

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

June 26, 2025 at 10:30 a.m.

1. [23-21332-E-7](#)  
[BHS-2](#)

**BENJAMEN VERMA**  
**Peter Macaluso**

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
BARRY W. MORSE, INC.  
5-19-25 [126]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 19, 2025. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Approval of Compromise is granted.**

Nikki Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses. The claims and disputes to be resolved by the proposed settlement involve the Trustee seeking authority to sell the rights to prosecute Debtor's cause of action deriving from a complaint in the Sacramento Superior Court filed as Case No. 25CV002800 against the Creditor Barry W. Morse Inc. ("Creditor") and Equity Wave Lending Inc. In the Complaint, the Debtor alleges Breach of Contract, Common Counts and Fraud related to the loan for the real property commonly known as 4414 Bantam Way, Elk Grove, CA 95758 ("Property"). Trustee seeks to sell the rights to

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prosecute the Complaint to Creditor for \$10,000, as is, where is, with no warranties or guarantees. Mot. 2:25-27. A copy of the sale agreement is included as Exhibit A, Docket 129.

## **DISCUSSION**

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

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

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

Movant argues that the four factors have been met.

### **Probability of Success**

It would be costly for Trustee to step into Debtor's shoes and hire special counsel to prosecute the case because the claims may not have merit. Mot. 5:7-22.

### **Difficulties in Collection**

The Trustee is not aware of any difficulties in collection of the settlement and has received a \$5,000.00 down payment from Creditor. If the matter was not settled and proceeded to trial, the Trustee has no information on the ability to collect on a judgment, if successful at trial. *Id.* at 5:24-27.

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

It would be expensive and uncertain for Trustee to prosecute this litigation. Trustee would have the burden of proof on allegations against Creditor that requires the cooperation of the Debtor, who did not mention the issues raised in the lawsuit at any time during the pendency of the Bankruptcy case and in fact, did not inform the Trustee even after the Complaint was filed. *Id.* at 6:2-14.

### **Paramount Interest of Creditors**

The proposed Compromise allows the Trustee to collect \$10,000.00 for the bankruptcy estate without the expense, uncertainty, or delay of costly litigation. *Id.* at 6:16-20.

## Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Trustee will immediately realize a return of \$10,000 for the Estate without needing to prosecute what could be expensive litigation. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Nikki Farris, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Creditor Barry W. Morse Inc. (“Creditor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 129).

**IT IS FURTHER ORDERED** that Nikki Farris, the Chapter 7 Trustee, is authorized to sell the right to prosecute the Complaint filed in the Sacramento Superior Court filed as Case No. 25CV002800 to Creditor Barry W. Morse Inc., for the sum of \$10,000 as is, where is, and without any warranties or guarantees.

**THE COURT HAS POSTED THIS AS A TENTATIVE RULING  
OUT OF AN ABUNDANCE OF CAUTION IN CASE THERE ARE  
ANY LAST MINUTE CONCERNS ABOUT HOW THE PROPERTIES ABANDONED  
ARE IDENTIFIED IN THE ORDER**

**IF A PARTY IN INTEREST HAS NO CHANGES OR POINTS TO BE ADDRESSED  
WITH RESPECT TO THE DESCRIPTION OF THE PROPERTIES,  
NO ATTENDANCE AT THE HEARING IS REQUIRED**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on May 26, 2025. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

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

Geoffrey Richards, the Chapter 7 Trustee ("Trustee") moves the court for an order abandoning the following assets of the Estate to the Debtor Donald Fred DuPont, Jr.:

- a. Real property identified as a lot in Mexico Rancho Costa Verde, San Felipe, Baja California ("Mexico Property").
- b. Personal Property identified as:

- i. "2013 Chevrolet Silverado," which the Debtor valued at \$9,500, exempted \$1.00 under California Code of Civil Procedure Section 704.010, and disclosed a lien of \$10,378 held by Schools Federal Credit Union.
- ii. "2012 Audi Q5," which the Debtor valued at \$9,000, and exempted \$4,500 under Section 704.010.
- iii. "2015 BMW 135," which the Debtor valued at \$2,000, exempted \$1.00 under Section 704.010, and disclosed a lien of \$5,397 held by Westlake Financial.
- iv. "2011 Land Rover Range Rover," Which the Debtor valued at \$2,500, and disclosed a lien of \$8,498.00 held by Schools First Federal Credit Union.
- v. "2022 Masa Ridge 26 Foot," travel trailer which the Debtor valued at \$26,000, 24 disclosed a lien of \$30,150 held by U.S. Bank, and exempted \$1.00 under Section 704.010.
- vi. "Custom Sand rail," which the Debtor valued at \$1,500 and exempted under Section 704.010.
- vii. "Misc Household Goods," which the Debtor valued at \$3,500 and exempted under Section 704.020.
- viii. "TV's, Computer's, Printers, Cell Phones, Camera," which the Debtor collectively valued at \$1,500 and exempted under Section 704.020.
- ix. "Exercise Equipment, Golf Clubs, Card Table, 12' Aluminum Boat with 15hp motor," which the Debtor valued at \$2000, and exempted under Section 704.020.
- x. "Shotgun, Pistol," which the Debtor valued at \$500, and exempted under Section 704.020.
- xi. "Assorted Wearing Apparel," which the Debtor valued at \$500, and exempted under Section 704.020.
- xii. "Assorted Costume & Fine Jewelry," which the Debtor valued at \$200, and exempted under section 704.040.
- xiii. "Cash," which the Debtor valued at \$60.
- xiv. "Joint with Wife [checking account] Bank America," which the Debtor valued at \$400.00.

