

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

June 30, 2022 at 2:00 p.m.

1. [20-90479-E-12](#)
[CAE-1](#)

JOE MACHADO

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-9-20 [1]**

Debtor's Atty: David C. Johnston

Notes:

Continued from 2/17/22

The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2022.

JUNE 30, 2022 STATUS CONFERENCE

The Chapter 12 Debtor/Plan Administrator filed an Updated Status Report on June 27, 2022. Dckt. 142. He indicates that the tax issues have been addressed, that the California Franchise Tax Board has been requested to get its claim on file so that the Chapter 12 Trustee can get monies disbursed, and suggests that the Status Conference be continued for ninety (90) days.

The Chapter 12 Trustee's report, filed on June 24, 2022, states that all of the property has been liquidated, and that the Debtor/Plan Administrator reports that the only remaining property consists of pigeons. The Trustee raises a question whether the provisions of 11 U.S.C. § 1232(d)(2) has been followed and if amended tax returns are required.

The Trustee states that the question of whether 11 U.S.C. § 1232(d)(2) has been satisfied (directing that the court should *sua sponte* investigate this), the court should *sua sponte* order the Debtor/Plan Administrator to sell unidentified remaining assets, and that counsel for the Debtor/Plan Administrator needs to get a fee application on file.

At the Status Conference, xxxxxxx

June 30, 2022 at 2:00 p.m.

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Debtor's Atty: Dennis D. Miller

Notes:

Operating Reports filed: 6/14/22

Debtor in Possession's Status Report filed 6/16/22 [Dckt 71]

Trustee Report at 341 Meeting lodged 6/21/22; Meeting continued to 6/27/22

The Status Conference is continued to 2:00 p.m. on

On June 16, 2022, Eagle Ledge Foundation, Inc., the Debtor in Possession, filed its Status Report. Dckt. 71. This provides an update on the steps being taken by the Debtor in Possession in fulfilling its obligations. Additionally, additional information is provided about professional liability insurance and the status of the foreclosure on the Chicago Property.

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)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Office of the United States Trustee on May 26, 2022. The court set the hearing for June 7, 2022. Dckt. 44.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **XXXXXXXXXXXX**

The Motion to Employ is XXXXXXXXXXXXXXXXXXXX.

Eagle Ledge Foundation, Inc., the Debtor in Possession, (though misstated as the "Debtor" in the Application) seeks to employ Kathleen L. DiSanto and her law firm of Bush Ross, P.A. as Counsel for the Debtor ("Counsel") pursuant to 11 U.S.C. §§ 327(a), 328, 329 and Federal Rules of Bankruptcy Procedure 2014(a), 2016. And 5002, and Local Bankruptcy Rule 2014-1.

At the June 7, 2022 hearing, Ms. DiSanto confirmed on the record that the employment authorization requested pursuant to 11 U.S.C. § 327 is for representation of the Debtor in Possession, not the Debtor.

Debtor seeks the employment of Counsel to provide legal advice, prepare court documents on behalf of Debtor in Possession, appear before the court, assist with negotiations with creditors, represent the Debtor in Possession in this case, and perform any other legal services required.

Debtor argues that Counsel's appointment and retention is necessary for administration of its Chapter 11 case. Debtor has agreed to compensate Counsel based on their firm's prevailing rates, which range from \$225.00 to \$500.00 per hour for attorneys and from \$125.00 to \$145.00 per hour for paralegals. Debtor states the lead counsel will be Kathleen DiSanto, whose current hourly rate is \$375.00 per hour. Any additional compensation will be requested in accordance with the Bankruptcy Code.

Ms. DiSanto states the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with creditors, the U.S. Trustee, any other party in interest, or their respective attorneys. However, Ms. DiSanto does inform the court that Randy Sterns, an attorney and shareholder at the firm, is the manager and sole member of C3 Servants, LLC, and thus serves as the collateral agent for the certificate holders, who are creditors of Debtor in Possession. However, because the firm does not represent C3 Servants, LLC, and because Counsel will screen themselves off the issue if any dispute arises between Debtor in Possession and C3 Servants, LLC, Ms. DiSanto does not believe there is any actual conflict of interest.

At the June 7, 2022 hearing Ms. DiSanto confirmed on the record that the employment requested pursuant to 11 U.S.C. § 327 is for employment as counsel for the Debtor in Possession, and not the Debtor.

APPLICABLE LAW

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.

The Motion expressly states that the request for employment is as an attorney for the Debtor and not the Debtor in Possession exercising the rights and power of a trustee, and having the fiduciary obligations to the bankruptcy estate of a trustee.

