. There is no effective reorganization taking place because there is not a reasonable possibility of a successful reorganization within a reasonable time.

Debtor commenced this Chapter 11 Bankruptcy Case on November 14, 2024.

Debtor filed a prior Chapter 12 Bankruptcy Case on August 8, 2025. 24-23664. As stated by Debtor's counsel for that Case, the attorneys filed it on an emergency basis to stop a pending foreclosure. The attorneys who filed the prior case did so, but advised the Debtor that they would not represent her as the Debtor in Possession. Civil Minutes; Dckt. 43 at 3-4. When Debtor's new counsel was obtained, the decision was made that the case would have to proceed under Chapter 11. The case could not be converted to one under Chapter 11. See 11 U.S.C. § 1208, which makes no provision to conversion to Chapter 11.

Given that the prior Bankruptcy Case, while giving the Debtor and the property of the Bankruptcy Estate automatic stay protection, Debtor was not represented by counsel who could prosecute either a Chapter 11 or Chapter 12 case of this size. Thus, in considering how and what good faith efforts the Debtor in Possession is making in prosecuting the current case, the court is looking at the conduct of the Debtor in Possession and her knowledgeable Chapter 11 counsel, and not shackling them with the prior Case.

The current Chapter 11 Case having been filed on November 14, 2025, seven months have passed for the Debtor in Possession to be moving forward. On January 21, 2025, the Debtor in Possession Diamond K, LLC filed a Motion to Employ The Oppenheim Group as the Real Estate Broker to market the 5762

Bellevue, La Jolla, California and 7546 Caminito Avola, La Jolla, California single family residence properties for sale. Motion; Dckt. 67. In the Motion, the grounds includes the following statement:

> The Debtor [actually the fiduciary Debtor in Possession is the one authorized to seek employment of professionals] wishes to employ The Oppenheim Group ("Oppenheim" or the "Broker"), by and through its brokers Jason Oppenheim and Vidi Revelli, to list the La Jolla Properties for sale. The Debtor hopes to sell the La Jolla Properties through a focused and structured sale process, thereby maximizing the value received, repaying the secured debt, and generating excess proceeds for the estate. The listing of the La Jolla Properties with the Broker is consistent with these goals. Any sale of the La Jolla Properties will be subject to further motion before the Court.

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The court entered the two Orders authorizing the employment of the Real Estate Brokers on February 14, 2025. Dckts. 91, 92.

There are no motions seeking authorization to sell any of the three above listed properties that have been filed with the court.

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In the Opposition the Debtor in Possession states that;

> The Debtor intends to sell the Property. The Debtor retained a broker and the property is listed. The sale of the Property for its highest and best price as part of a competitive sale could result in equity for this estate.

Opposition, p. 2:12-14; Dckt. 147. In filing Motions to Employ, the Debtor in Possession has specified specific properties for which the employment is made in each Motion. The court cannot find one for the 7456 Caminito Avola, San Diego, California property. In its order granting the Motions to Employ the Real Estate Brokers the court did not specify the properties.

The Debtor in Possession states also that it is well established law (citing to a 1988 Bankruptcy Court Decision from the Eastern District of California) that a Debtor in Possession should be allowed a reasonable time to diligently prosecute a Chapter 11 plan in good faith.

In the Opposition, the Debtor in Possession explains that the Bankruptcy Case is being prosecuted on dual tracks, with the Debtors in Possession seeking refinancing and, only as a backstop, the marketing and sale of property of the Bankruptcy Estate. *Id*.; p. 7:6-9.

The Declaration of Kamaljit Kalkat, the Responsible Representative of the Debtor in Possession testifies under penalty of perjury that she intends to sell the properties for the "highest and best price in order to repay the secured debt on those properties in anticipation of generating a surplus." Dec., ¶ 4; Dckt. 148. She also testifies that the sale is just a "back-stop" to her desire to obtain refinancing. *Id*.

There is no testimony as to the marketing steps being taken, the offers received, the interest in the properties, or adjustments make to listing prices if no offers or genuine interest is being generated for or in the properties. She only states, "I am currently consulting with the broker and my advisors on lowering the list price in an effort to entice multiple offers." *Id*.; ¶ 3. The Debtor in Possession and Responsible Representative is only "consulting" and not taking action to adjust the asking price on properties that have been listed since February 2025 and for which no proposed sales have been brought to this court.

With respect to selling 7546 Caminito Avola, San Diego property (at issue in this Motion) and the 5762 Bellevue, La Jolla, California, the Debtors in Possession are:

> [c]ontinuing its efforts to sell the Property and the Bellevue Property for the highest and best prices in order to repay the debt secured thereby and, hopefully, generate surplus proceeds for the estate.