- xv. Checking Chase, which the Debtor valued at \$1,908.
- xvi. Savings Chase, which the Debtor valued at \$8.00.
- xvii. "Rockhill Winery [checking account] Chase," which the Debtor valued at \$2,497.
- xviii. "Ameri Trade Low End Penny Stock," which the Debtor valued at \$300.00.
- xix. "Schwab Low End Penny Stock," which the Debtor valued at \$200.00.
- xx. "NEBF Pension Fund," which the Debtor valued at \$101.44.
- xxi. "GLIC Genworth annuity split with family members," which the Debtor valued at \$794.35.
- xxii. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which Debtor valued at \$1,450,000, but noted the claim is "Probably Uncollectable."
- xxiii. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which the Debtor valued at \$2,000,000, but noted the claim is "Probably Uncollectable."
- xxiv. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which the Debtor valued at \$875,000, but noted the claim is "Probably Uncollectable."
- xxv. "Wine Club Quarterly membership," which the Debtor valued at \$3,494.
- xxvi. "6200 Grape Vines," which the Debtor valued at \$6,200. (ECF 23, 95, 179).

(collectively, "Personal Property").

Regarding the Mexico Property, Trustee has determined that taking into account costs of sale including attorneys' fees and costs to bring the motion to approve a sale if the Trustee receives an offer, and to respond to Debtor's opposition to such sale, and the delay to market and transfer the Mexico Property if a sale is approved, there would be little, if any, proceeds of sale, for the benefit of the unsecured creditors. Decl. ¶ 3, Docket 271. In addition, the Mexico Property is also likely burdensome to the estate given the potential liabilities of local fees and taxes and other potential administrative expenses. *Id.*

Trustee has similarly determined that the Personal Property is of inconsequential value for the estate. Taking into consideration the liens on the Personal Property, the Debtor's claimed or available exemptions, the costs of sale, and the attorneys' fees, there would be little proceeds of sale, if any, for the benefit of the unsecured creditors. In addition, the Personal Property is likely burdensome to the estate given the potential liabilities including personal property tax and other potential administrative expenses. *Id.* at ¶ 4.

The court finds that the Mexico Property and the Personal Property is of inconsequential value to the Estate and there are negative financial consequences for the Estate if it retains the Property. The court authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Geoffrey Richards, the Chapter 7 Trustee ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following assets of the Estate are abandoned to the Debtor Donald Fred DuPont, Jr., with no further act of the Chapter 7 Trustee required:

- a. Real property identified as a lot in Mexico Rancho Costa Verde, San Felipe, Baja California ("Mexico Property").
- b. Personal Property identified as:
  - i. "2013 Chevrolet Silverado," which the Debtor valued at \$9,500, exempted \$1.00 under California Code of Civil Procedure Section 704.010, and disclosed a lien of \$10,378 held by Schools Federal Credit Union.
  - ii. "2012 Audi Q5," which the Debtor valued at \$9,000, and exempted \$4,500 under Section 704.010.
  - iii. "2015 BMW 135," which the Debtor valued at \$2,000, exempted \$1.00 under Section 704.010, and disclosed a lien of \$5,397 held by Westlake Financial.
  - iv. "2011 Land Rover Range Rover," Which the Debtor valued at \$2,500, and disclosed a lien of \$8,498.00 held by Schools First Federal Credit Union.
  - v. "2022 Masa Ridge 26 Foot," travel trailer which the Debtor valued at \$26,000, 24 disclosed a lien of \$30,150

held by U.S. Bank, and exempted \$1.00 under Section 704.010.

- vi. "Custom Sand rail," which the Debtor valued at \$1,500 and exempted under Section 704.010.
- vii. "Misc Household Goods," which the Debtor valued at \$3,500 and exempted under Section 704.020.
- viii. "TV's, Computer's, Printers, Cell Phones, Camera," which the Debtor collectively valued at \$1,500 and exempted under Section 704.020.
- ix. "Exercise Equipment, Golf Clubs, Card Table, 12' Aluminum Boat with 15hp motor," which the Debtor valued at \$2000, and exempted under Section 704.020.
- x. "Shotgun, Pistol," which the Debtor valued at \$500, and exempted under Section 704.020.
- xi. "Assorted Wearing Apparel," which the Debtor valued at \$500, and exempted under Section 704.020.
- xii. "Assorted Costume & Fine Jewelry," which the Debtor valued at \$200, and exempted under section 704.040.
- xiii. "Cash," which the Debtor valued at \$60.
- xiv. "Joint with Wife [checking account] Bank America," which the Debtor valued at \$400.00.
- xv. Checking Chase, which the Debtor valued at \$1,908.
- xvi. Savings Chase, which the Debtor valued at \$8.00.
- xvii. "Rockhill Winery [checking account] Chase," which the Debtor valued at \$2,497.
- xviii. "Ameri Trade Low End Penny Stock," which the Debtor valued at \$300.00.
- xix. "Schwab Low End Penny Stock," which the Debtor valued at \$200.00.
- xx. "NEBF Pension Fund," which the Debtor valued at \$101.44.
- xxi. "GLIC Genworth annuity split with family members," which the Debtor valued at \$794.35.



