UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 31, 2025 at 10:30 a.m.

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1. 19-90003-E-7 NATHAN DAMIGO
19-9006
SINES ET AL V. DAMIGO
RLE-1
Item 1 thru 3

CONTINUED MOTION FOR SUMMARY JUDGMENT
5-8-25 [93]

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

Local Rule 7056-1 Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Chapter 7 Trustee, and Office of the U.S. Trustee on May 8, 2025. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 7056-1. Failure of the respondent and other parties in interest to file written opposition at least 21 days prior to the hearing as required by Local Bankruptcy Rule 7056-1(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 Summary Judgment is granted in favor of Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker.

The Cross Motion for Summary Judgment filed by Defendant-Debtor Nathan Benjamin Damigo is denied.

Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker ("Plaintiffs") move this court for an order granting summary judgment / adjudication

pursuant to Fed. R. Bank. P. 7056 on its Count I alleged in the Complaint against Defendant-Debtor Nathan Benjamin Damigo ("Defendant-Debtor"). Plaintiffs state with particularity as to the relief sought:

> (1) Damigo's conduct—namely, conspiring to commit unlawful acts, including violations of the Virginia Hate Crimes Statute and assault or battery—was willful and malicious, and the debt arising therefrom for Nominal and Compensatory Damages is consequently nondischargeable under section 523(a)(6) of the Bankruptcy Code. Mot. 3:24-27.
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> (2) Damigo had a full and fair opportunity to litigate all issues and facts in the Amended Charlottesville Judgment and is collaterally estopped from re-litigating those facts and issues in this Adversary Proceeding. A jury found Damigo liable for civil conspiracy for conspiring to plan, promote, and enact racially, religiously, or ethnically motivated harassment, intimidation, or violence, as well as assault and battery, during two days of terror in Charlottesville, Virginia known as "Unite the Right" or the "Battle of Charlottesville," and for causing both physical and emotional injury to the Plaintiffs. The facts and issues underlying Plaintiffs' willful and malicious injury nondischargeability claims in this Adversary Proceeding were fully and fairly litigated to judgment in the Charlottesville Action, and Damigo is precluded from relitigating them here. *Id.* at 3:12-20.
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> (3) The Amended Charlottesville Judgment in the United States District Court for the Western District of Virginia, *Elizabeth Sines et al. V. Jason Kessler*, et al., Civil Action No. 3:17-cv-00072-NKM ("Charlottesville Action"), is included as Exhibit 17, Docket 100. The Amended Judgment awards Plaintiffs damages in the amount of $3,096,254.32, holding the Charlottesville Action Defendants, including Defendant-Debtor, jointly and severally liable.

Plaintiffs' Pleadings in Support

Plaintiffs file in support of their Motion a Memorandum of Points and Authorities (Docket 97) ("Memo"), the Declarations of Robert L. Eisenbach (Docket 95, 96), various Exhibits detailing the events of the trial action in the Charlottesville Action and a Statement of Undisputed Facts (Docket 101).

Plaintiffs assert in their Memo that they received a federal court judgment, as affirmed on appeal in the Fourth Circuit, for a final judgment of $3,096,254.32 based on Defendant-Debtor's willful and malicious conduct. Mem. 8:1-17, Docket 97. Plaintiffs succeeded in that action by jury trial. Plaintiffs seek to succeed here on the theory of collateral estoppel, and that 11 U.S.C. § 523(a)(6) renders this debt nondischargeable, as the damages awarded resulted from willful and malicious injury.

The court in the Charlottesville Action found the following:

1. The jury did not reach a verdict on Counts I or II, but the jury returned a verdict in favor of the Plaintiffs as to liability on Counts III, IV, V and VI. Am. J., Ex. 17, Docket 100.

    a. Count III is titled "Civil Conspiracy" alleging Defendant-Debtor conspired with his Charlottesville Action Co-Defendants to

accomplish unlawful and tortious acts, including maliciously causing Plaintiffs bodily injury. Second Am. Compl., Ex. 5 at 104-05, Docket 98.

b. Count IV is titled "Negligence Per Se" alleging Defendant-Debtor engaged in an act of terrorism in violation of Virginia Code § 18.2-46.5. *Id.* at 106-07.

c. Count V is titled "Civil Action for Racial, Religious, or Ethnic Harassment," alleging Defendant-Debtor engaged in acts of intimidation or harassment based on racial, religious, or ethnic animosity. *Id.* at 107-08.

d. Count VI is titled "Assault and Battery," alleging Defendant-Debtor either assaulted or committed battery against Plaintiffs. *Id.* at 108.

2. The Court held all of the Charlottesville Action Defendants jointly and severally liable for the nominal and compensatory damages awards on Counts III, IV, and V, which amount is $1,303,284. Am. J., Ex. 17, Docket 100.

3. Defendant-Debtor is liable for $58,333.33 in punitive damages. *Id.*

4. Defendant-Debtor is jointly and severally liable for a total of $468,216.15 in costs to all Plaintiffs. *Id.*

5. Defendant-Debtor is jointly and severally liable for a total of $1,266,420.84 in reimbursable expenses ("Reimbursable Expenses") to all Plaintiffs under the terms of the ESI Stipulation & Order. *Id.*

Mr. Eisenbach testifies as to the facts asserted in the Motion, Statement of Undisputed Facts, and Memo, and he authenticates the Exhibits. Decl., Dockets 95, 96.

Defendant-Debtor's Opposition and Cross Summary Judgment Motion

Defendant-Debtor filed an Opposition on June 11, 2025. Docket 107. Defendant-Debtor states:

1. Defendant-Debtor's own motion for summary judgment, accordingly, is effectively an opposition to Plaintiffs' motion for summary judgment. Opp'n 2:13-16.

2. Plaintiffs have in fact adopted a character assassination approach, packing as many incendiary and irrelevant allegations against Mr. Damigo into their memorandum as possible, with the aim of confusing the issues and predisposing the Court against Mr. Damigo. *Id.* at 3:21-25.

3. This case is rather unusual in that Plaintiffs must satisfy two different heightened burdens in order to prevail. The first arises because Plaintiffs are invoking an exception to dischargeability under § 523. . . The second arises because Plaintiffs are invoking collateral estoppel doctrine and reasonable doubts about what was decided in the prior action should be resolved against the party seeking to assert preclusion. *Id.* at 4:6-19.

4. By its terms, § 523(a)(6) only applies if the Defendant-Debtor is the wrongdoer. This demonstrates that, when Congress wanted to limit nondischargeability to the wrongdoer, it said so. *Id.* at 5:17-20.

    a. No supporting legal authority is made in support of this proposition.

5. Defendant-Debtor being found liable for violation of Count III, civil conspiracy, is not enough to support an exception to discharge under 11 U.S.C. § 523(a)(6). Opp'n 6:1-7:13.

    a. Defendant-Debtor cites *In re Chien*, 2008 WL 84444802 (9th Cir. BAP, Feb. 7, 2008) in support of this proposition.

6. Defendant-Debtor was not found primarily and directly liable for Counts IV and V – but only secondarily and vicariously liable. . . vicarious liability is not sufficient to support a § 523(a)(6) exception. *Id.* at 7:24-8:4.

    a. Defendant-Debtor cites *In re Chien*, 2008 WL 84444802 (9th Cir. BAP, Feb. 7, 2008) and *In Re Eggers*, 51 B.R. 452 (Bankr. E.D. Tenn 1985) in support of this proposition.

7. Punitive damages awarded on a recklessness standard are dischargeable. The jury instruction permitted an award of punitive damages based on the recklessness standard in the Charlottesville Action. The court was not clear whether the punitive damages were awarded on a recklessness standard, and so the punitive damages award should be discharged. *Id.* at 11:15-13:20.

    a. Defendant-Debtor cites *In re Gray*, 2011 WL 450307 at * 10 (9th Cir. BAP July 7, 2011) and *Jenkins v. IBD, Inc.*, 489 B.R. 587, 601-02 and 601 n. 90 in support of this proposition.

8. The Reimbursable Expenses were discharged because they were an unliquidated and contingent claim prior to Mr. Damigo filing bankruptcy. *Id.* at 13:21-14:14.

    a. No supporting legal authority is made in support of this proposition.

PLAINTIFFS' REPLY

Plaintiffs filed a Reply to the Opposition on June 18, 2025. Docket 110. Plaintiffs state:

1. Plaintiffs are entitled to summary judgment because there is no genuine dispute of material fact that Defendant-Debtor willfully and maliciously injured Plaintiffs by his participation in a conspiracy to commit racially, ethnically, and religiously motivated harassment and violence, as well as assault or battery, at the Unite the Right event in Charlottesville, Virginia in August 2017. *Id.* at 7:2-5.

2. Defendant-Debtor's Opposition fails to establish that there are any genuine disputes of material fact that would preclude summary judgment in favor of the Plaintiffs because Defendant-Debtor submits no evidence to dispute the Plaintiffs' statement of Undisputed Facts. *Id.* at 8:23-9:1.

3. As explained in Plaintiffs' Motion for Summary Judgment, as well as Plaintiffs' Opposition to Defendant-Debtor's Motion for Summary Judgment, the jury in the Charlottesville Action actually and necessarily decided that Defendant-Debtor's conduct giving rise to Plaintiffs' injuries was willful and malicious, the Amended Charlottesville Judgment is valid and final, and well-settled law of issue preclusion prevents Defendant-Debtor from trying to further litigate these issues before the Court. *Id.* at 11:27-12:3.

4. Defendant-Debtor's conduct in conspiring to commit racially, ethnically, and religiously motivated harassment and violence, as well as assault or battery, establishes his own direct willful and malicious injury to Plaintiffs. Accordingly, Defendant-Debtor was properly found liable for all resulting acts of his co-conspirators. Further, Defendant-Debtor is wrong that civil conspiracy is insufficient to establish willful and malicious injury by the debtor for purposes of Section 523(a)(6). Reply 13:16-20.

5. As the record reflects, the District Court in the Charlottesville Action found that Defendant-Debtor willfully, intentionally, and maliciously engaged in a civil conspiracy that injured the Plaintiffs. *See* Joint Exhibit 12 at 75 (finding that Defendant-Debtor and his Charlottesville Action Co-Defendants' conduct "was deliberate and intentional and the product of malice (as opposed to merely negligent)" and "far exceeds the standard of conduct deemed reprehensible in the courts."). Reply 15:27-16:3.

6. The standard the jury applied when awarding punitive damages is irrelevant because they arise from the jury's compensatory damages award based on the civil conspiracy claim. *Id.* at 15:14-15. The United States Supreme Court has held that once a court determines that a specific debt is nondischargeable under Section 523(a) due to the debtor's misconduct, all debts arising from that misconduct are nondischargeable. *Cohen v. De la Cruz*, 523 U.S. 213, 219 (1998) (holding entire judgment, including punitive damages in the form of treble damages, nondischargeable). Reply at 15:15-19.

7. But the Punitive Damages are also independently nondischargeable because they were based on Defendant-Debtor's willful and malicious conduct. As the District Court in the Charlottesville Action explained in the post-trial order, the jury found that Defendant-Debtor's conduct "demonstrated deliberate indifference to a great risk of harm" "and was deliberate and intentional and the product of malice (as opposed to merely negligent)." Joint Exhibit 12 at 75. Reply 16:8-12.