Congress provides in 11 U.S.C. § 327 for the employment of professionals by a bankruptcy trustee, which authorization to employ may be exercised by the Debtor in Possession in a Chapter 11 case. 11 U.S.C. § 1107. With respect to employment of a professional by a Debtor in Possession pursuant to 11 U.S.C. § 327, Congress provides in 11 U.S.C. § 1107(c) that (emphasis added):

(b) Notwithstanding section 327(a) of this title, a person **is not disqualified for employment under section 327** of this title **by a debtor in possession** solely because of such person's employment by or representation of the debtor before the commencement of the case.

Definition of Debtor and Debtor in Possession

It is the Debtor who seeks authorization to employ counsel. Congress has specifically defined the term “debtor” as follows:

(13) The term “debtor” means person or municipality concerning which a case under this title has been commenced.

11 U.S.C. § 101(13). In this case the “Debtor” is Eagle Ledge Foundation, Inc. Upon the filing of this case, all rights, interests, and property of the “Debtor” because property of the bankruptcy estate. 11 U.S.C. § 541(a). In a Chapter 11 case, the “Debtor” does not have control over or the right to use property of the bankruptcy case, but the Chapter 11 trustee does. 11 U.S.C. §§ 1106(a)(1), 704(a).

However, if a trustee is not appointed, the “Debtor in Possession” may exercise right and duties, and perform all functions and duties of a trustee (with certain enumerated exceptions). 11 U.S.C. § 1107. It is the “Debtor” who serves as the “Debtor in Possession.” Serving as the “Debtor in Possession” is akin to that of being a trustee of a trust, a fiduciary position separate from the individual “Debtor” and the individual “Debtor’s” rights and interests.

Statutory Authority Cited by Proposed Counsel for Debtor

11 U.S.C. § 327 provides for the trustee, with court approval, to employ professionals. In a Chapter 11 case where no trustee has been appointed, it is the Debtor in Possession, not the Debtor, who may employ a professional pursuant to 11 U.S.C. § 1107.

11 U.S.C. § 328 does not provide a legal basis for the court authorizing a Debtor to employ a professional. Rather, it states limitations on compensation for professionals authorized to be employed pursuant to 11 U.S.C. § 327 by the Debtor in Possession (or a creditors’ committee as provided in 11 U.S.C. § 1103).

11 U.S.C. § 329 does not provide a legal basis for the court authoring a Debtor to employ a professional. Rather, it creates a federal law basis for the court to review compensation of an attorney representing a Debtor, and to disallow amounts in excess of reasonable compensation.

As noted in 3 Collier on Bankruptcy, ¶ 327.05[3] with the enactment of the Bankruptcy Reform Act of 1994, the attorney for the Debtor cannot be compensated from property of the bankruptcy estate. This was stated by the United States Supreme Court in *Lamie v. United States*, 540 U.S. 526, 538, 540-541, (2004), holding:

Adhering to conventional doctrines of statutory interpretation, we hold that § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327.

...

Amendment 1645, viewed in its entirety, gives further reason to think Congress may have intended the change. The amendment added a new section that authorizes fee awards to debtors' attorneys in chapter 12 and 13 bankruptcies. 140 Cong. Rec., at 8383 (setting out new 11 U.S.C. § 330(a)(4)(B) [11 USCS § 330(a)(4)(B)]). Since the amendment's deletion of "or the debtors [sic] attorney" from the original proposed draft affected chapter 12 and 13 debtors' attorneys as much as chapter 7 debtors'

attorneys, § 330(a)(4)(B) shows a special intent to authorize the formers' fee awards in the face of the new, broad exclusion.

Disclosed Conflict

In the Motion, attorneys Dennis Miller and Kathleen DiSanto disclose, acknowledge, and apparently admit that a conflict of interest exists between the BR Law Firm and the Bankruptcy Estate in this case, stating:

18. In the interests of full disclosure, Randy Sterns, an attorney and shareholder at Bush Ross, is the manager and sole member of C3 Servants, LLC, a Florida limited liability company, which serves as the collateral agent (the "Collateral Agent") for the certificate holders, who are creditors of the Debtor, pursuant to the Certificates of Participation Standby Holder Representative and Security Agreement (the "Holder Representative Agreement"). The Holder Representative Agreement was approved by the certificate holders prior to the Petition Date.