- xxii. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which Debtor valued at \$1,450,000, but noted the claim is "Probably Uncollectable."
- xxiii. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which the Debtor valued at \$2,000,000, but noted the claim is "Probably Uncollectable."
- xxiv. Claim in connection with "Business Investment lost loan revenue with interest and legal fees," which the Debtor valued at \$875,000, but noted the claim is "Probably Uncollectable."
- xxv. "Wine Club Quarterly membership," which the Debtor valued at \$3,494.
- xxvi. "6200 Grape Vines," which the Debtor valued at \$6,200. (ECF 23, 95, 179).

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and parties in interest on June 5, 2025. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion for Entry of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion for Entry of Discharge is granted.</b></p>
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The Motion for Entry of Discharge has been filed by Michael Erich Hofmann (“Debtor in Possession”). Debtor moves the court for entry of discharge pursuant to 11 U.S.C. § 1192. 11 U.S.C. § 192 states:

If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

(2) of the kind specified in section 523(a) of this title.

Debtor in Possession states the confirmed Plan provides Debtor in Possession will make a lump sum payment to creditors in the amount of \$13,000, which is all plan payments due within three years. When the payment is made, Debtor in Possession was to receive a discharge from any debt that arose before confirmation of the Plan. Mot. 2:22-28.

Debtor in Possession's Declaration (Dckt. 477) certifies that Debtor in Possession has completed the plan payment of \$13,000, the only payment due within the first three years of the Plan, and the Plan has been substantially consummated. Decl. ¶ 4.

Walter Dahl, the Chapter 11 Subchapter V Trustee, filed a Consent Statement on June 19, 2025. Docket 491.

There being no objection, Debtor in Possession is entitled to a discharge.

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 Entry of Discharge filed by Michael Erich Hofmann ("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 granted, and the court shall enter the discharge for Michael Erich Hofmann in this case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee and all creditors and parties in interest on June 6, 2025. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

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

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

The Motion filed by Mary Ann Benny, the successor representative to the late George Ignac Benny (“Debtor”) requests the court to order Irma Edmonds (“the Chapter 7 Trustee”) to abandon property commonly known as 351 Rossler Road, Placerville, CA 95667 (“Property”). The Property is encumbered by the lien of Provident Funding Associates, LP, securing a claim of \$116,654. Debtor’s Amended Schedules A/B value the Property at \$694,000. Am. Schedule A/B at 4, Docket 18. Debtor has claimed exempt \$577,746 on her Amended Schedule C. Am. Schedule C at 2, Docket 23.

The Motion requests that the Estate’s interests be abandoned to “the Debtor.” However, given that the Debtor is deceased (Notice of Death, Dckt. 11), there is no “Debtor” to abandon the Property to. There may be a probate estate, a person who inherited the right to the Property, or other person to whom the Property be abandoned.

At the hearing, counsel for Successor Representative Mary Ann Benny reported to the court,

**XXXXXXX**

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

### **CHAMBERS PREPARED ORDER**

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

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

The Motion to Compel Abandonment filed by Mary Ann Benny, Successor Representative for the late George Ignac Benny, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 351 Rossler Road, Placerville, CA 95667 (“Property”) and listed on Amended Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Irma Edmonds (“Trustee”) to **XXXXXXX** by this order, with no further act of the Trustee required.

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

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

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

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

The Certificate of Service, Dckt. 49, documents service having been made on parties in interest on November 1, 2024. At least fourteen days notice is required (L.B.R. 9014-1(f)(2)), and twenty days notice was given.

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

No opposition was stated at the hearing.

<b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">xxxxxxx</span>.</b>
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#### **June 26, 2025 Hearing**

The court continued the hearing on the use for cash collateral having granted use through June 30, 2025. Order, Docket 88. Debtor in Possession was to file and serve supplemental pleadings by June 3, 2025. *Id.* A review of the Docket on June 24, 2025 reveals nothing new has been filed in the case.

At the prior hearing, Debtor in Possession informed the court that the details of the cash collateral budget are being worked out. At the hearing, **XXXXXXX**

## REVIEW OF THE MOTION

Heritage Home Furnishings, LLC (“Debtor in Possession”) moves for an order approving the use of cash collateral from generated from the business, a family-owned California limited liability company created in 2009 which operates as a commercial furniture retailer with a showroom and separate warehouse located in Turlock, CA. Debtor in Possession requests the use of cash collateral to continue the Debtor’s operations and to reorganize.

Debtor in Possession proposes to use cash collateral to be allocated to critical business expenses necessary to sustain operations, including payment of rent to maintain the premises, payroll to retain essential employees, inventory purchases to meet customer demand, and adequate protection payments to secured creditors. Mot. 3:14-21, Docket 41.

In the Motion the Debtor in Possession requests that replacement liens be granted creditors in the new cash proceeds generated from the operation of the business. While not expressly stating such, the regular practice is to grant such replacement liens in the same priority as the original lien and to the extent that the creditor’s collateral was reduced through the use of cash collateral (thus, a creditor’s collateral is not increased).

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

In the prayer, Debtor/Debtor in Possession requests that a super-priority claim be granted pursuant to 11 U.S.C. § 503(b) and § 507(b) to the extent that there has been a diminution in the amount of Creditor’s collateral, notwithstanding the replacement lien. Motion, p. 7:18-21; Dckt. 41.

Debtor in Possession has submitted a proposed Stipulation with the court between it and the Small Business Administration (“SBA”). Exhibit A; Dckt. 43. The Stipulation calls for providing the SBA with a super priority claim pursuant to 11 U.S.C. §§ 503(b), 507(b), to the extent that the use of cash collateral results in a diminution of the SBA cash collateral notwithstanding the replacement lien.

The Debtor/Debtor in Possession also seeks authorization to make adequate protection payment in the amount of \$731 monthly.