8. The Reimbursable Expenses are not dischargeable because they arose post-petition. As the ESI Stipulation and Order stated, it "does not obligate [the Charlottesville Action Defendants] to pay any fees or costs incurred by the Third Party Discovery Vendor at this time…" *See* Joint Exhibit 6 at 7. Reply 17:21-18:9.

   a. No supporting legal authority is made in support of this proposition.

APPLICABLE LAW
Summary Judgment

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora*

Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

For the two Motions for Summary Judgment, the issue presented to the court is even more focused. Plaintiffs assert that based upon issue preclusion, arising under Collateral Estoppel as a sub-principle of *Res Judicata*. Defendant-Debtor's asserts that the required elements for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(6) were not necessarily determined and summary judgment based upon the Amended Charlottesville Judgment is improper, and therefore Defendant-Debtor should be granted summary judgment.[1]

Willful and Malicious Injury

11 U.S.C. § 523(a)(6) states:

> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity. . .

The "modern" application of this law has been clearly enunciated by the Supreme Court and augmented by the Ninth Circuit Court of Appeal.

The court begins with *Kawaauhau v. Geiger*, 523 U.S. 57 (1998), in which a unanimous Supreme Court stated that the standard for a debt being nondischargeable under 11 U.S.C. § 523(a)(6) as:

> The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a **deliberate or intentional *injury***, not merely a deliberate or intentional *act* that leads to injury. Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury." Or, Congress might have selected an additional word or words, *i.e.*, "reckless" or "negligent," to modify "injury." Moreover, as the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend "the *consequences* of an act," not simply "the act itself." *Restatement (Second) of Torts § 8A, comment a,* p. 15 (1964) (emphasis added).
> . . .

[1] As discussed, merely because the required grounds for nondischargeability were not necessarily decided (given the nature of the jury instructions and not clear findings for such grounds) in the prior non-bankruptcy action and issue preclusion does not apply is not a basis for granting Defendant-Debtor a summary judgment motion. Rather, if that is the case, then the nondischargeability action will go to trial in the Bankruptcy Court, where the Bankruptcy Judge will then make the necessary findings and conclusions.

> We hold that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6). For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is Affirmed.

Kawaauhau v. Geiger, 523 U.S. at 61-62, 64.

In *Geiger* the creditor held a $355,000 judgment for medical malpractice. The Supreme Court determined that "mere" malpractice did not arise to the wilful and malicious standard for nondischargeability. In an eerily similar set of facts to the present Adversary Proceeding before this court, the creditor in *Geiger* lost her right leg below the knee due to the malpractice.

The Supreme Court requires that the debtor have intended the "consequences of the act," not merely the act itself. The Supreme Court's conclusion is that "We hold that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)."

In 2010, twelve years after *Geiger*, the Ninth Circuit Court of Appeals had the opportunity to address this willful and malicious injury standard. As stated by the Ninth Circuit in *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010), the willful injury standard in this Circuit is met "**only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct."** *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). This second part, "the debtor believes the injury is substantially certain to result from his own conduct" requires such a belief be shown, not merely that others would conclude such.

In *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002), the Ninth Circuit Court of Appeals stated the requirements of 11 U.S.C. § 523(a)(6) as follows:

> The question presented on appeal is whether a finding of "willful and malicious injury" must be based on the debtor's subjective knowledge or intent or whether such a finding can be predicated upon an objective evaluation of the debtor's conduct. We hold that *§ 523(a)(6)*'s willful injury requirement is met **only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct.**

Id. at 1173.

With respect to the evidence of the subjective motive, the Ninth Circuit is clear that the court does not merely accept what a debtor states his or her intent was, but in Footnote 6 in *Carillo v. Su*, the Circuit states:

> 6. **To be clear, when we speak of "actual knowledge" we are not suggesting that a court must simply take the debtor's word for his state of mind**. In addition to what a debtor may admit to knowing, **the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.** *See, e.g., Spokane Ry. Credit Union v. Endicott (In re Endicott)*, 254 B.R. 471, 477 n. 9 (Bankr. D. Idaho, 2000) ("The use of the term 'objective' is not talismanic nor at odds with *Geiger* if it is viewed as **simply recognizing that a debtor will have to deal with any direct or circumstantial evidence which would indicate that he must have had a**

> **substantially certain belief that his act would injure, notwithstanding any subjective denial of such knowledge."**). This approach, however, remains fundamentally subjective in that it retains its focus on what was actually going through the mind of the debtor at the time he acted. This subjective approach explains how courts have typically resolved the applicability of § 523(a)(6) in the context of motor vehicle accidents. When car accidents occur and there is **no evidence, beyond evidence of (at times) extreme recklessness, that the driver expressly sought to crash into another, § 523(a)(6)'s nondischargeability provision typically has been found inapplicable.** *See Madden v. Fate (In re Fate)*, 100 B.R. 141 (Bankr. D. Mass. 1989); *Mugge v. Roemer (In re Roemer)*, 76 B.R. 126 (Bankr. S.D. Ill. 1987); *Cooper v. Noller (In re Noller)*, 56 B.R. 36 (Bankr. E.D. Wis. 1985); *In re Donnelly*, 6 B.R. at 23. When, however, the evidence demonstrates that the driver purposefully crashed his car into another's, § 523(a)(6) applies and the driver's debt stemming from that "accident" is nondischargeable. *See Stubbs v. Mode (In re Mode)*, 231 B.R. 295 (Bankr. E.D. Ark. 1999); *Grange Mut. Cas. Co. v. Chapman (In re Chapman)*, 228 B.R. 899 (Bankr. N.D. Ohio 1998).

For a determination that an obligation is nondischargeable pursuant to 11 U.S.C. § 523(a) the Plaintiff must establish the elements by the "ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. at 291. This is the same as for the State Court Action.

Injuries covered by the section 523(a)(6) discharge exceptions are not confined to physical damage or destruction; an injury to intangible personal or property rights is sufficient. *In re Rushing*, 161 B.R. 984 (Bankr. E.D. Ark. 1993). Thus, the conversion of another's property without the owner's knowledge or consent, done intentionally and without justification and excuse, is a willful and malicious injury within the meaning of the exception. *In re Lampi*, 152 B.R. 543 (C.D. Ill. 1993); *Security Bank of Nevada v. Singleton*, 10 C.B.C.2d 429, 37 B.R. 787 (Bankr. D. Nev. 1984); *Bombadier Corp. v. Penning (In re Penning)*, 22 B.R. 616 (Bankr. E.D. Mich. 1982).

Virginia Law For the Amended Judgement Claims Entered

The Amended Charlottesville Judgment in this case is from the District Court in the Western District of Virginia. The causes of actions asserted were based on Virginia law. Therefore, the court here must rely on Virginia law in discerning the elements of civil conspiracy for which Mr. Damigo had been found liable. The Supreme Court of Virginia has explained:

> A criminal conspiracy is an agreement to commit a crime. *See Wright v. Commonwealth*, 224 Va. 502, 297 S.E.2d 711 (1982). A **civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose**, not in itself criminal or unlawful, by criminal or unlawful means. *Werth v. Fire Adjust. Bureau*, 160 Va. 845, 855, 171 S.E. 255, 259, *cert. denied*, 290 U.S. 659, 54 S.Ct. 74, 78 L.Ed. 570 (1933).

Hechler Chevrolet, Inc. v. General Motors Corp., 337 S.E. 2d 744, 749 (Va. 1985) (emphasis added).

The Virginia Supreme Court has expressly addressed that for a civil conspiracy claim to exist, the actual wrongful conducted for which the conspiracy existed occurred and the harm inflicted on the victim.

> Because there can be no conspiracy to do an act that the law allows, *Werth*, 160 Va. at 855, 171 S.E. at 259, we have held that "an allegation of conspiracy, whether criminal or civil, must at least allege an unlawful act or an unlawful purpose" to survive demurrer. *Hechler Chevrolet, Inc. v. General Motors Corp.*, 230 Va. 396, 402, 337 S.E.2d 744, 748 (1985). In other words, **actions for common law civil conspiracy** and statutory business conspiracy **lie only if a plaintiff sustains damages as a result of an act that is itself wrongful or tortious**. *See Beck v. Prupis*, 529 U.S. 494, 501, 120 S.Ct. 1608, 146 L.Ed.2d 561 (2000); *see also Almy v. Grisham*, 273 Va. 68, 80, 639 S.E.2d 182, 188 (2007) ("[I]n Virginia, a common law claim of civil conspiracy generally requires proof that the underlying tort was committed."); *Werth*, 160 Va. at 855, 171 S.E. at 259 (" 'To give action there must not only be conspiracy, but conspiracy to do a wrongful act.' ") (quoting *Transportation Co. v. Standard Oil Co.*, 50 W.Va. 611, 40 S.E. 591, 594 (1901)); *McCarthy v. Kleindienst*, 741 F.2d 1406, 1413 n. 7 (D.C.Cir.1984) (**"[C]onspiracy allegations ... do not set forth an independent cause of action; instead, such allegations are sustainable only after an underlying tort claim has been established.**"); *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C.Cir.1983) ("Since **liability for civil conspiracy depends on performance of some underlying tortious act, the conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort**."); *Koster v. P & P Enters.*, 248 Neb. 759, 539 N.W.2d 274, 278 (1995) ("[A] claim of civil conspiracy is not actionable in itself, but serves to impose vicarious liability for the underlying tort of those who are a party to the conspiracy."); *Selle v. Tozser*, 786 N.W.2d 748, 756 (S.D.2010) ("[C]ivil conspiracy is merely a method of establishing joint liability for the underlying tort.").

Dunlap v. Cottman Transmission Systems, LLC, 754 S.E.2d 313, 317-18 (Va. 2014).

Here, the Amended Charlottesville Judgment having been entered the District Court concluded that the wrongful acts and injuries relating thereto for the (1)racially, ethnically, and religiously motivated harassment and violence and (2) the assault and battery for which Defendant-Debtor conspired with others to occur actually happened as he and his co-conspirators had planned. Thus, Defendant-Debtor was found liable of civil conspiracy to commit these tortious acts and suffers the financial damages relating thereto.

<u>Committing Racially, Ethnically, and Religiously</u>
<u>Motivated Harassment And Violence.</u>

Protection from racially, ethnically, and religiously motivated harassment and violence is codified in the Virginia Code Ann. § 8.01-42.1, which gives rise to a civil cause of action. Va. Code Ann. § 8.01-42.1 states:

> A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment, (ii) violence directed against his person, or (iii) vandalism directed against his real or personal property,

where such acts are motivated by racial, religious, gender, disability, gender identity, sexual orientation, or ethnic animosity.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorney fees in an amount to be fixed by the court.

C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.