The Certificate is filed as Exhibit A in support of this Motion. Dckt. 15. It defines the Collateral Agent, the LLC of which a BR Law Firm shareholder is the manager and sole member, is defined to mean:

"Collateral Agent" means the entity, person or persons appointed by the Foundation to serve as the agent and secured party under this Agreement. In the event of default by the Foundation under the Certificates, the Holders are entitled to elect a Representative that will replace Legal Servants, LLC, as Collateral Agent.

Exhibit A, p. 2; Dckt. 13. In the Certificate, it states that Debtor is issuing \$20,000,000 in certificates for which the "Collateral Agent," the BR Law Firm Shareholder's LLC, is the "secured party."

For the "Required Documentation," the notes issued for the \$20,000,000 in certificates by the Debtor, the note and allonge is to make those notes for which the Debtor is the payor, are made to pay to the order of the BR Law Firm Shareholder's LLC. Id., p. 4.

This required document section continues requiring all of the "documentation" which would be provided to a creditor for monies borrowed, to be made with the BR Law Firm Shareholder's LLC in the position of the "creditor."

In § 4.07 of Exhibit A, it states that all collateral given to the BR Law Firm Shareholder, LLC shall be for the benefits of the creditors who have obtained certificates from Debtor.

In § 4.07(c) it states that the liens on collateral securing the Debtor's obligations shall be perfected in the name of the BR Law Firm Shareholder's LLC.

In § 4.07(d) it states that in the event of a default by Debtor in paying the obligations to the BR Law Firm Shareholder's LLC, then the LLC has the right to enforce and collect all monies for rents, mortgages, or sales proceeds.

In § 5.04 of Exhibit A, it provides that in the event of a default, upon the request of the BR Shareholder's LLC, Debtor would then cure the default. If the default is not cured, then the BR Law Firm

Shareholder's LLC has the obligation to the creditors to assign the rights and interest to another representative of the creditors.

In § 601 of Exhibit A, the duties of the BR Law Firm Shareholder's LLC (and the shareholder as the sole member and managing member) are stated to be:

Section 6.01. Duties of Collateral Agent.

(a) If an Event of Default has occurred and is continuing, the Collateral Agent shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) If an Event of Default has occurred and is continuing, the Holders of a Majority in Interest of the principal amount of the Certificates may remove the Collateral Agent and substitute the Holder Representative to take any and all actions authorized under this Agreement for the benefit of the Holders.

(c) Except during the continuance of an Event of Default:

(I) The Collateral Agent need perform only those duties that are specifically set forth in this Agreement and no others. No implied covenants or obligations shall be read into this Agreement against the Collateral Agent. The Collateral Agent shall not be required to take any action or exercise any judicial remedy to protect the interests of the Holders and its duties shall be limited to holding the Collateral for the benefit of the Holders. Once an Event of Default occurs and the Foundation fails to timely cure such default, the Collateral Agent shall be authorized to assign, transfer and deliver the Collateral and any claims thereunder to the Holder Representative appointed by the Holders pursuant to Section 5.11 herein.

(ii) In the absence of bad faith on its part, the Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, reports, statements, documents or opinions furnished to the Collateral Agent and conforming to the requirements of this Agreement. The Collateral Agent, however, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Agreement.

(d) The Collateral Agent may not be relieved from liability for its own gross negligent action, its own negligent failure to act, or its own willful misconduct in each case, as finally adjudicated by a court of law, except that:

(I) This paragraph does not limit the effect of paragraph (c) of this Section.

(ii) The Collateral Agent shall not be liable for any error of judgment made in good faith by, unless it is proved that the Collateral Agent was negligent in ascertaining the pertinent facts.
(iii) The Collateral Agent shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by by [sic] a Majority in Interest of the Holders pursuant to this Agreement.

(e) Every provision of this Agreement that in any way relates to the Collateral Agent is subject to paragraphs (a), (c) and (d) of this Section.

(f) The Collateral Agent may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense. No provision of this Agreement shall require Collateral Agent to expend or risk its own funds or incur an liability.

Id., p. 19 (emphasis added).

This "simple" 27 page agreement by which the BR Law Firm Shareholder, acting as the managing member of his sole owned LLC, includes disclosing:

- A shareholder of BR Law Firm,
- Is the manager and member of an LLC which serves as the "collateral agent,"
- For creditors of the Debtor, which creditors have claims in this Bankruptcy Case,
- For which the LLC Is to receive monies for and has obligations to the creditors of Debtor, and
- In the event of a default by Debtor, the LLC is required to take certain actions to protect the interests of creditors.

At the hearing, the court determined that the Application would be granted on an interim basis and Ms. DiSanto and the Law Firm would be provided an opportunity to address the issue of whether the Law Firm and Ms. DiSanto were sufficiently disinterested to be employed as counsel for the Debtor in Possession.