With respect to the “super priority claim,” Congress provides for a super priority administrative expense in 11 U.S.C. § 507(b), stating:

(b) If the trustee, under section 362, 363, or 364 of this title, **provides adequate protection of the interest of a holder of a claim secured by a lien on property** of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) [unsecured administrative expense] of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor’s claim

under such subsection shall have priority over every other claim allowable under such subsection.

Collier's Treatise on Bankruptcy states:

A creditor seeking to assert a claim under section 507(b) must meet three criteria. First, the trustee must have, under section 362, 363 or 364(d), provided adequate protection of the interest of the holder of a claim secured by a lien on property.<sup>1</sup> Second, such creditor must have a claim allowable under section 507(a)(2). Third, the claim must have arisen from either the stay of action against property under section 362, from the use, sale or lease of property under section 363, or from the granting of a lien under section 364(d).

4 COLLIER ON BANKRUPTCY ¶ 507.14[1].

This priority administrative expense arises statutorily when the adequate protection lien provided.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing



The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period September 9, 2024 (the commencement of this Case), through February 14, 2025, including required adequate protection payments of \$731 to the SBA. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The Stipulation between Debtor in Possession and the SBA is not approved at this time, the court finding a noticed motion is required.

The court continues the hearing to 10:30 a.m. on January 30, 2025, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by January 21, 2025, with any opposition to be presented orally at the continued hearing.

### **January 30, 2025 Hearing**

The court continued the hearing on this Motion, having granted the use of cash collateral through February 14, 2025. Order, Docket 54. A review of the Docket on January 27, 2025 reveals that Debtor in Possession has filed a proposed Plan. Docket 56. On or before January 21, 2025, Debtor in Possession was to file and serve supplemental pleadings for the further use of cash collateral and notice of the January 30, 2025 hearing.

Debtor in Possession has not filed supplemental pleadings as of the court’s January 29, 2025, review of the Docket.

On December 9, 2024, a Subchapter V Plan was filed. Dckt. 56. No order setting a hearing on confirmation has been entered. <sup>FN.1.</sup>

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FN. 1. The voluminous text in the Order Setting Subchapter V Chapter 11 Status Conference Date (Dckt. 6), paragraph 4 is titled “Filing of Plan and Lodging of Confirmation Hearing Order.” In that paragraph it states that the plan proponent shall lodge with the court the proposed order setting the hearing for confirmation.

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At the hearing, counsel for the Debtor/Debtor in Possession reports that he has been communicating with the SBA for the further use of cash collateral.

### **February 13, 2025 Hearing**

The court continued the hearing on this Motion and Debtor in Possession informed the court it was communicating with the SBA regarding the use of cash collateral. A review of the Docket on February 6, 2025 reveals nothing new has been filed with the court.

The morning of the hearing, the Debtor in Possession filed two supplemental pleadings. The first is a supplemental Points and Authorities. Dckt. 78. The Debtor in Possession proposes adding monthly adequate protection payments to the SBA in the amount of \$731. The Debtor in Possession is projecting \$3,519 in positive monthly cash flow after paying the monthly expenses and the adequate protection payments and the two vehicle payments.

The second Supplemental Pleading is the declaration of managing member Fabiola Sanchez Sandoval, providing testimony concerning updating the proposed budget and the Second Stipulation with the SBA.

The testimony states that the Second Stipulation was agreed to on or about February 13, 2025 (the day of the hearing). It states that the Second Stipulation is attached as an exhibit, with the Exhibit B filed at Docket 80 a copy of the Stipulation.

The Subchapter V Trustee supports the continued use of Cash Collateral.

The Motion is granted and the use of Cash Collateral, pursuant to the budgets that are consistent with the Second Stipulation for Use of Cash Collateral is authorized through June 30, 2025.

The hearing is continued to 10:30 a.m. on June 12, 2025, specially set to the Court's Sacramento Division Courthouse Calendar.

On or before May 29, 2025, the Debtor/Debtor in Possession may file supplemental pleadings for the use of cash collateral. Opposition may be stated orally at the hearing.

### **June 12, 2025 Hearing**

The court continued the hearing on the use for cash collateral having granted use through June 30, 2025. Order, Docket 88. Debtor in Possession was to file and serve supplemental pleadings by June 3, 2025. *Id.* A review of the Docket on June 9, 2025 reveals nothing new has been filed in the case.

At the hearing, counsel for the Debtor in Possession reported that the details for the use of cash collateral are being finalized and requested a further continuance.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:30 a.m. on June 26, 2025.

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

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

The Motion for Use of Cash Collateral filed by Heritage Home Furnishings, LLC, the 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 for Authority to Use Cash Collateral is  
**XXXXXXX.**

6. [18-90029-E-11](#)      **JEFFERY ARAMBEL**  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-17-18 [1]**

**Item 6 thru 7**

Debtor's Atty: Pro Se

Notes:

Continued from 4/3/25

Operating Report filed: 5/21/25

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services During the Month of March 2025 filed 4/8/25 [Dckt 2108]

[FWP-28] Stipulation Regarding Use of Cash Collateral filed 6/18/25 [Dckt 2123]

<b>The Status Conference is XXXXXXXX</b>
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**JUNE 26, 2026 STATUS CONFERENCE**

No updated Status Report has been filed by parties in interest in this Case. Focus Management Group USA, Inc., the Plan Administrator, has filed on June 23, 2025, a Motion to Sell Real Property. Dckt. 2125. The hearing on that Motion is set for 10:30 a.m. on July 17, 2025.