D. As used in this section:

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

Assault and Battery

The elements for establishing a civil cause of action for assault and battery follow the common law elements for assault and battery in Virginia. The Supreme Court of Virginia again explains (emphasis added):

> The tort of assault consists of an **act intended to cause either harmful or offensive contact with another person or apprehension of such contact**, and that **creates in that other person's mind a reasonable apprehension of an imminent battery**. Restatement (Second) of Torts § 21 (1965); Friend § 6.3.1 at 226; *Fowler V. Harper, et al.*, The Law of Torts § 3.5 at 3:18–:19 (3d ed. Cum.Supp.2003).
>
> The **tort of battery is an unwanted touching which is neither consented to, excused, nor justified**. *See Washburn v. Klara*, 263 Va. 586, 561 S.E.2d 682 (2002); *Woodbury v. Courtney*, 239 Va. 651, 391 S.E.2d 293 (1990). Although these two torts "go together like ham and eggs," the difference between them is "that between physical contact and the mere apprehension of it. One may exist without the other." W. Page Keeton, Prosser and Keeton on Torts § 10 at 46; see also Friend § 6.3.

Koffman v. Garnett, 574 S.E. 2d 258, 261 (Va. 2003).

The term "malicious" has been defined in Virginia case law as "consisting of an evil or rancorous motive influenced by hate; the purpose being to deliberately and wilfully injure the plaintiff." *Kamlar Corp. V. Haley*, 299 S.E. 2d 514, 518 (Va. 1983) (internal quotations omitted). The term "willful" means deliberate or intentional. *Hill v. Noyes*, Case No. LS-4105-4, 1991 WL 834990 at *2 (Va Cir. Ct. May 31, 1991).

In the Charlottesville Action, the judge described the Charlottesville Action Defendants' actions as malicious in his Memorandum Decision (emphasis added):

> In other words, on both days, **the conduct was violent and physical** (as opposed to economic); demonstrated **deliberate indifference to a great risk of harm**; stretched over a substantial period on August 11 (and again on August 12); and **was deliberate and intentional and the product of malice (as opposed to merely negligent).** The evidence of **Defendants' conduct far exceeds the standard of conduct deemed reprehensible in the courts**. *See, e.g.*, *Saunders v. Branch Banking & Trust Co of Va.*, 526 F.3d 142, 153 (4th Cir. 2008). Accordingly, under the evidence, the jury was entitled to conclude that Defendants acted reprehensibly such as to support a sizable award of punitive damages.

Ex. 12 at 75, Docket 100.

Moreover, the judge in the Charlottesville Action spoke directly of Defendant-Debtor's personal liability for the malicious conduct, stating (emphasis added):

> Under Virginia law, the jury's finding of liability on the civil conspiracy claim "meant that [Charlottesville Action Defendants] were held jointly and severally liable for the damages award." *See Tire Eng'g & Dist., LLC v. Shandong* Linglong Rubber Co., Ltd., 682 F.3d 292, 312 n. 10 (4th Cir. 2012); *see also Worrie v. Boze*, 95 S.E.2d 192, 198 (Va. 1956) ("**The conspirators are jointly and severally liable for all damage resulting from the conspiracy**."), abrogated in part on other grounds, *Station #2, LLC v. Lynch*, 695 S.E.2d 537, 541 (Va. 2010). **"The object of a civil conspiracy claim is to spread liability to persons other than the primary tortfeasor."** *Gelber v. Glock*, 800 S.E.2d 800, 820 (Va. 2017); *see also La Bella Dona Skin Care, Inc*., 805 S.E.2d at 406 (explaining that "civil conspiracy is a mechanism for spreading liability amongst coconspirators for damages sustained **as a result of an underlying act that is itself wrongful or tortious**"). While [Debtor-Defendant] and Identity Evropa argue that Plaintiffs' "argument regarding joint and several liability [ ] misses the mark," Dckt. 1593 at 4, they present no contrary law to dispute Plaintiffs' authorities that under Virginia law, Defendants, as coconspirators, are liable for all damages resulting from the conspiracy.

Ex. 12 at 76-77, Docket 100.

Issue Preclusion

The doctrine of Issue Preclusion, formerly referred to as Collateral Estoppel, as a subcategory of the Doctrine of *Res Judicata* provides that if an issue has been adjudicated in a prior judicial proceeding, it cannot be relitigated in a subsequent judicial proceeding.

The bankruptcy court may give preclusive effect to a district or state court judgment as the basis for excepting a debt from discharge. As stated by the Supreme Court in *Grogan v. Garner*, 498 U.S. 279, 285 (1991) [emphasis added],

> Our prior cases have suggested, but have not formally held, that the principles of collateral estoppel apply in bankruptcy proceedings under the current Bankruptcy Act. *See, e.g., Kelly v.*

> *Robinson*, 479 U.S. 36, 48, n.8, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986); *Brown v. Felsen*, 442 U.S. at 139, n.10. *Cf. Heiser v. Woodruff*, 327 U.S. 726, 736, 90 L. Ed. 970, 66 S. Ct. 853 (1946) (applying collateral estoppel under an earlier version of the bankruptcy laws). Virtually every Court of Appeals has concluded that collateral estoppel is applicable in discharge exception proceedings. *See In re Braen*, 900 F.2d at 630; *Combs v. Richardson*, 838 F.2d at 115; *Klingman v. Levinson*, 831 F.2d 1292, 1295 (CA7 1987); *In re Shuler*, 722 F.2d 1253, 1256 (CA5), *cert. denied sub nom. Harold V. Simpson & Co. v. Shuler*, 469 U.S. 817, 83 L. Ed. 2d 32, 105 S. Ct. 85 (1984); *Goss v. Goss*, 722 F.2d 599, 604 (CA10 1983); *Lovell v. Mixon*, 719 F.2d 1373, 1376 (CA8 1983); *Spilman v. Harley*, 656 F.2d 224, 228 (CA6 1981). *Cf. In re Rahm*, 641 F.2d 755, 757 (CA9) (prior judgment establishes only a *prima facie* case of nondischargeability), *cert. denied sub nom*. *Gregg v. Rahm*, 454 U.S. 860, 70 L. Ed. 2d 157, 102 S. Ct. 313 (1981). **We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).**

In applying the principles of Collateral Estoppel, it is important to distinguish Collateral Estoppel issue preclusion, which prevents the re-determination of issues which were part of an earlier judgment, and *Res Judicata* action preclusion which prevents the subsequent filing of an action. Many of the cases in which the courts have held that *Res Judicata* does not apply to a state court judgment have been when the debtor attempts to assert that a creditor's judgment for breach of contract precludes the creditor from subsequently filing a nondischargeability action for fraud.

In *Cal-Micro, Inc. v. Cantrell,* 329 F.3d 1119 (9th Cir. 2003), the Ninth Circuit Court of Appeals restated the established rule of law that 28 U.S.C. §1738 [Fn.1.] requires the federal courts to give full faith and credit to a state's (Virginia's) collateral estoppel principles, citing to the earlier Ninth Circuit decision, *Gayden v. Nourbakhsh*, 67 F.3d 798, 800 (9th Cir. 1995). *See also Harmon v. Kobrin (In re Harmon),* 250 F.3d 1240, 1245 (9th Cir. 2001). The court applies the forum state's law of issue preclusion. *Id.*

With respect to the application of Issue Preclusion under Virginia Law, the Supreme Court of Virginia has held:

> Issue preclusion, also known as collateral estoppel, precludes "parties to the first action and their privies" from relitigating "any issue of fact actually litigated and essential to a valid and final personal judgment in the first action." *Funny Guy, LLC*, 293 Va. at 142, 795 S.E.2d 887 (emphasis added) (citation and internal quotation marks omitted). The party seeking to assert issue preclusion must establish the following:
>
> > (1) the parties [or their privies] to the two proceedings must be the same, (2) the issue of fact sought to be litigated must have been actually litigated in the prior proceeding, (3) the issue of fact must have been essential to the prior judgment, and (4) the prior

> proceeding must have resulted in a valid, final judgment against the party against whom the doctrine is sought to be applied.
>
> *Glasco v. Ballard*, 249 Va. 61, 64, 452 S.E.2d 854 (1995).

Lane v. Bayview Loan Servicing, LLC, 831 S.E. 2d 709, 714 (Va. 2019).

FN. 1. 28 U.S.C. § 1738.

> § 1738. State and Territorial statutes and judicial proceedings; full faith and credit
>
> The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

A court is not required to apply issue preclusion even if the five threshold factors are met because the court is also charged with determining whether issue preclusion "furthers the public policies underlying the doctrine." *In re Harmon*, 250 F.3d at 1245 (citing *Lucido v. Super. Ct.*, 51 Cal.3d 335 (1990)). In short, the decision to apply issue preclusion is discretionary.

The party asserting issue preclusion "carries the burden of proving a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007).

DISCUSSION

In this case, the court finds issue preclusion is in effect because the elements for willful and malicious injury by the Defendant-Debtor determined in the Charlottesville Action are essentially identical to the elements willful and malicious injury for purposes of 11 U.S.C. § 523(a)(6). The court declines the request to relitigate issues already decided. For this Motion and Adversary Proceeding, Plaintiffs have documented that the Amended Charlottesville Judgment has been entered which is based on civil conspiracy to commit assault and battery, and to commit actions of harassment based on another's ethnic, racial, or religious views / identity. Moreover, Plaintiffs have shown that the essential elements of willful and malicious injury have been committed by Defendant-Debtor by directly participating in the civil conspiracy.

Virginia conspiracy law is clear: conspirators are held liable for the actions of the co-conspirators. Mr. Damigo has been held liable of civil conspiracy, and the actions of the co-conspirators involve wilful and malicious injury. In his defense, Mr. Damigo asserts the argument that he has only been found liable

for civil conspiracy, nothing else. However, Mr. Damigo has been held jointly and severally liable for compensatory, nominal, and punitive damages for actions committed by *all* co-conspirators in the case.

The Amended Charlottesville Judgment finds that Defendant-Debtor's conduct is that which violates the laws prohibiting (1)racially, ethnically, and religiously motivated harassment and violence and (2) the assault and battery for which Defendant-Debtor, and that Defendant-Debtor conspired with others to have such acts occur. Though the "dropping of the axe" may have been done by another, Defendant-Debtor planned and conspired to have that occur.

Defendant-Debtor is not merely having liability imputed to him due to the act of some third-party, but Defendant-Debtor's culpability engaging in civil conspiracy for such "axe droppings" makes him directly liable for tortious actions that happened pursuant to the plans which he conspired with others to occur.

The award of Reimbursable Expenses in the amount of $1,266,420.84 and award of punitive damages in the amount of $58,333.33 are also nondischargeable pursuant to 11 U.S.C. § 523(a)(6) because they stem from the willful and malicious acts of the Debtor. The law in the Ninth Circuit is clear:

> We have held that "both compensatory and punitive damages are subject to findings of nondischargeability pursuant to section[ ] 523(a)(6)...." *Moraes v. Adams* (*In re Adams*), 761 F.2d 1422, 1423, 1428 (9th Cir.1985). In *Adams*, the court rejected the debtor's argument that only the punitive portion was nondischargeable under this section. It noted, " 'The exception is measured by the nature of the act, i.e., whether it was one which caused willful and malicious injuries. *All liabilities resulting therefrom are nondischargeable*.' " Id. (quoting *Coen v. Zick*, 458 F.2d 326, 329–30 (9th Cir.1972)).