JUNE 30, 2022 CONTINUED HEARING

For the June 30, 2022, a Supplemental Declaration by Randy Sterns was filed by the Debtor in Possession. Dckt. 72. He discusses this Limited Liability Company, C3 Servants, LLC, which is the "Collateral Agent" for the certificate holders that are creditors in this case. This Collateral Agent's duties are to hold the collateral and then take certain action if the "Paying Agent," TMI Trust Company provides a notice of default. He testifies that no notice of default has been given.

Mr. Sterns also testifies that he has never been paid any fee or compensation for any services as manager of C3 Servants, LLC “in connection with the Holder Representative Agreement. Declaration, ¶ 13; Dckt. 72. This statement raises several concerns.

1. If Mr. Sterns is not being compensated for protecting the rights and interests of the creditors in their collateral by holding it, how is C3 Servants, LLC able to fulfill its duties?
2. The Declaration states, “I have never been paid a fee or any type of compensation or remuneration for my services as manger of C3 Servants, LLC or in connection with the Holder Representative Agreement.” Thus, he makes it sound as if C3 Servant, LLC is independently wealthy, charity providing services to sophisticated business investors.

Additionally, this statement of no compensation for this “Holder Representative Agreement” is pregnant with an indication that he is getting paid some other way for performing these duties, and having such obligations to, the creditors.

Doing a simple “Google Search” one finds a website providing information about businesses, and with respect to C3 Servants, LLC, the following information is provided:

C3 SERVANTS, LLC

Company Number	L16000191846
Status	Active
Incorporation Date	18 October 2016 (over 5 years ago)
Company Type	Florida Limited Liability
Jurisdiction	Florida (US)
Agent Name	BUSH ROSS REGISTERED AGENT SERVICES, LLC
Agent Address	1801 N. HIGHLAND AVENUE, TAMPA, FL 33602
Directors/ Officers	BUSH ROSS REGISTERED AGENT SERVICES, LLC, agent RANDY K STERNS

https://opencorporates.com/companies/us_fl/L16000191846. The source of this information is stated to be the Florida Department of State Division of Corporations, <http://www.sunbiz.org>.

Going to the Florida Division of Corporations (not using the link given on the above page), it shows:

C3 Servants, LLC’s Status is Active

C3 Servants, LLC’s Registered Agent is Bush Ross Registered Agent Services, LLC

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=C3SERVANTS%20L160001918460&aggregateId=flal-116000191846-15fe0ee7-faac-4f6e-b2d2-ddf54c8077b7&searchTerm=C3%20Servants&listNameOrder=C3SERVANTS%20L160001918460>.

For Bush Ross Registered Agent Services, LLC, the address for that entity is 1801 N. Highland Avenue, Tampa, Florida and its mailing address is P.O. Box 3913, Tampa, Florida. The P.O. Box 3913 mailing address is the same as that given on the Bush Ross, P.A. Law Firm which is seeking to be authorized to be employed as counsel for the Debtor in Possession. The Bush Ross, P.A. Law Firm does not include a street address with its information at the top of the pleadings it filed. *See*, Dckt. 81 for example.

However, on the Bush Ross Law Firm webpage, it states an address of 1801 North Highland Ave., Tampa, Florida. <https://www.bushross.com/>.

At the hearing, **XXXXXXX**

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

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

The Motion to Employ filed by Eagle Ledge Foundation, Inc. (“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 Employ is **XXXXXXXXXXXXXXXX**

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 3, 2022. By the court's calculation, 4 days' notice was provided. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Pay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **XXXXXXXXXX**

The Motion to Pay is XXXXXXXXXXXXXXXXXX.
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Eagle Ledge Foundation, Inc., as the Debtor in Possession in this Chapter 11 Case, seeks authorization to pay outstanding pre-petition wages, salaries, compensation, benefits, and related taxes to certain of Debtor's officers for the period May 1-31, 2022; and to allow post-petition payments thereof as well. The grounds stated in the Motion are summarized as follows:

- A. Debtor commenced this Chapter 11 Case on May 18, 2022.
- B. The Debtor in Possession is operating the business and properties of the Debtor that are now property of the Bankruptcy Estate in this Case (11 U.S.C. § 541(a)).
- C. The business of Debtor in the Bankruptcy Estate is one that provides loans to small local churches. The business of the Estate raises monies by selling certificate to individuals and then makes and manages the loans.
- D. The Debtor in Possession seeks authorization to pay the following pre-petition salaries of Officers of Debtor who is serving as the Debtor in Possession:

1. Chester Reid (“Dr. Reid”), as President and Chairman of the Debtor.
 - a. Dr. Reid is to oversee and handle the administrative responsibilities of the Debtor in Possession in this Chapter 11 Case.
 - b. Dr. Reid has agreed to reduce his annual salary to \$12,000.00, to be paid \$1,000.00 a month, exclusive of payroll and other taxes and withholdings.
 - c. No benefits or additional amounts are provided to Dr. Reid.
 - d. Dr. Reid is owed \$580.65 for the prorated compensation for the month of May 2022.
2. Thomas Fontana, as the Chief Executive Officer and Managing Principal of Debtor.
 - a. Mr. Fontana responsible for developing, implementing, and promoting the Debtor’s spiritual and faith-based mission of providing funding to sustain small local churches. Mr. Fontana is also involved with the Debtor’s day-to-day operations in overseeing TMI Trust Company’s servicing of the loan portfolio, management of the Debtor’s investment portfolio, and has expertise in real estate investment and management.
 - b. Mr. Fontana’s pre-petition salary and benefits were:
 - (1) \$24,000 salary
 - (2) \$36,000 minister housing benefit
 - (3) Medical and dental benefits, which were terminated at the end of 2021.
 - c. For post-petition compensation, Mr. Fontana is to be provided:
 - (1) \$2,000.00 a month salary, exclusive of taxes and withholding which are stated to be an additional \$122.00.
 - (2) \$3,000.00 a month minister housing benefit.
 - d. For pre-petition compensation Mr. Fontana is owed gross salary of \$2,903.23 (the prorated compensation for the month of May 2022), with a net payment of \$2,781.22.

The Motion states that the services of both are necessary for the administration and prosecution of this case by the Debtor in Possession.

The Debtor in Possession requests the authorization to pay the prorated obligations for May 2022, and then monthly post-petition for the services rendered.

No evidence is presented in support of this Motion or to establish the facts alleged in the Motion.

REVIEW OF SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS (“SOFA”)

Statement of Financial Affairs; Dckt. 23.

For the 2020-2021 Fiscal Year, Debtor states having gross revenues of \$308,364. SOFA, Part 1. Two pending and one concluded legal actions are identified. *Id.*, Part 3.

Schedules; Dckt. 24

On Schedule A/B Debtor lists having real property with a value of \$1,500,000 and personal property with a value of \$1,402,423. Stmt Fin Affairs., Part 1. On Schedule A/B, Debtor lists having \$761,165 in deposit accounts. Sch. A/B, Part 1. Debtor lists having an additional \$625,346 in Loan Portfolio, Church Bonds, and Cash Equivalents. *Id.*, Part 4.

Debtor lists owning real property in Chicago, Illinois having a value of \$1,500,000. *Id.*, Part 9.

For Secured Claims, on Schedule D, Debtor lists only C3 Servants, LLC, as a “Collateral Agent for Certificate Holders.” *Id.*; Schedule D, Part 1. Debtor states that the amount of this secured claim(s) is “Unknown.

On Schedule F, Debtor lists it’s Certificate Holders as having unsecured claims, though listing on Schedule D that the Certificate Holders’ claims are secured by “All cash, liquid securities, and mortgage loan investments.” Thus, it appears that all of the property of the estate, except for the real property is encumbered by the Certificate Holders secured claims.

From a review of Schedules D, E, and F, the vast majority of Debtor’s creditors, both in claim and amount, are the Certificate Holders with secured claims.

JUNE 7, 2022 HEARING

At the June 7, 2022 Hearing, the court determined that the Motion should be granted on an interim basis, with a further hearing to be conducted at 2:00 p.m. in conjunction with the Initial Status Conference in this Bankruptcy Case.

JUNE 30, 2022 CONTINUED HEARING:

Chester Reid, the Responsible Representative for the Debtor in Possession provides his Supplemental Declaration in Support of this Motion. Dckt. 74. He explains the experience of the two officers and the duties they have in operating the business that is now property of the Bankruptcy Estate.

At the continued hearing, **XXXXXXXXXXXX**

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 Pay filed by Eagle Ledge Foundation, Inc (“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 **XXXXXXXXXXXXXXXXXXXX**

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Maintain Existing Cash Management System with Loan Servicing Agent was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, XXXXXXXXXXXX

<p>The Motion to Maintain Existing Cash Management System with Loan Servicing Agent is XXXXXXXXXXXXXXXX.</p>

Eagle Ledge Foundation, Inc., the Debtor, in this Chapter 11 case seeks (as the Debtor, not the Debtor in Possession), seeks to maintain its Cash Management System with its Loan Servicing Agent. Dckt. 33. TMI Trust Company is identified as the loan servicing agent who maintains the Cash Management System.