At the Status Conference, **XXXXXXX**

**APRIL 3, 2025 STATUS CONFERENCE**

Focus Management Group USA, Inc., the Chapter 11 Plan Administrator, filed an updated

Status Report on March 20, 2025. Dckt. 2099. The Plan Administrator reports that the sales of the Murphy Ranches and the Westley Lot have closed. The net sales proceeds have been disbursed to Summit.

With respect to further proceedings under the Confirmed Chapter 11 Plan, the remaining assets to be administered are identified as:

(i) Substantial tax reserve funds from the sale of real property and tax refunds, (ii) the Estate's 100% interest in a 5 acre property on Laird Road identified by APN 016-034-003, (iii) the Estate's 100% interest in a property identified by APN 021-013-029, (iv) the 1/3 interest in the Oakdale Development Property, that the Estate owns a partial interest in with the remainder owned by Mr. Arambel's sister(s), (v) the Estate's asserted interest in the remaining property held by Filbin Land & Cattle Company, (vi), certain crop retains, and (vii) certain other assets.

Status Report, ¶ 4; Dckt. 2009.

The Plan Administrator continues to project that it appears that only secured claims will be paid through the Confirmed Chapter 11 Plan in this Bankruptcy Case, except for a carve-out of \$200,000 from Summit's collateral for creditors holding general unsecured claims. The Plan Administrator projects a 2.5% dividend for creditors holding unsecured claims. Id.; ¶ 7.

The Plan Administrator reports that Debtor Jeffrey Arambel has withdrawn an assertion that an income tax obligation in excess of \$3,000,000 is an obligation of Mr. Arambel to be paid through this Bankruptcy Plan.

The Status Conference is continued to 10:30 a.m. on June 26, 2025.

**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 Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

**The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized through September 30, 2025.**

**The hearing on the Motion is continued to **XXXXXXX**, to be conducted in the Sacramento Division Courthouse.**

**Supplemental Pleadings and Notice shall be filed and served on or before **XXXXXXX**.**

#### **June 26, 2025 Hearing**

The court continued the hearing on this Motion, having previously granted the use of cash collateral through June 30, 2025. Order, Docket 2111. On June 18, 2025, Plan Administrator filed a Stipulation to extend the use of cash collateral. Docket 2123. Under the extension provision of the previous stipulation (Stipulation ¶ 3, Docket 2101) between Plan Administrator and Summit, the terms surrounding

the use of cash collateral have been extended by the terms of the new stipulation through September 30, 2025. Stipulation ¶ 3, Docket 2123.

The Motion is granted and the use of cash collateral is authorized on the terms and conditions of the Stipulation (Dckt. 2123).

The hearing on the Motion is continued to **XXXXXXX**. Supplemental Pleadings and Notice shall be filed and served on or before **XXXXXXX**.

### **REVIEW OF THE MOTION**

Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC (“Summit”) for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit’s cash collateral constitutes the sole source of funds to operate Debtor’s business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### **Proposed Stipulation**

Summit entered into a stipulation with the Plan Administrator detailing how Summit’s cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit’s cash collateral, and Summit is willing to consent to the Plan Administrator’s use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

### **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continued the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

**January 11, 2024 Hearing**

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

### **March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court's attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

### **June 27, 2024 Hearing**

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the



case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as “cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). Stipulation for Use of Cash Collateral; Dckt. 1994.

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V A G I L L C (“Summit”), being heard in conjunction with this Motion.

### **July 18, 2024 Hearing**

The court continued this hearing from June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through September 30, 2024, was filed on June 20, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 1994. The court issued an order continuing the Stipulated Use of Cash Collateral to July 18, 2024.

At the July 18, 2024, the parties confirmed that they stipulated to the use of cash collateral through September 30, 2024, the end of the current budget, and requested a continued hearing so pleadings may be filed for further use of cash collateral.

Counsel for the Plan Administrator stated that while the budget provides for a \$1.5 Million payment to Creditor, such payment shall be authorized by a separate order of the court. The order authorizing the use of cash collateral through September 30, 2024, shall include the statement of such further order being required.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 1994) through September 30, 2024.

The hearing on the Motion is continued to 10:30 a.m. on September 19, 2024. Supplemental Pleadings shall be filed and served on or before September 12, 2024.

### **September 19, 2024 Hearing**

The court continued this hearing from July 18, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through December 30, 2024, was filed on September 12, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 2019. The court issued an order continuing the Stipulated Use of Cash Collateral to September 30, 2024. Order, Docket 2014.

In reviewing the proposed Budget for September through December 2024, it appears that the vast majority of the expenses to be paid are the fees for the Plan Administrator, Plan Administrator's Attorney, the Plan Administrator's Accountant, and U.S. Trustee Fees. Exhibit A, Budget; Dckt. 2019.

There is no income or "cash-in" being generated for the Plan Estate, other than a \$200,000 carve out for distribution to creditors holding general unsecured claim from a \$1,500,000 payment made to Summit on its secured claim.

The proposed Budget running through December 2024, has an additional column after December, which is titled "Funeral Expense 13th Month." *Id.* These have been previously identified final expenses to be paid in the month the Plan is concluded.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 2019) through December 31, 2024.

The hearing on the Motion is continued to 10:30 a.m. on January 16, 2025. Supplemental Pleadings shall be filed and served on or before January 7, 2025.