In re Britton, 950 F.2d 602, 606 (9th Cir. 1991). *See also In re Klause*, 181 B.R. 487, 493 (Bankr. 9th Cir. 1995) ("Generally, punitive damages are nondischargeable under § 523(a)(6) if a bankruptcy court finds that the nature of the underlying act (from which the punitive damages arose) involves willful and malicious conduct on the part of the debtor.").

The Motion for Summary Judgment is granted, and the court shall enter judgment that the entire monetary obligation owing in the amount of $3,096,254.32, plus applicable post judgment-interest, deriving from the Charlottesville Action against Defendant-Debtor Mr. Damigo is nondischargeable as provided in 11 U.S.C. § 523(a)(6). Defendant-Debtor Mr. Damigo's Cross Motion for Summary Judgment is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Summary Judgment filed by Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker ("Plaintiffs") having been presented to the court, Findings of Fact and Conclusions of Law stated in the Civil Minutes for the hearing;

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

IT IS ORDERED that the Motion for Summary Judgment, pursuant to Fed. R. Civ. P. 56(a) as incorporated by Fed. R. Bankr. P. 7056, is granted in favor of Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker.

IT IS FURTHER ORDERED that judgment is granted for Plaintiffs and against Defendant-Debtor Nathan Damigo, on the claim for relief pursuant to 11 U.S.C. § 523(a)(6), and judgment shall be entered that the obligation owing on the judgment obtained by Plaintiffs against Mr. Damigo in the in *Elizabeth Sines et al. V. Jason Kessler*, et al., Civil Action No. 3:17-cv-00072-NKM ("Charlottesville Action"), in the amount of $3,096,254.32, plus applicable post-judgment interest, granted for the claim for relief for willful and malicious injury committed by Mr. Damigo, is nondischargeable and may be enforced, including any additional amount accruing thereto, through a district court or state court proceeding or as otherwise permitted under applicable state law to be added to the judgment.

2. **19-90003-E-7** **NATHAN DAMIGO** **CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT**
19-9006 **CAE-1**
SINES ET AL V. DAMIGO **4-3-25 [82]**

Plaintiff's Atty: Robert L. Eisenbach; Caitlin B. Munley
Defendant's Atty: Glen Keith Allen; Andrew Allen

Adv. Filed: 1/30/19
Answer: 3/13/25

Amd Cmplt Filed: 4/3/25
Answer: 4/22/25

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued from 7/17/25 by order of the court filed 7/16/25 [Dckt 130]. To be conducted in conjunction with other matters on the calendar.

The Status Conference is xxxxxxx

3. 19-90003-E-7 NATHAN DAMIGO
19-9006
SINES ET AL V. DAMIGO

CONTINUED MOTION FOR SUMMARY JUDGMENT
5-8-25 [89]

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

Local Rule 7056-1 Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Chapter 7 Trustee, and Office of the U.S. Trustee on May 8, 2025. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 7056-1. Failure of the respondent and other parties in interest to file written opposition at least 21 days prior to the hearing as required by Local Bankruptcy Rule 7056-1(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 Summary Judgment filed by Defendant-Debtor Nathan Benjamin Damigo is denied.

The Court has granted the Motion for Summary Judgment filed by Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker.

The Court shall place in the Minutes for ruling on this Motion for Summary Judgment the Minutes for the ruling on Plaintiffs' Motion, with edits to identify the Defendant-Debtor as the moving party.

4. 24-24023-E-11 UST-1 | **NEXT HILL ENTERPRISES, LLC**
Richard Jare | **MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7**
6-11-25 [106]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession and all creditors and parties in interest on June 11, 2025. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss or Convert Case is granted, and the case is dismissed.

The Assistant United States Trustee, Terri H. Didion ("U.S. Trustee"), seeks dismissal of the case on the basis that:

1. Next Hill Enterprises, LLC ("Debtor in Possession") is unable to confirm a plan of reorganization. The court granted the Motion for Relief with respect to the real property located at 425 Pleasant Valley Rd, Diamond Springs, California. This Property was the primary asset of Debtor in Possession. Therefore, the case should be dismissed. Mot. 2:3-7.

2. Debtor in Possession has failed to file the required monthly operating reports for February, March, and April of 2025. *Id.* at 2:8-10.

3. The case should be converted to one under Chapter 7 because it appears that the value of the Debtor in Possession's assets exceeds the secured claims. *Id.* at 2:11-13.

U.S. Trustee submitted the Declaration of Shane Bharat to authenticate the facts alleged in the Motion. Decl., Docket 17.

Debtor in Possession's Response

Debtor in Possession filed a Response on July 18, 2025. Docket 111. Debtor in Possession states that dismissal is appropriate, not conversion. Debtor in Possession states there is no equity in the assets of the Estate. The primary asset fo the Estate, the Property, has been sold through a nonjudicial foreclosure sale. Resp. 2:2-4. The remaining parcel of real property owned by the Estate is encumbered by the lien of a junior creditor who was shut out of receiving proceeds from the sale of the Property. *Id.* at 2:9-17. Therefore, there is no equity for creditors in a Chapter 7.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

> (4) For purposes of this subsection, the term "cause" includes—
>
> > (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
> >
> > (B) gross mismanagement of the estate;
> >
> > (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
> >
> > (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
> >
> > (E) failure to comply with an order of the court;
> >
> > (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
> >
> > (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
>
> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
>
> (K) failure to pay any fees or charges required under chapter 123 of title 28;
>
> (L) revocation of an order of confirmation under section 1144;
>
> (M) inability to effectuate substantial consummation of a confirmed plan;
>
> (N) material default by the debtor with respect to a confirmed plan;
>
> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P)failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

Collier's Treatise states on the subject:

> The first example of cause listed in section 1112(b)(4) is "substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation." In general, this standard has two basic requirements. First, it tests whether, after the commencement of the case, the debtor has suffered or continued to experience a negative cash flow, or, alternatively, declining asset values. Second, it tests whether there is any reasonable likelihood that the debtor, or some other party, will be able to stem the debtor's losses and place the debtor's business enterprise back on solid financial footing within a reasonable amount of time. Both tests must be satisfied in order for cause to exist under this subparagraph to dismiss or convert the case under section 1112(b)(4)(A).
>
> This standard asks two questions. First, does the debtor have a negative cash flow or declining asset values? This includes looking at the financial history of the debtor and determining if a pattern of decline exists. Second, will the debtor or another party be able to "stop the bleeding" and return the debtor to solid financial footing within a reasonable amount of time? The first question must be answered in the affirmative and the second in the negative for cause to exist. However, the "loss or diminution prong" is not relevant if the debtor is not an operating company but merely holds an intangible asset

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

> Congress added to the enumerated causes under section 1112(b)(4) the failure by the debtor to timely file or report information as required by other provisions of the Bankruptcy Code. By adding this provision, Congress has provided the statutory remedy for such failure where the remedy is not expressed within the Code provision setting forth the required reporting. For example, where a small business debtor fails to timely file the documents required to be appended to the petition pursuant to section 1116(1), such failure constitutes a failure to report. Similarly, section 1188(c) requires debtors proceeding under subchapter V to file a report of the debtor's efforts to obtain a consensual plan at least 14 days before the status conference scheduled by the court under section 1188(a). The failure to timely file this report constitutes cause. Nevertheless, by providing that the failure to report or file must be unexcused in order to constitute cause for dismissal or conversion, the statute provides to the court discretion in determining whether such cause has been established. "By inference the court, therefore, has the ability and some discretion to determine what is an 'excused' or 'unexcused' failure to 'timely file' the designated documents." Where the debtor subsequently cured the deficient filing and provided a good explanation for the delinquency in filing the documents required by section 1116(1), the court found that the failure to file or report was "excused."
>
> Unexcused failures to report or file required information however will constitute cause. When such unexcused failure has been demonstrated by the movant, the court shall dismiss or convert the case (or appoint a trustee or examiner), unless unusual circumstances are specifically found by the court to make such actions not in the best interest of creditors and the estate.

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

DISCUSSION

The court finds the case should be dismissed for two reasons: first, Debtor in Possession is not attempting to reorganize, and it appears Debtor in Possession lacks the means to do so with its primary asset having been sold in a nonjudicial foreclosure sale. Indeed, as of the court's review of the Docket on July 28, 2025, there is no plan of reorganization on file, this case having been filed on September 9, 2024. Assets are disappearing with the court granting relief from stay. The court finds there is cause to grant the Motion and dismiss the case pursuant to 11 U.S.C. § 1112(b)(4)(A).

Second, Debtor in Possession has not complied with its duties in filing monthly operating reports for the months of February, March, and April of 2025. Debtor in Possession offers no excuse in failing to file the monthly operating reports. Therefore, the court finds there is cause to grant the Motion and dismiss the case pursuant to 11 U.S.C. § 1112(b)(4)(F).

The court finds dismissal is the appropriate course of action. In advocating for conversion, the U.S. Trustee cites to the Schedules A/B filed at Docket 1 to indicate there is equity beyond secured claims. However, U.S. Trustee does not discuss the impact of the court granting relief from stay as to the Property,

the primary asset of the case. Debtor in Possession has indicated this sale did not result in a surplus and the junior lienholder is secured now by the remainder of the property fo the Estate.

Therefore, the Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss or Convert filed by Assistant United States Trustee, Terri H. Didion, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the case is dismissed.

5. 18-90029-E-11 FWP-33 **JEFFERY ARAMBEL** **Chris Kuhner** **CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS** **6-23-25 [2125]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on June 23, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

The Motion to Sell Property is granted.

July 31, 2025 Hearing

The court continued the hearing on this Motion as Jeffrey Arambel, Debtor, and his sister Sherry Arambel appeared at the hearing and opposed the Motion. The court set the briefing schedule of July 25, 2025 for parties to file supplemental briefs. Movant filed a Supplemental Brief on July 25, 2025. Docket 2168. Movant states:

1. As to real property, the Plan Administrator enjoys the status of a hypothetical bona fide purchaser for value ("BFP") pursuant to 11 U.S.C. §§ 544(a)(3) and 1107. Suppl. Brief 3:23-24.

2. Sherry Arambel has not identified or submitted any evidence that would have put the Plan Administrator on constructive notice that the Grant Deed is not what it says that it is or that Sherry Arambel reserved her alleged secret interest in the Subject Property. There is nothing to defeat Plan administrator's BFP status. *Id.* at 5:15-17.

3. California law is clear—constructive notice in the context of real property is provided by the recordation and the proper indexing of an instrument in the public records. Sherry Arambel's asserted interest is not in the public recording record. *Id.* at 5:21-26.

4. Debtor's actual knowledge and the Schedules are irrelevant and do not destroy BFP status. *See Wonder-Bowl Properties v. Kim* (*In re Kim*), 161 B.R. 831 (9th Cir. BAP 1993) (recognizing that actual knowledge of a debtor in possession is irrelevant); *see also In re Probasco*, 839 F.2d 1352, 1354 (9th Cir. 1988) (recognizing that a debtor's actual knowledge is irrelevant). Suppl. Brief 6:4-24.

5. Plan Administrator is also not charged with inquiry notice because there are no other facts present that would have put a hypothetical BFP on inquiry notice of Sherry Arambel's purported interest. Suppl. Brief at 7:1-24.