Id.; p. 7:10-12.

This language used by the Debtor in Possession is concerning, in that it states that the Debtor in Possession's "mission" is to sell the property only for the highest and best price to generate surplus value for the Bankruptcy Estate. The fiduciary Debtor in Possession does not state that the property is being **marketed in a commercially reasonable manner for sale at the fair market value.** The language used by the Debtor in Possession could be construed to mean that the properties will only be sold for what the Debtors need them to be sold for to make money for the Debtors, **without regard to the fair market value of the properties.** Such action would be inconsistent with the fiduciary duties of the Debtor sin Possession and the fiduciary duties of their Responsible Representatives.

Now, more than seven months into these Chapter 11 Cases, there are no bankruptcy plans being prosecuted or information about getting plans filed and disclosure statement hearings set.

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, as there has been enough delay in the case as things are, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 7:17-24.

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 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by APC CS 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 is ~~granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 7546 Caminito Avola, San Diego, California 92063 ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~
>
> ~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.~~
>
> ~~No other or additional relief is granted.~~

6. 24-25181-E-11 CAE-1 **DIAMOND K LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 11-14-24 [1]**

Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

Notes:
Continued from 6/10/25 to be conducted in conjunction with motions for relief from stay.

The Status Conference is xxxxxxx

JUNE 26, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

JUNE 10, 2025 STATUS CONFERENCE

The Chapter 11 Cases for Kamaljit Kalkat, 24-25180, and Diamond K, LLC, 24-25181, are being jointly administered, with the Kamaljit Kaur Kalkat case being the lead case in which substantially all ongoing pleadings are to be filed. Joint Administration Orders; 24-25180, Dckt. 61, and 24-25181, Dckt. 101.

A review of the Docket discloses that several motions have been filed. A Motion for Relief From the Stay relating to the Bellevue Avenue Property that is part of the Diamond K, LLC Estate has been filed by APC CS Trust.. Dckt. 121. Relief is sought pursuant to 11 U.S.C. § 362(d)(2). The hearing on the Motion is set for June 26, 2025.

APC CS Trust has filed a second Motion for Relief From the Automatic Stay with respect to the Caminito Avola property that is in the Diamond K, LLC Estate. Dckt. 127. Relief is sought pursuant to 11 U.S.C. § 362(d)(2). The hearing on the Motion is set for June 26, 2025.

Illinois General Investment Trust has filed a second Motion for Relief From the Automatic Stay with respect to the Clark Road Property that is in the Kamaljit Kaur Kalkat Estate. Dckt. 135. Relief is sought pursuant to 11 U.S.C. § 362(d)(2). The hearing on the Motion is set for July 10, 2025.

At the Status Conference, counsel for the Debtor in Possession reported that the Debtor in Possession is pursuing a refinancing of the farmland property, but have it listed as a backup.

The broker has not been hired to do that, the Debtor in Possession having been contacted by a lender who was proposing to do a refinancing loan. The Debtor in Possession anticipated a week of "due diligence" given the possible lender's existing knowledge of the property.

As of June 7, 2025, the Debtor in Possession learned that this lender could not commit to doing the full refinance.

The Debtor in Possession intends to proceed with the "dual path" of refinance and possible sale.

Counsel for AgWest expressed concern about the Debtor in Possession's ability to prosecute this Bankruptcy Case.

Counsel for ATG Capital reported that the Realtor who has been listing property for sale, his listing agreement has termed out.

Counsel for Arch West Funding expressed frustration about the properties that secured its claim have not been sold, the properties having been marketed since February 2025.

Counsel for Frank Loretz Family Trustee first echoed the comments of other creditors' counsels that counsel for the Debtor in Possession is effectively communicated with them. He noted that Debtor's limited liability companies are farming the farm land and using the farming properties to pay one of the creditors.

Counsel for the Debtor in Possession advised that the reason the Debtor in Possession did not proceed with the offer on the La Jolla property was that the lender was discussing doing a global refinancing. The Debtor in Possession reported that the marketing for sale of the two Southern California properties is moving forward.

The farm proceeds are being paid to Rabo Argifinance due to an assignment of the proceeds to Rabo Argifinance.

Counsel for Rabo Argifinance addressed the crop assignments as being done by a non-Debtor entities, not the Debtor.

Debtor in Possession counsel could not provide information about the Debtor's children living in the Southern California

The Status Conference is continued to 10:00 a.m. on June 26, 2025 (Specially Set Day and Time), to be conducted in conjunctions with the hearings on motions for relief from the automatic stay.