### **January 30, 2025 Hearing**

The court continued the hearing on this Motion, having previously granted the use of cash collateral through December 31, 2024. Order, Docket 2026. On January 15, 2025, Plan Administrator filed a Stipulation to extend the use of cash collateral. Docket 2073. Under the extension provision of the previous stipulation (Stipulation ¶ 3, Docket 2019) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2025. Stipulation ¶ 3, Docket 2073.

The Motion is granted and the use of cash collateral is authorized on the terms and conditions of the Stipulation (Dckt. 2073).

### **April 3, 2025 Hearing**

The court continued the hearing on this Motion, having previously granted the use of cash collateral through March 31, 2025. Order, Docket 2087. On March 26, 2025, Plan Administrator filed a Stipulation to extend the use of cash collateral. Docket 2101. Under the extension provision of the previous stipulation (Stipulation ¶ 3, Docket 2073) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2025. Stipulation ¶ 3, Docket 2101.

The Motion is granted and the use of cash collateral is authorized on the terms and conditions of the Stipulation (Dckt. 2101).

The hearing on the Motion is continued to 10:30 a.m. on June 26, 2025. Supplemental Pleadings and Notice shall be filed and served on or before June 19, 2025.

**Counsel for the Plan Administrator shall prepare an order granting the Motion and continuing the hearing consistent with the Ruling above, and lodge the proposed order with the Court.**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2025. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

**The Motion to Extend Deadline to File a Complaint Objecting to Discharge is  
XXXXXXX.**

Cristobal Pinedo, creditor in this case, ("Movant") moves to extend the deadline to file a complaint objecting to Ulises Solis Martinez's ("Debtor") discharge. This is Movant's second Motion to Extend Deadline objecting to discharge, the court having granted the prior Motion by Order extending the deadline to object to June 9, 2025. Order, Docket 43.

Creditor Mr. Pinedo obtained stay relief to proceed with pending nonbankruptcy litigation against the Debtor and other parties, arising from a personal injury cause of action. Were Mr. Pinedo to commence § 523(a)(6) litigation now and then not prevail in the underlying state-court litigation, any nondischargeability litigation would be a waste of all parties' and the Court's resources. By contrast, litigating § 523(a)(6) claims after resolution of the state-court action will streamline the nondischargeability litigation, given that Mr. Pinedo's state-court claims will likely have preclusive effect before this Court.

The deadline for filing a complaint for nondischargeability of debt is June 9, 2025. Order, Docket 43. The Motion requests that the deadline to object to Debtor's discharge be extended to September 9, 2025,

to allow time for the state court litigation to conclude. It appears Mr. Pinedo is set for trial for June 24, 2025, on the non-bankruptcy litigation. Mot. 2:19-20.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 12, 2025. Docket 58. Debtor argues another extension is not equitable and cause has not been shown that would justify a further extension.

## DISCUSSION

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The Debtor's Opposition is interesting. Debtor finds it to be offensive and burdensome to have to respond to a deadline to extend the time for filing a nondischargeability complaint, and would much rather have to file an answer, incurring all of the costs and expenses of having Debtor's attorney respond and do all of the "administrative matters" relating to an adversary proceeding.

The Debtor states that granting a further extension is neither proper or equitable, all but demanding that the court set a short deadline for Creditor to file the complaint for nondischargeability and let the financial costs rise.

The court notes that Creditor's Motion does not provide information on how the State Court Action is being prosecuted. However, in the Points and Authorities grounds are stated with particularity (which are required to be stated in the Motion itself, Fed. R. Bankr. P. 9013), which include:

- A. The Amended Complaint was filed on July 9, 2021. Points and Authorities, p. 3:12-4:4.
- B. Trial for the State Court Action is set for June 24, 2025. *Id.*; p. 4:8.

The trial having been set for June 24<sup>th</sup>, two days before this hearing, the court will be interested to hear whether the Parties were assigned a courtroom or the trial was continued to a later date.

The Motion requests the court extend the time for commencing a proceeding for a determination as required by 11 U.S.C. § 523(c), including relief pursuant to 11 U.S.C. § 523(a)(6), be extended to September 9, 2025, based again on the pending litigation. It would appear the litigation is going to be concluded soon with trial taking place on June 24, 2025. Debtor asserts cause has not been shown for a further extension; however, the court finds the argument persuasive it is in the best interest of judicial economy to extend the deadline to a date beyond the conclusion of the state court litigation so as not to relitigate issues.

At the hearing, counsel for the Debtor articulated the reasons for having a parallel federal court action, that would likely end up being determined by the final judgment in the State Court Action, stating

XXXXXX

At the hearing, **XXXXXXX**

~~The court finds that in the interest of Movant to complete the underlying state court litigation which may constitute a nondischargeable debt, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to commence an adversary proceeding to determine the nondischargeability of debt is extended to September 9, 2025.~~

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by Cristobal Pinedo, creditor in this case, (“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 deadline for Movant to commence a proceeding for the determination that a debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) is extended to September 9, 2025.~~

**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 parties in interest on June 5, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Motion to Employ is ~~granted~~.**

Costa Farms ("Debtor in Possession") seeks to employ Peter G. Macaluso ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel for representation in prosecuting this Chapter 12 case.

Mr. Macaluso provides a Declaration in support testifying neither he nor his firm represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 6, Docket 18.

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

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

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

### **Existence of Costa Farms**

At a prior hearing in this Bankruptcy Case on a Motion to Use Cash Collateral, the question arose as to whether Costa Farms was an entity which could file bankruptcy or was a business name used by David Costa. See discussion in the Civil Minutes; Dckt, 36.