Sherry Arambel's Supplemental Brief

Sherry Arambel filed a Supplemental Brief on July 25, 2025. Docket 2170. Sherry Arambel states the following grounds in her supplemental pleading:

A. She asserts that the deed The deed should be reformed to properly reflect the parties' intention. The deed was mistakenly signed and should be revised pursuant to California Civil Code § 3399, a mutual mistake. *Id.*; p. 1.

B. Additional time should be given for the marketing of the property. *Id*.

C. "The Grayson Property was originally transferred to Sherry Arambel via a gift deed from her mother in 2012, establishing Sherry Arambel's 16.66% ownership interest. See Exhibit 'A' attached." *Id.*; p. 2.

D. "To assist the Debtor in obtaining a loan, Sherry Arambel intended to execute a deed of trust but mistakenly signed a grant deed, transferring title to the Debtor. See Exhibit 'B' attached." *Id*.

E. "The loan was repaid in full, and neither party realized the error until we researched the title at the Recorders Office on 7/9/25, otherwise, Sherry Arambel's interest would have been restored." *Id*.

F. "The Debtor's bankruptcy schedules stated under penalty of perjury that the Grayson Property is co-owned by Sherry Arambel and the Debtor. See Exhibit 'C' Case Number 2018-90029 A/B: Property Page 7 attached." *Id*.

G. " Sherry Arambel objects, presenting the original 2012 gift deed and mistaken grant deed from 2015 as evidence. Sherry Arambel requests restoration of her 16.66% co-ownership and additional marketing time to attain an offer closer to the $775,000 Bambas appraisal value." *Id*.

As Discussed in this decision, at the first hearing on this Motion the court directly asked counsel for the Debtor whether the Debtor was asserting that the Property was being sold for less than fair value. Debtor's counsel clearly stated on the record that no, the Debtor was not disputing the value, but that he was working with an investor to purchase the property and sought a four week continuance of the hearing.

H. "Pursuant to California Civil Code § 3399, a written instrument may be reformed for mutual mistake where it does not reflect the parties' true intent. Here, both parties intended the document as a deed of trust, not a grant deed. *See Oates v. Nelson*, 269 Cal. App. 2d 18 (1969) (reformation for mutual mistake or known unilateral mistake)." *Id*.; p. 3.

The California Court of Appeal in *Oates v. Nelson*, 269 Cal. App. 2d 18 (1969) was addressing a claim between the two parties to the documents, not a third party asserting *bona fide* purchaser status. Additionally, the appellate decision only addresses the error of the trial court in applying the statute of limitations arising under California Code of Civil Procedure § 3389.

California Civil Code § 3399 provides (emphasis added):

> § 3399. When contract may be revised
>
> **When, through** fraud or a **mutual mistake of the parties, or a mistake of one party**, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, **so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value**.

While California Civil Code § 3399 provides for contracts to be corrected, it expressly provides that such cannot be done if it results in prejudice to rights acquired by a third person, in good faith and value - such as a *bona fide* purchaser for value. Shelly cites to *Demetris v. Demetris*, 125 Cal.App. 2d 440 (1954), in support of her assertion. In that case, the dispute was between the various persons who were granted interests in the deed that was issued, asserting that the deed was improperly granting title to the property to the son, rather than as joint tenants with the father. The son then obtained a loan secured by a mortgage on the on the property. The court in *Demetris v. Demetris* that the deed could be reformed as between the family members, but that did not alter the rights of the creditor holding the mortgage, which encumbered all interests in the property. *Id*.; 445, 446. The Decision states that the lien of the creditor would be paid first, before the interests of the owners, as stated in the reformed deed, would be disbursed.

I. Sherry Arambel asserts that the property has not been properly marketed. *Id*.

This runs contrary to the statement of the owner of 83.33% interest in the Property, the Debtor, whose counsel expressly stated on the record that the Debtor did not assert that the sale price was under value, but that the Debtor had an investor he was negotiating with to buy the Property.

With her original Opposition, Dckt. 2147, Sherry Arambel states that he had an agreement/acknowledgment that if Mid Valley Foreclosed on the Property, then the Debtor would pay Sherry Arambel for her ".85 acres." Opp., p. 2-3, and Exhibit C; Dckt. 2147. Exhibit C is stated to be an

Agreement/Acknowledgment between Jeff Arambel and Sherry Arambel. The Agreement/Acknowledgment states (as summarized by the court):

A. Sherry Arambel has an .85% interest in the 41 Acre "Brown" Property in Grayson, California.

B. Jeff Arambel owns the 4.25 acre balance.

C. "Sherry Arambel's .85 acre is a small portion of a larger Multi-Property collateral for a $350,000.00 loan made by Mid Valley Financial to Jeff Arambel."

D. Jeff Arambel agrees that int eh event that Sherry Arambel should lose her .85 acre s to foreclosure by Mid Valley Financial that Jeff Arambel will owe Sherry Arambel from and/all of Jeff Arambel assets the appraised value of the .85 acre at the time of the foreclosure.

The Agreement/Acknowledgment is dated March 26, 2015. The grant deed from Sherry Arambel to Jeff Arambel was recorded on March 31, 2015.

DISCUSSION RE PLAN ADMINISTRATOR AS A BFP

The issue before the court hinges on the language of 11 U.S.C. § 544(a)(3). That Section states:

> (a)The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—
> . . .
> (3)a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

This Section makes clear that a trustee in bankruptcy obtains the status of a *bona fide* purchaser and has perfected such transfer at the time of the commencement of the case. The Plan administrator enjoys the rights of avoidance given to a trustee pursuant to 11 U.S.C. § 1107. Collier's Treatise on Bankruptcy states regarding 11 U.S.C. § 544(a)(3):

> The trustee has the rights of a bona fide purchaser of real property, whether or not such a purchaser exists, but not of personal property. State law governs who may be a bona fide purchaser and the rights of such a purchaser for purposes of subsection 544(a)(3). Pursuant to that subsection, the trustee is given the rights and powers of a bona fide purchaser of real property from the debtor if at the time of the commencement of the title 11 case a hypothetical purchaser could have obtained bona fide purchaser status, so the trustee can avoid any liens or conveyances that a

bona fide purchaser could avoid. As a hypothetical bona fide purchaser, the trustee under this subsection is deemed to have conducted a title search, paid value for the property and perfected its interest as a legal title holder as of the date of the commencement of the case. Varying results have been reached in cases concerning acknowledgments of deeds that are defective in one way or another. . .

The trustee (or debtor in possession) can exercise rights as a bona fide purchaser at the time of the commencement of the case regardless of actual knowledge. Information contained in the debtor's schedules does not constitute constructive notice.

However, the trustee's right as a bona fide purchaser does not override state recording statutes and permit avoidance of any interest of which a trustee would have had constructive notice under state law. For example, if, under state mechanics' lien law, a claimant supplying materials or labor to a debtor properly perfects its mechanics' lien by complying with all the requirements of that law, the claim will have priority over the strong arm powers of a trustee under section 544(a). If a claimant fails to properly perfect under applicable state law, its claim is deemed unperfected under the Code, will not stand against the claim of a bona fide purchaser and, thus, is subject to the trustee's exercise of the strong arm powers of section 544(a)(3). Similarly, a trustee generally can avoid an unrecorded transfer of land, but not after having been put on constructive notice or inquiry notice of a prior claim.

5 COLLIER ON BANKRUPTCY ¶ 544.05. The Ninth Circuit Court of Appeals explains regarding 11 U.S.C. § 544(a)(3):

The Bankruptcy Code, 11 U.S.C. section 544(a)(3), gives a bankruptcy trustee "strong arm powers" to avoid transfers of real property of the debtor that would be voidable under state law by a bona fide purchaser (BFP) of the property from the debtor. *Professional Investment*, 955 F.2d at 627; *Tleel v. Chbat* (*In Re Tleel*), 876 F.2d 769, 770 (9th Cir.1989); *Probasco v. Eads* (*In Re Probasco*), 839 F.2d 1352, 1354 (9th Cir.1988). While whether a trustee qualifies under section 544(a)(3) is a question of federal law, state law determines whether the trustee's status as a BFP will defeat the rights of the person against whom the trustee seeks to assert his powers. 4 Collier on Bankruptcy, ¶ 544.02, p. 544–8 to 11 (Lawrence P. King ed., 15th ed. 1992); *Tleel*, 876 F.2d at 772; *Gurs v. Walsh* (*In Re Gurs*), 27 B.R. 163, 165 (Bankr. 9th Cir.1983). Here, California law applies and will determine whether the trustee can set aside Sheila Weisman's (hereinafter "Weisman") unrecorded transfer of all of her interests in the house to Marc Peters (hereinafter "Peters").

California is a race-notice jurisdiction and requires every conveyance of real property to be recorded in order to be valid against a subsequent purchaser of the same property. Cal.Civil Code § 1214. However, an unrecorded instrument is valid as between the parties thereto and those who have notice of it. Cal.Civil Code § 1217. Although 11 U.S.C. section 544(a)(3) creates the legal fiction of a perfect BFP and explicitly renders the trustee's actual notice of prior grantees irrelevant, *Professional Investment Properties*, 955 F.2d at 627 n. 2, we have held that constructive or inquiry

notice obtained in accordance with California Civil Code section 19 can defeat a trustee's claim. *Probasco*, 839 F.2d at 1354–56.

The resolution of this case turns on California Civil Code section 19. It provides:

> Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact. . .

Whether the circumstances are sufficient to require inquiry as to another's interest in property for the purposes of section 19 is a question of fact, even where there is no dispute over the historical facts. *Probasco*, 839 F.2d at 1355; *see also Natural Resources, Inc., v. Wineberg*, 349 F.2d 685, 690 (9th Cir.1965) (under California law whether possession is such to require inquiry is question of ultimate fact), cert. denied, 382 U.S. 1010, 86 S.Ct. 617, 15 L.Ed.2d 525 (1966). If, under the circumstances, the trustee should have made an inquiry as to whether Weisman had transferred all of her interests in the Campbell residence to Peters, then section 19 charges the trustee with knowledge of the unrecorded deed that did just that. Such knowledge would prevent the trustee from prevailing in this strong arm action. *See Probasco*, 839 F.2d at 1354–56.

Resolution of the question whether the trustee was under a duty to make an inquiry depends in part on the interplay of several long established and related principles of California real estate law:

> 1) Open, notorious, exclusive, and visible possession of real property by one other than the vendor is notice sufficient to put a prospective purchaser on inquiry of any rights held by the occupant, unless there is no duty under the circumstances to make inquiry.
>
> 2) There is no duty to inquire upon a subsequent purchaser regarding any unknown claims or interests by a person in possession of real property where the occupant's possession is consistent with the record title.
>
> 3) Where possession is inconsistent with the record title and thereby creates a duty to inquire, a prospective purchaser is charged with constructive notice of all facts that would be revealed by a reasonably diligent inquiry, regardless of whether the purchaser has ever seen the property.

In re Weisman, 5 F.3d 417, 420-21 (9th Cir. 1993).