MAY 8, 2025 STATUS CONFERENCE

The Chapter 11 Cases for Kamaljit Kalkat, 24-25180, and Diamond K, LLC, 24-25181, are being jointly administered, with the Kamaljit Kaur Kalkat case being the lead case in which substantially all ongoing pleadings are to be filed. Joint Administration Orders; 24-25180, Dckt. 61, and 24-25181, Dckt. 101.

The Debtor in Possession's Report of Sale in the Diamond K LLC Case for the 623 N. Rexford Dr. Property was filed on May 5, 2025. Dckt. 114. It states that the purchase price of $5,500,000 was paid: (1) $5,537,646.07 was paid by the purchase and (2) the balance of "37,646.07" was paid through a credit by the broker. It appears that the "balance" amount is a clerical error. An amended Report of Sale will be filed by the Debtor in Possession.

At the Status Conference, counsel for the Debtor in Possession reports that a broker will now be hired to first seek refinancing of the farmland and put in place a marketing and sale option if the refinancing does not occur.

A motion to employ a broker will be filed

Counsel for AgWest reports that Debtor in Possession counsel has discussed the proposed process, and they think that it sounds reasonable.

The U.S. Trustee reported that there outstanding U.S. Trustee fees that have come due and the Debtors in Possession needs to pay.

Counsel for Arch West Funding requested information about the San Diego property status for marketing and sale. Counsel for the Debtor in Possession reports that there is a $5MM offer on one of the properties, and Debtor has submitted a slightly higher counter offer.

Counsel for the Frank Loretz Family Trust reported that his client does not believe that the collateral is properly being taken care of, and they may file a motion for relief from the stay. He will discuss with the client delaying such filing in light of the refinance and marketing attempts that have been discussed.

Counsel for the Illinois General Investment Trust, states that payments are not being made on the residence property. Counsel for the Debtor in Possession says that the residence property is not including in the refinance or sale of the farmland property. The Debtor is intending to use the refinance or sale proceeds to pay this secured claim.

The Status Conference is continued to 10:00 a.m. on June 10, 2025 (Specially Set Day and Time).

MARCH 5, 2025 STATUS CONFERENCE

The Chapter 11 Cases for Kamaljit Kalkat, 24-25180, and Diamond K, LLC, 24-25181, are being jointly administered, with the Kamaljit Kaur Kalkat case being the lead case in which substantially all ongoing pleadings are to be filed. Joint Administration Orders; 24-25180, Dckt. 61, and 24-25181, Dckt. 101.

No Status Reports have been filed by either Debtor in Possession.

At the Status Conference, counsel for the Debtors in Possession reported that the Brokers are marketing the properties. The Debtors in Possession have obtained insurance for the orchard properties.

Counsel for AgWest, whose claims are secured by the orchards, expressed concerns about the Debtors in Possession not having their financial records straightened out yet. This is an issue which they

have been discussing for a year. AgWest also expressed concerns that the orchards are not being properly maintained. They will oppose a request to extend the disclosure statement and plan exclusively deadlines.

Counsel for Arch West noted that they have only received proof of insurance for one property, but not the other.

Counsel for Frank Lorelz Trust stated that an inspection of the properties is schedule for the next two weeks. Concern was also raised that the Debtor Kamaljit Kalkat are operating the orchards but not paying rents.

Counsel for the Debtors in Possession noted that Rabo Agrifinance has liens on the operating revenues of the two related limited liability companies operating the orchards.

The Status Conference is continued to 11:30 a.m. on May 8, 2025 (Specially Set Day and Time).

January 15, 2025 Status Conference

At the Status Conference, counsel for the two Debtors in Possession whose cases are being jointly administered reported that the individual Debtor has operated real estate ventures through two entities. They are working on a liquidation plan from which the two Debtor's in Possession can reorganize and fund the plan through the operation of the orchards.

Counsel for the U.S. Trustee reported that the 341 Meeting has been continued. The proof of insurance has not yet been provided. Counsel for the Debtors in Possession reported that they are working to get insurance, and their agent tells them that they should have a quote withing a week. Some of the properties are insured.

Counsel for Creditor Arch West reported that they have forced place insurance in plan. This Creditor is discussing the with the Debtor in Possession whether this property should be sold.

Counsel for Rabo Agrifinance reported that on their loans with the individual Debtor and two other persons.

The two Debtors in Possession are now prosecuting the two jointly administered cases.

The Status Conference is continued to 2:00 p.m. on March 5, 2025