On the Bankruptcy Petition, the box is checked that the Debtor is a partnership. Petition, ¶ 6; Dckt. 1. The Petition is signed by David Costa, identified as the “owner.” *Id.*; p. 4. On Schedules A/B significant assets are listed, including a seven figure account receivable owed by Mid Valley Nut Company (which is currently a debtor in its own Chapter 11 Case).

For this account receivable, the Debtor does not identify whether it is subject to the Federal Perishable Commodities Act (PACA), which includes certain trust provisions or other state or federal lien rights. At the hearing, counsel for the Debtor **XXXXXXX**

With respect to real Property, the 90100 Woodward Lake Drive Property (80 acres) is listed, with the nature of the Debtor’s interest stated to be “Owner/surviving partner.”

The Schedules and Statement of Financial Affairs are signed by David Costa, who is identified as the “100% Partner.” Dckt. 15 at 20. The court is unfamiliar with the legal concept of being a “100% Partner,” given that a partnership consists of two or more persons joining together to create a legal entity partnership.

The Legal Agreement for the Chapter 12 representation has been filed as Exhibit A in support of this Motion. Dckt. 19. The Agreement contains some clerical errors, with reference being made for filing a Chapter 13 bankruptcy case. It is also not clear from the Agreement who counsel is representing, it merely stating that Costa Farms and David Costa agree to pay for the filing of a Chapter 13 bankruptcy case.

This Bankruptcy Case was filed on May 23, 2025. However, Counsel’s Declaration states that the “Debtor” made a substantial payment for counsel to substitute into this Case. Dec., ¶ 1; Dckt. 18. Since the Bankruptcy Case had been filed, all of the “Debtor’s” assets were property of the Bankruptcy Estate and not something that the “Debtor” could pay to counsel.

~~————— Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Peter G. Macaluso as Counsel for the Chapter 12 Estate on the terms and conditions set forth in the Legal Agreement filed as Exhibit A, Dckt. 19. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

The Motion to Employ filed by Costa Farms (“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 to Employ is ~~granted, effective May 23, 2025, and Debtor in Possession is authorized to employ Peter G. Macaluso (“Counsel”) for Debtor in Possession on the terms and conditions as set forth in the Legal Agreement filed as Exhibit A, Dckt. 19.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on June 20, 2025. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 26, 2025. Dckt. 174.

The Motion re: Order Converting Case to One Under Chapter 7 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion re: Order Converting Case to One Under Chapter 7 is XXXXXXX.**

Ethan J. Birnberg, Chapter 7 Trustee ("Trustee") in the recently converted Chapter 7 case of Town & Country West LLC, seeks an order clarifying that both cases, Town & Country West LLC ("West Debtor") and Town & Country Event Center, LLC ("Event Debtor"), have been converted to one under Chapter 7.

On November 18, 2024, the court ordered the cases be jointly administered with the West Debtor case being the lead case. Order, Docket 48. As part of that Order, parties in these bankruptcy cases were to use a combined heading and caption with boxes indicating which Debtor is affected by a given Motion. *Id.*

On April 10, 2025, creditor Qualfax Inc. ("Qualfax") filed a Motion to Dismiss or Convert the case. In the header it is not clear that Qualfax was seeking relief as to both cases, simply titling the Motion "Motion to Dismiss or Convert Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)." Mot. 1, Docket 107. Movant did not use the required cover sheet and header indicating the Motion applied to one or both Debtors.

Similarly, the prayer is not specific, stating “For the reasons stated herein, there is sufficient “cause” to dismiss or convert the case to Chapter 7.” *Id.* at 13. The Motion refers to either the West Debtor or Event Debtor separately in different scenarios but often repeats the relief requested as to a singular debtor.

It is apparent that the Motion fully addresses issues in both cases. *See, e.g.*, Mot. 10-11, Docket 107. The court also addresses issues in both cases in its Civil Minutes. Civil Minutes at 10, Docket 152. However, the Motion requests the court dismiss “this case,” seemingly referring to the West Debtor, and not “these cases.” Mot. 13:4, Docket 107. The court’s Order reflects what is requested in the prayer and what is requested in multiple places throughout the Motion to Dismiss, namely, that the West Debtor had been converted.

Trustee states “The caption for the motion [to dismiss] also identified the motion affecting both cases.” Mot. 3:5, Docket 165. The court disagrees. The Motion to Dismiss did not use the required caption form indicating which cases were affected, instead only referring to the West Debtor in the caption.

### **Motion Appears to Request Correction of Clerical Error**

When literally read, the present Motion could be requesting only that the court “clarify” what was intended, but not correct it. What the Trustee appears to be moving for is a Motion to Amend a Judgment pursuant to Fed. R. Civ. P. 59(e) as incorporated into bankruptcy in Fed. R. Bankr. P. 9023, which would allow the court to amend the judgment and include the names of both Debtors. The Trustee may similarly be requesting this relief pursuant to Federal Rule of Civil Procedure P. 60(a), which is incorporated into Federal Rule of Bankruptcy Procedure 9024. However, Trustee does not explicitly make this argument.

Federal Rule of Civil Procedure P. 60(a) states:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

A leading treatise on Civil Procedure, Moore’s Federal Practice, states regarding fed. R. Civ. P. 60(a):

Rule 60(a) authorizes district courts to correct a “clerical mistake ... whenever one is found in a judgment, order, or other part of the record.” The language of the rule itself leaves no doubt as to a court’s power to correct clerical mistakes in judgment or orders, but the rule does not define what constitutes the “record” for purposes of the application of the rule. . .