Here, the court determines Plan Administrator was not on actual, constructive, or inquiry notice of Sherry Arambel's potential interest, and so the Plan Administrator may exercise its strong arm powers operating as a BFP under 11 U.S.C. § 544(a)(3). The court reaches this conclusion because first and

foremost, Sherry Arambel has no recorded interest in the Property. The Plan Administrator could not be on actual notice without there being a recorded deed, California being a race-notice jurisdiction.

Plan Administrator was not on constructive or inquiry notice of Sherry Arambel's potential interest, either. It is undisputed that Sherry Arambel had not resided on the Property at any point. A reasonable prudential purchaser would not be expected to inquire as to various potential interests in the Property where there is no recorded deed reflecting such interest and where there is no physical occupation of the Property indicating there may be an interest. Moreover, Collier's Treatise and Ninth Circuit caselaw are clear that Debtor merely listing the interest in the Schedules is not enough to put Plan Administrator on inquiry notice. *See Chase Manhattan Bank USA, N.A. v. Taxel* (*In re Deuel*), 594 F.3d 1073, 1076-77 (2010).

While Sherry Arambel now tells the court and Jeffery Arambel put in his Schedules that Sherry Arambel has an interest in the Property, the Grant Deed their signed and had recorded tells the world another story. As set forth in the official County Records, the interests of Sherry Arambel had been transferred to Jeffery Aramble. It was Jeffery Arambel who then used that to obtain secured loans from other lenders, securing it with the Property.

In addition to the positions asserted by Sherry Arambel being contrary to the undisputed facts concerning the Grant Deed that was recorded, the actions of Jeffery Arambel make his contention that he thought the grant deed was merely a deed of trust not credible. If Jeffery Arambel thought that Sherry Arambel had only signed a deed of trust for Mid Valley Financial, never would have gone to other lenders and obtained loans by purporting to give them a deed of trust on the Property. Rather, he would have brought Sherry Arambel in every time to provide another "deed of trust."

Therefore, pursuant to Plan Administrator's strong arm powers of 11 U.S.C. § 544(a)(3), the Motion to Sell is granted.

The sale is made pursuant to 11 U.S.C. § 363(f) free and clear of the liens of:

1.

2.

3.

4.

and any interest of Sherry Arambel in the Property. Any interest of Sherry Arambel in the Property shall attach to any net proceeds, if any, from the sale after paying all of the costs of sale and the debts which are secured by the Property. If there are any net sales proceeds remaining after the payment of the claims secured by the Property, the Plan Administrator shall hold such net proceeds pending further order of the court.

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

REVIEW OF MOTION

Focus Management Group USA, Inc., the duly appointed Plan Administrator in this case pursuant to Section 1.74 of the confirmed Plan of Reorganization, ("Movant") moves the court for an order authorizing it to sell property of the estate. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as vacant land in Stanislaus County, California, containing approximately +/- 5.1 acres of land, bearing Assessor's Parcel No. 016-034-003, commonly referred to as the "Grayson/Laird Property"("Property").

The proposed purchaser of the Property is George Borden ("Buyer"), and the terms of the sale and relief requested in the Motion are:

a. The sale of the Subject Property free and clear of liens and other interests to the Buyer in exchange for the Buyer's payment of the purchase price in the amount of $300,000.00, subject to overbidding, in accordance with the terms and conditions set forth in the PSA attached to the Exhibit Document as Exhibit 1. The sale of the Subject Property is on an "AS-IS" basis and without any warranties, disclosures, questionnaires, or guarantees provided by the Plan Administrator;

b. In the alternative, the sale of the Subject Property, on the same terms and with no conditions, to the best overbidder that is approved by the Plan Administrator and the Court at the hearing on this Motion, taking into consideration all factors, and approval of a "back-up" buyer;

c. The use of bidding procedures (the "Bidding Procedures"), at the beginning of hearing on the Motion, as set forth in Section IV of this Motion;

d. The payment through escrow of: (i) any Subject Property taxes and assessments due on the Subject Property in the estimated amount of $1,800 and any pro-rated current amounts, (ii) closing costs and other expenses, (iii) broker's commission(s) (iv) U.S. Trustee fees, (v) unsecured property taxes subject to a lien estimated at $1,600, (vi) a holdback of $10,800 for estimated income taxes, (vii) approximately $9,000 in fees to Stanislaus County for administrative violations at the Subject Property, and (viii) net proceeds from the sale of the Subject Property to Summit; and

e. Waiving the 14-day stay period imposed by Bankruptcy Rule 6004(h).

Mot. 3:1-16, Docket 2125.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens. The following creditors hold liens in the Property:

Priority	**Claim Holder**	**Estimated Claim**

Tax	Stanislaus County Tax Collector	$1,800.00 (est.)
First	SBN V Ag I LLC ("Summit")	$5,500,000
Second	Summit	$1,000,000
Tax	Unsecured Property Tax Lien	$1,600.00 (est.)
Tax (Disputed)	IRS	$3,419,274.35 (disputed)

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

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in *bona fide* dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

Movant has stated that Summit has given its consent to release their respective liens, to the extent not paid in full, on the Subject Property. The Plan Administrator expects that Summit will consent to the sale of the Subject Property free and clear of their liens pursuant to 11 U.S.C. § 363(f)(2). Mot. 6:14-18, Docket 2125.

The Plan Administrator seeks authority to pay the Stanislaus County Tax Collector from the proceeds of the sale. Therefore, Stanislaus County Tax Collector's liens and any lien of the Del Puerto Water District shall be satisfied and released as paid in full. *Id.* at 6:19-21.

The preliminary title report for the Subject Property indicates that the IRS recorded a notice of federal tax lien against the Subject Property on May 3, 2024 in the amount of $3,419,274.35 (the "Fed Tax Lien"). Decl. ¶ 13, Docket 2039. The Fed Tax Lien is disputed. On its face, the Personal Tax Notice for the Fed Tax Lien is issued to Arambel personally under his personal social security number. It is not directed to the Estate or the Estate's tax ID number. The Plan Administrator has filed all state and federal tax returns required to be filed for the Arambel Estate for the tax years ending November 30, 2019, 2020,

2021, 2022, and 2023 under the Estate's tax ID number, aka Federal Employer Identification Number or FEIN. None of these Estate tax returns show any unpaid amounts owed by the Estate. Mot. 6:22-7:2.

Collier on Bankruptcy provides a substantive review of the *bona fide* dispute basis for selling free and clear of a lien interest, stating:

> Sale When Interest in Bona Fide Dispute; § 363(f)(4)
>
> A sale may proceed free and clear of liens or interests if they are in bona fide dispute.[59] The trustee has the burden of demonstrating that a bona fide dispute exists.[60] To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt.[61] The court is not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists.[62] In one case, however, the court held that a *bona fide* dispute did exist because the adverse interest holders disputed whether the sale could have been free and clear of their interests under a rent stabilization law.[63] Such post-hoc application of this paragraph could raise due process concerns.
>
> In *Rodeo Canon Development Corp.*,[64] the Court of Appeals for the Ninth Circuit distinguished between a *bona fide* dispute over the validity of the nondebtor party's interest in the property and a dispute over the debtor's interest. In the latter, the court may not authorize a sale under section 363 until the court resolves the dispute and determines that the debtor has an interest that can be sold. Until that occurs, section 363 does not even apply. The Bankruptcy Appellate Panel for the Ninth Circuit interpreted *Rodeo Canon* as stating a prudential rule of efficient dispute resolution, not a rule prohibiting a bankruptcy court from determining ownership in a contested matter.[65] Therefore, the bankruptcy court may determine the issue in the contested matter initiated by the motion for an order approving the sale. However, the Ninth Circuit withdrew its opinion two weeks after the appellate panel's decision,[66] so whether the appellate panel's decision will have any more than persuasive effect is unclear.
>
> 64 *Warnick v. Yassian (In re Rodeo Canon Dev. Corp.)*, 362 F.3d 603 (9th Cir. 2004) (withdrawn based on parties' subsequent stipulation that operative facts on which court based its opinion were not correct).

3 Collier on Bankruptcy P 363.06

In addition to filing these returns, the Plan Administrator has submitted requests for the IRS to promptly review each of these returns within sixty (60) days pursuant to Bankruptcy Code section 505(b). The time for such review has long past without any response from the IRS resulting in the Estate's tax returns having cleared. Therefore, pursuant to 11 U.S.C. § 363(f)(4), the Property should be sold free and clear of the IRS tax lien. Mot. 7:2-10.

For this Motion, Movant has established grounds for selling free and clear from the liens of Summit and the IRS pursuant to 11 U.S.C. § 363(f)(2) and (4). The dispute of the IRS' claim is colorable,

Movant presenting evidence that the tax lien is against property interests of Jeffrey Arambel in his personal capacity, not against property of the bankruptcy estate.

Upon the close of escrow, Stanislaus County Tax Collector can release its lien upon being paid in full. The court does not now with this Order release the liens of Stanislaus County Tax Collector pursuant to 11 U.S.C. § 363(f).

Proposed Overbidding Procedures

(a) Valuation of the consideration being received by the estate from the sale of the Subject Property at $300,000.00;

(b) the initial overbid must be at least $10,000.00 higher than the $300,000.00 gross sale price that the estate will receive from a sale to the Buyer, and each successive bid thereafter must be at least $5,000.00 more than the previous highest qualified overbid or such other amounts as the Plan Administrator determines are appropriate;

(c) prior to the date of the hearing and before being permitted to bid, any overbidder must deliver to the Plan Administrator a deposit by cashier's check payable to Focus Management Group USA, Inc., Plan Administrator on behalf of the estate, in an amount equal to $15,000.00, and if an overbid is successful, the deposit by the successful overbidder shall be non-refundable; in addition, any person or entity seeking to overbid must identify the proposed overbidder and any principals, owners, members, or shareholders of the bidder and evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transaction(s), the adequacy of which the Plan Administrator and their advisors will determine in their sole discretion;

(d) any overbid must be on the same terms and conditions as the PSA, and any overbidder must agree to sign a purchase and PSA for the purchase of the Subject Property in substantially the same form and terms as the PSA, except that all contingencies shall be deemed satisfied, waived, or otherwise removed and close of escrow shall occur within 30 days after entry of an order approving the sale or as otherwise agreed; and

(e) any overbidder seeking to appear at the hearing must make arrangements to appear by telephone. Instructions for telephonic appearance may be obtained from counsel for the Plan Administrator as identified in the caption of this Motion; and

(f) approval by the Court of the second highest bid as a back-up buyer on the same terms and conditions.

Mot. 8:20-9:18.

Real Estate Commission

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately $15,000 to Pearson Realty. Pearson Realty represents both Buyer and Movant, so Pearson Realty is seeking the full $15,000 commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so that the sale can move forward immediately upon entry of the Bankruptcy Court order approving the sale, Movant not anticipating any opposition.

The Plan Administrator has clearly shown that the interests, if any, of Sherry Arambel are in *bona fide* dispute. Further, the court has continued the hearing on this Motion for two weeks to allow for supplemental briefing concerning the rights and interests being asserted by Sherry Arambel.

The request to waive the fourteen (14) day stay of enforcement is waived for cause show.