In the Motion, the following information is provided about TMI Trust Company and the services it provided to the Debtor pre-petition and is to provide to the Bankruptcy Estate post-petition (identified by paragraph number in the Motion and emphasis added):

8. The Loan Servicing Agreement can be summarized as follows:³

a. Loan Servicing Practices: TMI has agreed to service and administer loans on behalf of ELF, in a manner consistent with good lending practices, utilizing loan procedures recommended by TMI and approved by ELF.

b. Scope of Services Provided: Among other things, TMI provides **loan collection services**, issues payment **coupons or monthly statements to borrowers**, issues **payoff information** to borrowers, keeps ELF and the Collateral Agent apprised of defaults by borrowers, **provides reporting to ELF, and invests loan proceeds for the benefit of ELF.**

c. Loan Servicing Fees: In exchange for providing the loan servicing, TMI charges a set-up fee of \$250.00 for each new loan, and an **annual loan servicing fee of .20%, based on the principal amount outstanding on loans administered by TMI, subject to a minimum fee of \$750.00 per month.** The fee is calculated monthly, with one-twelfth to be paid monthly from cash held by TMI for the benefit of ELF. **On average, the monthly fees are approximately \$1,500.00.** Actual out-of-pocket expenses are billed at 110% of cost to ELF.

3 The above summary is provided solely for the convenience of the Court, creditors, and parties in interest. The summary should not be deemed an admission of the Debtor, nor is it intended to in any way alter or modify the terms of the Loan Servicing Agreement. In the event of any discrepancy between this Motion and terms of the TMI Agreements, the terms Agreement shall prevail.

10. Currently, the **Debtor has five active loans**, and as of the Petition Date, the **total outstanding principal balance owed by the borrowers is approximately \$719,394.36 in the aggregate. TMI receives and processes the loan payments** from the borrowers, utilizing the loan procedures to make determinations regarding the application of such amounts to principal, interest, fees, expenses, or any other charges or escrows. **The funds are held in an interest-bearing account for the benefit of the Debtor** and are reflected as cash or cash equivalents in the monthly reporting provided to the Debtor. Upon request of the Debtor, and not more than two times per month, the Debtor may request a disbursement of all amounts of principal, interest, or fees collected under the Loans, less the amount of TMI's servicing fees. To the extent a disbursement request is not made by the Debtor, TMI's servicing fees are deducted on a monthly basis from the Debtor's cash. As of the Petition Date, **TMI was holding cash and equivalents of approximately \$82,473.82 for the Debtor (the "Cash Proceeds").** TMI provides the Debtor with monthly accounting reports by the tenth business day of each month.

11. **TMI also manages the Debtor's church bond portfolio**, which had a value of approximately **\$529,701.62 as of the Petition Date** (the "Bond Portfolio" and, together with the Cash Proceeds, the "Servicing Account"). These bonds are only purchased at the express direction of the Debtor, and the Debtor is not actively purchasing and does not intend to purchase additional bonds. However, **there is no active market to sell the bonds currently held by the Debtors. The majority of the bonds will mature in 3 to 4 years and, if retained, are projected to generate a**

far better return than if the Debtor attempted to cash out the bonds immediately, which will ultimately inure to the benefit of the bankruptcy estate and its creditors.

No information is provided about who and what TMI Trust Company is for employment by the Bankruptcy Estate. Also, it is not identified whether such services require such employment to be authorized pursuant to 11 U.S.C. § 327.

A quick, internet search first turns up a website for TMI Trust Company, with a website at www.tmico.com. The information provided under the “About” tab discloses that TMI was purchased by Reliance Finance Corporation, which has a subsidiary providing services to churches and nonprofits.

It then states that Reliance Finance Corporation was acquired by FIS Global in 2014, and then TMI Trust Company was “spun off and once again became an independent trust company.”

A review of the California Secretary of State’s website and search of businesses registered to do business in California returned a result that no entity named TMI Trust Company is registered to do business in California.

No declarations, documentary evidence, copies of contracts, or other evidence was filed in support of this Motion.

JUNE 7, 2022 HEARING

At the June 7, 2022 Hearing, the court determined that the granting of the motion with the entry of an interim order was proper.