One may obtain relief under Rule 60(a) from a “clerical” mistake, but that does not mean that the mistake must be committed by the clerk or by the court. The Rule may also be used to correct mistakes made by the jury or by a party.

12 MOORE’S FEDERAL PRACTICE - CIVIL § 60.10[1] & [2].

Rule 60(a) applies when the record indicates that the court intended to do one thing but, by virtue of a clerical mistake or oversight, did another. The mistake to be corrected must be clerical or mechanical, because Rule 60(a) does not provide relief from substantive errors in judgment (see [3], below). The Seventh Circuit expressed this idea clearly when it observed that:

If the flaw lies in the translation of the original meaning to the judgment, then Rule 60(a) allows a correction; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.

Because a Rule 60(a) correction does not change the substance of the original judgment, it does not start a new time to appeal from the underlying judgment. Thus, although the entry of a corrected judgment under Rule 60(a) is itself an appealable order, the appeal is limited in scope to the disposition of the Rule 60(a) motion and does not bring up for review the underlying judgment.

12 MOORE’S FEDERAL PRACTICE - CIVIL § 60.11[1][a].

It may be necessary for the court to issue an Order to Show Cause why the order converting the case should not include both Debtors, allowing parties in interest to brief the issue if they see fit assuming due process rights have been implicated.

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 re: Order Converting Case to One Under Chapter 7 by Ethan J. Birnberg, Chapter 7 Trustee (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion re: Order Converting Case to One Under Chapter 7 is **XXXXXXX**.

# FINAL RULINGS

11. [19-90003](#)-E-7      NATHAN DAMIGO  
[19-9006](#)  
SINES ET AL V. DAMIGO

MOTION FOR SUMMARY JUDGMENT  
5-8-25 [\[89\]](#)

Final Ruling: No appearance at the June 26, 2025 Hearing is required.  
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The hearing has been continued to 10:30 a.m. on July 10, 2025, by prior order of the Court (Dckt. 113).

12. [19-90003](#)-E-7      NATHAN DAMIGO  
[19-9006](#)      CAE-1  
SINES ET AL V. DAMIGO

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
4-3-25 [\[82\]](#)

Final Ruling: No appearance at the June 26, 2025 Status Conference is required.  
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The Status Conference has been continued to 10:30 a.m. on July 10, 2025, by prior order of the Court (Dckt. 113).

13. [19-90003](#)-E-7      NATHAN DAMIGO  
[19-9006](#)      RLE-1  
SINES ET AL V. DAMIGO

MOTION FOR SUMMARY JUDGMENT  
5-8-25 [\[93\]](#)

Final Ruling: No appearance at the June 26, 2025 Hearing is required.  
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The hearing has been continued to 10:30 a.m. on July 10, 2025, by prior order of the Court (Dckt. 113).

DEBTOR DISMISSED: 05/29/25

**Final Ruling:** No appearance at the June 26, 2025 hearing is required.  
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The case having previously been dismissed, the Motion is denied as moot without prejudice.  
Order, Docket 68.

**The Motion to Value is denied as moot without prejudice, the case having been dismissed on May 29, 2025.**

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 to Value Collateral of Poppy Bank having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied as moot without prejudice, the case having been dismissed.

**Final Ruling:** No appearance at the June 26, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on May 29, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Extend Deadline to File a Plan is granted, and the deadline to file a Plan in the case is June 22, 2025.**

Debtor in Possession moves the court for an order extending the deadline for filing a Subchapter V plan by 20 days to June 21, 2025 pursuant to 11 U.S.C. § 1189(b). 11 U.S.C. § 1189(b) states:

(b)Deadline.—

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

In support of the Motion, Debtor in Possession states:

1. This case is not a typical Chapter 11 case. The primary debts, which the Debtor disputes, are two Labor Commissioner awards exceeding \$500,000 against a defunct restaurant in which the Debtor and its managing member had no interest. Mot. 2:13-16.
2. The Labor Commissioner's proof of claim is rife with errors. *Id.* at 2:17-24.

3. This is an ideal case for the Trustee to mediate in the development of a consensual plan. Given the extremely modest assets in the estate, it is not efficient for the estate to litigate the validity of the claim. The expense would consume the estate. *Id.* at 3:9-12.
4. In the past three weeks, the Debtor's attorney has spent two full days in Emanuel Cancer Center to receive six hour IVs each time, and has spent substantial other time attending to unexpected and serious health challenges. Based on his heavy court calendar, and unresolved anemia, it has been impossible to completely formulate the Subchapter V Plan. The Debtor has been diligent, has prepared projections as requested, and a brief additional time is needed. *Id.* at 3:13-18.

The Chapter 11 Subchapter V Trustee, Lisa Holder ("Trustee"), filed a Non-Opposition on May 30, 2025.

## **DISCUSSION**

In this case, the court concludes a 20-day extension is warranted. Debtor's counsel has been undergoing medical issues that have delayed the filing of the Plan. Moreover, the case involves complicated issues with a creditor who may not be filing documents properly. These circumstances are outside the Debtor in Possession's control.

Debtor in Possession filed the Plan on June 22, 2025. Docket 34. Therefore, pursuant to 11 U.S.C. § 1189(b), the court extends the deadline for filing a Chapter 11 Subchapter V Plan to June 22, 2025, finding there are circumstances justifying the extension for which the debtor should not justly be held accountable.

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 to Extend Deadline to File a Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted pursuant to 11 U.S.C. § 1189(b), and the court extends the deadline for filing a Chapter 11 Subchapter V Plan to June 22, 2025.