DISCUSSION

At the time of the hearing, Sherry Arambel stated here Opposition to the Motion to Sell, as well as having filed a written opposition on July 25, 2025 (Dckt. 2147). Sherry Arambel asserts that she has a 15.55% ownership interest in the Property and she is not being compensated for her interest. Additionally, she states that based on the $775,000 appraisal obtained by brother, the Debtor, the sale for $300,000 is not reasonable.

With respect to the claim of ownership, Sherry Arambel states:

> I Sherry Arambel mistakenly signed a Grant Deed dated 3/31/2015, see Exhibit 'B' which I obtained from the Stanislaus County Recorder Office on 7/9/25, rather than what I thought was a Deed of Trust to accommodate a much more extensive refinancing with Mid Valley Financial involving seven other Properties in which I had no ownership interest. Furthermore, I signed an agreement/acknowledgment dated 3/26/2015 See Exhibit 'C' attached which was to assure me that in the event Mid Valley Foreclosed on the Grayson Property that I would be paid back for my interest. All of the Mid Valley Financial loans were subsequently Paid back in full and thus no issues if I had signed a Deed of Trust rather than mistakenly signing a Grant Deed.

Opposition, p. 2-3; Dckt. 2147.

Attached as Exhibit B to the Opposition, Sherry Arambel provides the court with a grant deed, which she has authenticated and is certified by the Stanislaus County Clerk, stating that:

> FOR A VALUABLE CONSIDERED, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGE, Sherry A. Arambel, a married woman dealing with her sole and separate property

hereby GRANT(S) to Jeffery Arambel, an unmarried man

the following described real property in the County of Stanislaus, State of California

[Exhibit A is attached to the Grant Deed Describing the Property]

Dated March 25, 2015.

Exhibit B; Dckt. 2147 at 11-15.

Sherry Arambel states that she signed this grant deed, which has been recorded by the Stanislaus County Recorder and is part of the real estate records for that County. The grant deed states that Sherry Arambel has granted to Jeffery Arambel the property, which she states is the Property now being sold by the Plan Administrator under Jeffery Arambel's confirmed Chapter 11 Plan in this Bankruptcy Case.

While stating that she thought the Grant Deed was a Deed of Trust, there is no issue as to whether she signed it or whether it has been recorded.

Sherry Arambel directs the court to review Schedule A/B filed in the Bankruptcy Case by Jeffery arambel in which he states that Jeffery Arambel owns an 83% interest, which property is co-owned with Sherry Arambel.

The court conducted a brief discussion with Sherry Arambel, who is appearing in *pro se*, about basic California real property law and the title records maintained by the county. As noted by the counsel for the Plan Administrator, when Jeffery Arambel filed this Chapter 11 case, the trustee (or debtor in possession exercising the powers of a trustee, 11 U.S.C. § 1107) is given the various powers and rights, including the rights of:

> (3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

11 U.S.C. § 544(a)(3). With respect to this federal law, Collier on Bankruptcy provides the following summary:

> ¶ 544.05 Status of Trustee as Bona Fide Purchaser of Real Property under Section 544(a)(3)
>
> The trustee has the rights of a bona fide purchaser of real property,[1] whether or not such a purchaser exists, but not of personal property.[2] State law governs who may be a bona fide purchaser and the rights of such a purchaser for purposes of subsection 544(a)(3).[3] Pursuant to that subsection, the trustee is given the rights and powers of a bona fide purchaser of real property from the debtor if at the time of the commencement of the title 11 case a hypothetical purchaser could have obtained bona fide purchaser status,[4] so the trustee can avoid any liens or conveyances that a bona fide purchaser could avoid.[5] As a hypothetical bona fide purchaser, the trustee under this subsection is deemed to have conducted a title search, paid value for the

property and perfected its interest as a legal title holder as of the date of the commencement of the case.[6] Varying results have been reached in cases concerning acknowledgments of deeds that are defective in one way or another.[7]

The fact that a state later amends a recording statute cannot affect the trustee's status under section 544 as a bona fide purchaser fixed as of the commencement of the case.[8] As one court explained:

> Upon commencement of a bankruptcy case, the trustee is vested with the rights and powers of a bona fide purchaser of real property without notice of any prior claim thereto. No intervening change in law may be applied retroactively to strip the trustee of previously vested rights under either federal or state law. … [T]he Trustee's rights … vested at the time the petition was filed and the bankruptcy estate was established.[9]

But if, before the commencement of the case, the state amends the recording statute to validate retroactively previously defectively recorded deeds, the trustee is bound by that validation.[10] Again, section 544(a) speaks as of the commencement of the case.

The trustee (or debtor in possession) can exercise rights as a bona fide purchaser at the time of the commencement of the case regardless of actual knowledge.[11] Information contained in the debtor's schedules does not constitute constructive notice.[12]

However, the trustee's right as a bona fide purchaser does not override state recording statutes and permit avoidance of any interest of which a trustee would have had constructive notice under state law.[13] For example, if, under state mechanics' lien law, a claimant supplying materials or labor to a debtor properly perfects its mechanics' lien by complying with all the requirements of that law, the claim will have priority over the strong arm powers of a trustee under section 544(a). If a claimant fails to properly perfect under applicable state law, its claim is deemed unperfected under the Code, will not stand against the claim of a bona fide purchaser and, thus, is subject to the trustee's exercise of the strong arm powers of section 544(a)(3).[14] Similarly, a trustee generally can avoid an unrecorded transfer of land, but not after having been put on constructive notice or inquiry notice of a prior claim.[15]

1 State law determines what is real property. *See New Asset Subsidiary L.L.C. v. Zelms (In re BFA Liquidation Trust)*, 331 B.R. 907, 913 (D. Ariz. 2005) (holding that in Arizona a deed of trust is not real property).

2 *Nickless v. Reid (In re Reid)*, 435 B.R. 810, 813 (Bankr. D. Mass. 2010)*; In re Prior*, 176 B.R. 485, 494 (Bankr. S.D. Ill. 1995); *In re Cosmopolitan Aviation Corp.*, 34 Bankr. 592, 596 (Bankr. E.D.N.Y. 1983); *see In re Marino*, 813 F.2d 1562, 1566 (9th Cir. 1987).

3 *Crane v. Richardson (In re Crane)*, 742 F.3d 702, 706, 70 C.B.C.2d 1226 (7th Cir. 2013); *Owens-Ames-Kimball Co. v. Michigan Lithographing Co. (In re Michigan Lithographing Co.)*, 997 F.2d 1158, 1159 (6th Cir. 1993); *Briggs v. Kent (In re Professional Inv. Props. of Am.)*, 955 F.2d 623, 627, 26 C.B.C.2d 528 (9th Cir. 1992), *cert. denied,* 506 U.S. 818, 113 S. Ct. 63, 121 L. Ed. 2d 31, *reh'g denied*, 506 U.S 1014, 113 S. Ct. 638, 121 L. Ed. 2d 569 (1992); *Mashburn v. Arzate (In re Arzate*), 611 B.R. 446 (Bankr. W.D. Okla. 2019); *Kittery Point Partners, LLC v. Bayview Loan Servicing, LLC (In re Kittery Point Partners, LLC)*, 2018 Bankr. LEXIS 859 at *16 (Bankr. D. Me. Mar. 12, 2018) (quoting Treatise); *In re Mosello*, 193 B.R. 147, 151 (S.D.N.Y. 1996). Whether a trustee can take free of a constructive trust is discussed in *Marcus v. Horton (In re Horton*), 618 B.R. 22 (Bankr. D.N.M. 2020). See also ¶ 544.02[3] *supra.*

4 Owens-Ames-Kimball Co. v. Michigan Lithographing Co. (In re Michigan Lithographing Co.), 997 F.2d 1158, 1159 (6th Cir. 1993); *Gaffney v. U.S. Dep't of Transportation (In re Premier Airways, Inc.*), 303 B.R. 295, 298 (Bankr. W.D.N.Y. 2003) (stating that under section 544(a)(3) the trustee is not required to prove his or her bona fides).

5 *In re Weisman*, 5 F.3d 417, 422, 29 C.B.C.2d 1045 (9th Cir. 1993) (avoidance denied where open possession gave bona fide purchaser constructive notice); *Gaffney v. U.S. Dep't of Transportation (In re Premier Airways, Inc.)*, 303 B.R. 295, 298 (Bankr. W.D.N.Y. 2003) (finding the rights of the trustee defeat the claim of the Federal Aviation Administration to an equitable lien on land that the debtor acquired through a grant under the Airport Improvement Program of the Department of Transportation) (citing Treatise). Where a trustee sought to defeat a claim of homestead, the court in *Michael v. Martinson (In re Michael)*, 49 F.3d 499, 502, 32 C.B.C.2d 1813 (9th Cir. 1995), stated that section 544(a)(3) is inapplicable to defeat a homestead interest where state law prevents a homestead from being perfected against a bona fide purchaser. *Compare Watkins v. Watkins*, 922 F.2d 1513, 1514 (10th Cir. 1991) (denying avoidance where under Oklahoma law a divorce decree should have placed potential purchaser on notice) with *Manchester v. Neundorf (In re Neundorf)*, 2022 Bankr. LEXIS 91 (Bankr. W.D. Okla. Jan. 13, 2022) (different result reached where neither divorce decree nor conveyance had been recorded).

6 *Midlantic Nat. Bank v. Bridge (In re Bridge),* 18 F.3d 195, 204, 30 C.B.C. 2d 1152 (3d Cir. 1994); *Dobin v. Sheehan (In re Eight Bulls, LP)*, 439 B.R. 370 (Bankr. D.N.J 2010) (notice-race statute).

7 *Compare Gordon v. Terrace Mtg. Co. (In re Kim)*, 571 F.3d 1342 (11th Cir. 2009) (mortgage not avoided because acknowledgment substantially complied with formalistic requirements as permitted by state law), with *Pingora Loan Servicing, LLC v. Scarver (In re Lindstrom),* 30 F.4th 1086 (11th Cir. 2022) (defective attestation in recorded mortgage did not give constructive notice); *Kelley v. Thomasville Nat'l Bank (In re Taylor)*, 2016 Bankr. LEXIS 4202 (Bankr. M.D. Ga. Dec. 7, 2016) (same), and *Rieser v. Fifth Third Mtg. Co. (In re Walsh)*, 407 B.R. 883 (Bankr. S.D. Ohio 2009) (state law treated defectively acknowledged mortgage as unrecorded), *and DeGiacomo v. CitiMortgage, Inc. (In re Nistad*), 2012 Bankr. LEXIS 367 (Bankr. D. Mass. Jan. 30, 2012).

8 *Baker v. CIT Group/Consumer Fin. Inc. (In re Hastings)*, 353 B.R. 513, 518–19 (Bankr. E.D. Ky. 2006).

9 *Select Portfolio Services, Inc. v. Burden (In re Trujillo)*, 378 B.R. 526, 538 (B.A.P. 6th Cir. 2007).

10 *Mostoller v. Equity One, Inc. (In re Hickman)*, 367 B.R. 620, 625 (Bankr. E.D. Tenn. 2007). The Ohio legislature, fed up with bankruptcy trustees avoiding defectively recorded mortgages under section 544(a)(3), amended its recording statute to overturn those cases. The statutory modification fell short, however, and a defectively recorded mortgage was avoided under section 544(a)(1). *Harker v. PNC Mortg. Co. (In re Oakes)*, 917 F.3d 523 (6th Cir. 2019).