JUNE 30, 2022 HEARING

The Supplemental Declaration of Mark Young is provided in support of maintaining the pre-petition Cash Management System. Dckt. 76. In it he discusses the business operations of TMI Trust company, where he is employed as a Managing Director. While stating the various services that TMI provides, he does not address TMI’s ability to legally do business in California.

The court raised this point, noting that the California Secretary of State reports that no entity named TMI Trust Company has registered to do business in California. This court’s triple checking of the Secretary of State’s website on June 29, 2022, again disclosed that there is no such entity registered to legally do business in California.

This issue has not been addressed by either the Debtor in Possession or TMI.

At the continued hearing, **XXXXXXXXXXXXXXXX**

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 Maintain Existing Cash Management System with Loan Servicing Agent filed by Eagle Ledge Foundation, Inc (“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 **XXXXXXXXXXXXXXXXXX**

6. [22-90160-E-11](#)
[DDM-5](#)

**EAGLE LEDGE FOUNDATION,
INC.
Dennis D. Miller**

**CONTINUED MOTION TO GRANT
REPLACEMENT LIENS AND/OR
MOTION FOR ADEQUATE
PROTECTION , MOTION TO APPROVE
DIP BUDGET, MOTION TO USE CASH
COLLATERAL
6-1-22 [35]**

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve DIP Budget O.S.T. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, 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.

**The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens,
Motion for Adequate Protection, and Motion/Application to Approve DIP
Budget is **XXXXXXX** .**

Eagle Ledge Foundation, Inc., as the “Debtor” (not the Debtor in Possession) seeks to use cash collateral, provide adequate protection, grant replacement liens, and get an operating budget approved. This Motion is not filed by Eagle Ledge Foundation, Inc. as the debtor in possession in this case. Throughout the Motion it is only the Debtor, not the debtor in possession seeking to use property of the Bankruptcy Estate.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves in the place of a bankruptcy trustee as the fiduciary to the bankruptcy estate 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

The Bankruptcy Estate includes the Debtor's pre-petition business and property. Debtor states that there are currently five active loans which total in the aggregate \$719,394.36. Motion, p. 4:14-15; Dckt. 35.

Upon receiving payments on these loans, the monies are deposited in interest bearing accounts, after deducting servicing fees, "for the benefit of the Debtor." *Id.*, p. 4:16-22.

Not more than two times per month, Debtor can request disbursements from the accounts. The Motion then states:

16. The Debtor believes the funds held by TMI and that will be collected on a postpetition basis by TMI may constitute cash collateral, and that the Collateral Agent may assert an interest in such funds for the benefit of the Certificate Holders, as such amounts represent proceeds of the mortgages held by the Debtor and the notes payable to the Debtor.

Id., ¶ 16. In a footnote, Debtor states that it does not admit any lien or secured claim. However, on the Schedules Debtor states that the Certificate Holders have claims secured by all of Debtor's assets, excluding the real property.

It is then further asserted that only the Collateral Agent is a person who can assert an interest in the property constituting cash collateral. It appears that this "Collateral Agent" is asserting the liens of the Certificate Holders.

Adequate Protection

In the Motion Debtor states having \$761,165.00 in its Operating Account. Debtor does not believe that these monies are subject to Creditor liens. The source of these monies is not identified in the Motion. However, on Schedule D, it is stated that the Collateral Agent for the Certificate Holders has a lien in all "cash, liquid security, and mortgage loan investments" of the Debtor.

To provide adequate protection for the Certificate Holders having claims (as stated on Schedule F for which it's Collateral Agent has a lien to secure their claims) totaling (\$4,043,001) (computed by deleting out the non Certificate creditors listed on Schedule F), Debtor states in the Motion:

24. As adequate protection of any interest the Collateral Agent may have in the loan proceeds collected on a post-petition basis, the Debtor proposes provide the Collateral Agent with monthly written reporting as to the status of collections and disbursements, in addition to complying with the reporting requirements under the Bankruptcy Code and Bankruptcy Rules (such as monthly operating reports).

25. To provide further adequate protection of the interests of any secured creditor, the Debtor proposes to open a third debtor-in-possession account (the "Collateral Account") and to the extent the balance of the Cash Proceeds in the Servicing Account exceeds \$75,000.00 on the last business day of the month, the Debtor, on

or before the tenth day of next month, will direct TMI to transfer the funds in excess of \$75,000.00 to the Collateral Account.

However, it appears that the “adequate protection” is to merely a report of the status of the collateral and to transfer some of the existing collateral to the Collateral Agent.

Looking at Debtor’s non-real property assets, it appears that the (\$4,043,001) is secured by personal property having a value, as stated by Debtor, of \$1,402,423. The purported adequate protection is to just hold part of the existing collateral as the collateral is reduced. Summary of Assets, Part 1; Dckt. 24.

Filed as Exhibit A in support of the Motion is an unauthenticated document titled Debtor’s Proposed Budget. Dckt. 36. The Budget is stated to be:

	May 2022	June 2022	July 2022	August 2022	Sept 2022	Oct 2022	
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	TOTAL
Beginning Balance ¹	625,318.00	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	19,000.00
Cash Receipts ²	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	21,000.00
Rental Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL SOURCES	628,818.00	625,023.00	616,978.00	609,683.00	602,388.00	595,093.00	40,000.00
Expenses							
Bank Fees	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Copies/Postage	100.00	100.00	100.00	100.00	100.00	100.00	600.00
Insurance	0.00	500.00	0.00	0.00	0.00	0.00	500.00
Officer Salaries/ Payroll Taxes	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	36,870.00
Office Supplies	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Property Management Fees		1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	7,500.00
TMI Loan Servicing and Escrow Fees	950.00	950.00	950.00	950.00	950.00	950.00	5,700.00
U.S. Trustee Fees	0.00	250.00	0.00	0.00	0.00	250.00	0.00
Legal	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Accounting Fees	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
TOTAL USES	7,295.00	11,545.00	10,795.00	10,795.00	10,795.00	11,045.00	53,770.00
ENDING BALANCE	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	584,048.00	-13,770.00

Reviewing this Budget, Debtor projects receiving \$3,500.00 in cash receipts, which appear to be the payments on the loan that are the collateral for Certificate Holders, which total \$21,000.00. For the period May 2022 through October 2022, Debtor projects spending (\$53,770.00).

Footnote 2 to the Budget states that Debtor’s cash receipts are generated from collection of borrower loan payments. Thus, for that period Debtor projects losing \$32,770.00 from its operations (which appears to be a reduction in the Certificate Holder’s collateral).

No Declarations or other authenticated documentary evidence is provided by Debtor.

JUNE 7, 2022 HEARING

At the June 7, 2022 hearing, the court determined that issuance of an interim order granting the relief and creating replacement liens was proper. Further hearing will be conducted at 2:00 p.m. on June 30, 2022.

JUNE 24, 2022 DECLARATION

On June 24, 2022, Mark Young, employed by TMI, filed a declaration stating TMI receives and processes loan payments from borrowers and manages Debtor's church bond portfolio. Dckt. 76. TMI has not and does not provide brokerage or investment advice to Debtor. Additionally, Mr. Young states TMI serves as an escrow agent, paying agent, and registrar, pursuant to the agreement with Debtor.

JUNE 30, 2022 HEARING

At the continued hearing, XXXXXXXXXXXXXXXX

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 Authority to Use Cash Collateral filed by Eagle Ledge Foundation, Inc ("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 XXXXXXXXXXXXXXXX

FINAL RULINGS

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

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-30-19 [1]

Final Ruling: No appearance at the June 30, 2022 Status Conference is required.

Plaintiff's Atty: Robert L. Eisenbach
Defendant's Atty: *Pro Se*

Adv. Filed: 1/30/19
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued from 1/27/22 by request of the Defendant, Nathan Damigo.

Status Report [Plaintiff] filed 6/6/22 [Dckt 38]

The Status Conference has been continued to 2:00 p.m. on November 10, 2022, both parties having provided the court with Status Reports that the final judgment has not been entered in the Federal Court Action.

Final Ruling: No appearance at the June 30, 2022 Status Conference is required.

Debtor's Atty: *Pro Se*

Notes:

Continued from 1/27/22

Post-Confirmation Compensation Report filed: 3/11/22, 4/11/22, 5/12/22, 6/10/22

Operating Report filed: 4/20/22, 4/27/22

[FWP-21] Order granting use of cash collateral filed 2/10/22 [Dckt 1645]

[FWP-18] Order granting motion to abandon property [100% membership in JEA2, LLC] filed 2/15/22 [Dckt 1648]

[FWP-22] Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation with SBN V AG I LLC filed 4/1/22 [Dckt 1663]; Order granting filed 5/9/22 [Dckt 1686]

[FWP-13] Order continuing hearing on Motion to Abandon to 6/30/22 at 10:30 a.m. filed 5/26/22 [Dckt 1695]

<p>The Status Conference is continued to 10:30 a.m. on August 4, 2022, to be conducted in conjunction with the continued hearing on the Motion to Abandon.</p>