11 *SunTrust Bank, N.A. v. Macky (In re McCormick)*, 669 F.3d 177, 180, 67 C.B.C.2d 68 (4th Cir. 2012) (interpreting North Carolina's pure race recording statute); *Huber v. Danning (In re Thomas)*, 147 B.R. 526, 529 (B.A.P. 9th Cir. 1992), *aff'd*, 32 F.3d 572 (9th Cir. 1994), cert. denied, 513 U.S. 1079, 115 S. Ct. 727, 130 L. Ed. 2d 631 (1995); *Bank of America N.A. v. Welsh (In re Welsh)*, 539 B.R. 713 (Bankr. D. Del. 2015); *Twentieth Century Land Corp. v. Landmark North Freeway, Ltd. (In re Bill Heard Enters., Inc.)*, 420 B.R. 553, 560 (Bankr. N.D. Ala. 2009); *Gray v. Burke (In re Coletta Bros.)*, 172 B.R. 159, 162 (Bankr. D. Mass. 1994); *Frontage Dev. Corp. v. Furman*, 156 B.R. 125, 130 (Bankr. S.D.N.Y. 1993).

12 *See* ¶ 544.02[2] supra; *Dobin v. Sheehan (In re Eight Bulls, LP)*, 439 B.R. 370, 375 (Bankr. D.N.J. 2010) (quoting Treatise).

13 *Hamilton v. Washington Mut. Bank F.A. (In re Colon)*, 563 F.3d 1171, 1180 (10th Cir. 2009) (person engaging in title search has constructive notice of the contents of every document in the chain of title); *United States v. Smith (In re Hagendorfer)*, 803 F.2d 647, 649, 15 C.B.C. 2d 1243 (11th Cir. 1986) (same); *Anderson v. Conine (In re Robertson)*, 203 F.3d 855, 43 C.B.C.2d 1130 (5th Cir. 2000); *Perosio v. NBT Bank Nat'l Ass'n (In re Perosio*), 364 B.R. 868, 873 (N.D.N.Y. 2006) (a prospective purchaser is deemed to have constructive notice of any deed or instrument properly recorded, and is presumed to have known every fact disclosed or to which an inquiry suggested by the record would have led); *Wallach v. Countrywide Home Loans, Inc. (In re Sheppard),* 471 B.R. 45 (Bankr. W.D.N.Y. 2012) (under state law, lis pendens is sufficient to impart constructive notice of defectively recorded mortgage); *see also Bank of America N.A. v. Gallo (In re Gallo*), 539 B.R. 88 (Bankr. E.D. N.C. 2015 (same); *Green v. HSBC Mortgage Servs., Inc. (In re Green)*, 68 C.B.C.2d 367, 474 B.R. 790 (Bankr. D. Md. 2012) (same).

14 *Knopfler v. Addison Bldg. Material Co.*, 28 C.B.C.2d 467, 149 B.R. 522, 526 (Bankr. N.D. Ill. 1993). The same result followed in the case of an unperfected easement in *Macejko v. Solis (In re Laconi*), 2024 Bankr. LEXIS 125 (Bankr. N.D. Ohio Jan. 18, 2024).

15 *Argent Mortgage Co., LLC v. Drown (In re Bunn)*, 578 F.3d 487 (6th Cir. 2009); *In re Professional Inv. Props. of Am.*, 955 F.2d 623, 627, 26 C.B.C.2d 528 (9th Cir.), *cert. denied*, 506 U.S. 818, 113 S. Ct. 63, 121 L. Ed. 2d 31, reh'g denied, 506 U.S. 1014, 113 S. Ct. 638, 121 L. Ed. 2d 569 (1992); *In re Seaway*

> *Exp. Corp.*, 912 F.2d 1125, 1128 (9th Cir. 1990). But when state law does not imply constructive notice when a deed is recorded out of the chain of title, the trustee will not be deemed to have constructive notice. *Twentieth Century Land Corp. v. Landmark North Freeway, Ltd. (In re Bill Heard Enters., Inc.)*, 420 B.R. 553, 560–61 (Bankr. N.D. Ala. 2009). Open possession will put a trustee on constructive notice even if no deed or other instrument regarding the property has been filed. *Hopkins v Martinez (In re Espino)*, 648 B.R. 235 (Bankr. D. Idaho 2022).

5 Collier on Bankruptcy P 544.05 (16th 2025)

As addressed below, Jeffery Arambel, the Debtor is represented by counsel. While Jeffery Arambel and Sherry Arambel were in court the day of the hearing, Mr. Arambel's counsel was appearing telephonically.

Sherry Arambel questioned how the Property had been marketed, the duration of the marketing (stating it was only four weeks), and that the contract price was substantially less than that stated in the Appraisal Report presented by Jeffery Arambel. Because both Sherry Arambel and Jeffery Arambel's counsel raised questions about the marketing of the property, the court had the Broker (who was in court) take the stand so that they could put their questions directly to the Broker.

The court noted on the record that at the hearing Sherry Arambel was consulting extensively with Jeffery Arambel during the hearing. Sherry Arambel did state her position to the court. However, at one point she requested that she be allowed to have Jeffery Arambel to take the stand and describe the Property that is the subject of this Motion. The court declined that request, noting that Jeffery Arambel is represented by counsel, and that his counsel had chosen not to request to allow his client to testify. The court commented that Jeffery Arambel could not use his sister as a device to provide testimony (and possible argument) that was not being advanced by his counsel.

Additionally, that while Jeffery Arambel had submitted an Appraisal Report stating a higher value for the Property, his counsel stated that they were not asserting that point at the hearing, but rather requesting a short extension of time so that Jeffery Arambel could have an investor who is interest in the Property seek to purchase it.

Jeffery Arambel Opposition

Jeffery Arambel's counsel appeared at the hearing to state the Debtor's opposition to the Motion. Counsel was also able to file written Opposition on July 15, 2025. Dckt. 2149. The Opposition first notes that on Schedule A/B the Debtor listed his sister, Sherry Arambel, as having a 16% interest. *Id*.; p. 2:5-14. The Opposition further states/admits that "current title to the Property is in the name of Jeffrey Arambel as 100% owner, although the Debtor acknowledges and agrees that the Property is co-owned with Sherry." *Id*. This states that while title is held 100% interest, Jeffery Arambel states that there is an unrecorded interest he believes that Sherry Arambel has.

The Opposition grounds, stated in Part II of the Opposition, are that the Property has not been adequately marketed, it was marketed for four weeks or less, and that the contract price does not represent the fair market value of the Property. *Id*.; p. 2:17-23. The Opposition then states that it is not clear who was given notice of the hearing and the potential for overbidders. *Id*.; p. 2:24-25. Third, it states that the Debtor

listed Sherry Arambel as having an interest in the Property on the Schedules, but the Motion does not seek to sell the interest of a co-owner. *Id*.; p. 2:26-3:4.

At the hearing, the court specifically asked counsel for the Debtor whether they were presenting the contention that the Property has a value greater than the contract amount presented by the Trustee and would pursue that grounds as part of the Opposition. **Counsel for the Debtor clearly stated on the record that no, the Debtor was not advancing that argument, but that Debtor Jeffery Arambel had been working with a potential investor to purchase the Property.**

To be clear, Debtor's counsel stated to the court that the Debtor was not pursuing the opposition that the Property was worth more than the proposed sales price, but the Debtor was requesting time to get his potential investor to bid on the Property as part of the Plan Administrator's sale of the Property through this Motion.

The "Opposition" of the Debtor stated on the record is that Debtor was requesting a short continuance, four weeks, to try and get the investor to step up to purchase the Property. After some discussion, the court concluded that two weeks was reasonable, which Debtor's counsel stated was sufficient.

Questioning of Broker

Though live testimony is not generally presented at a hearing like this, given that Sherry Arambel and Jeffery Arambel's counsel had questions about the marketing of the Property, the court had Sullivan Grosz, the Broker employed by the Plan Administrator, sworn in and take the stand to address questions by Sherry Arambel and Jeffery Arambel's counsel. The Broker provided information concerning his experience in marketing properties, the listings of this Property, and the marketing efforts and communications made, as is stated on the record. (with the audio available on the court's Docket for listening to by any party in interest).

Continuance of Hearing

This Motion was filed using the notice procedure as provided in Local Bankruptcy Rule 9014-1(f)(2), which allows parties to orally present their bases for opposition and if colorable grounds are stated further briefing or proceedings may be ordered. The court specifically questioned whether the Debtor was pursuing an opposition based on the appraisal and the value of the Property. Debtor's counsel stated no, but just that the Debtor was seeking additional time to get his investor "to the table." With respect to the interest asserted in the Property by Sherry Arambel, the court cannot determine that through a Motion to Sell property. An adversary proceeding is required to determine the rights and interests in property. Fed. R. Bankr. P. 7001(b). The Motion does not seek to have the court authorize the sale of any interests of a co-owner or the interests, if any, of Sherry Arambel.

The court continues the hearing on the Motion to Sell Property is granted continued to 10:30 a.m. on July 31, 2025. Supplemental pleadings concerning the asserted interest of Sherry Arambel, the recorded grant deed, and whether her interest prevails over the bona fide purchaser status of the Trustee/Debtor in Possession for the Bankruptcy Estate, and related issues shall be filed and served by July 25, 2025.

This affords the Debtor the time to further work with the potential investor and get the investor to step up to the table and put his money down. It also affords Sherry Arambel to seek to obtain counsel to

assert any rights and interests she may have in the Property notwithstanding the grant deed she admits signing (though now says mistakenly believing it was a deed of trust), the provisions of 11 U.S.C. § 544(a)(3), and the California Real Property Recording Statutes.

The hearing on the Motion to Sell Property is continued to 10:30 a.m. on July 31, 2025. Supplemental pleadings concerning the asserted interest of Sherry Arambel, the recorded grant deed, and whether her interest prevails over the *bona fide* purchaser status of the Trustee/Debtor in Possession for the Bankruptcy Estate.

Plan Administrator shall draft an order consistent with this ruling and lodge the proposed order with the court.

6.	**25-20329-E-11 CAE-1**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC.**	**CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 1-27-25 [1]**

Item 6 thru 7

Debtor's Atty: Gabriel E. Liberman

Notes:
Continued from 7/10/25 to be conducted in conjunction with the continued hearing on the Motion to Use Cash Collateral.

Stipulation to deem Proof of Claim Timely Filed [Sapper West, Inc.] filed 7/16/25 [Dckt 83]; Order filed 7/18/25 [Dckt 84]

The Status Conference is xxxxxxx

7.	**25-20329-E-11 GEL-1**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. Gabriel Liberman**	**CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION , MOTION SCHEDULING DEADLINES RELATING TO A FINAL HEARING ON USE OF CASH COLLATERAL 1-30-25 [8]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on January 30, 2025. By the court's calculation, 14 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.

No opposition was stated at the hearing.

The Motion for Authority to Use Cash Collateral is xxxxxxx.

July 31, 2025 Hearing

The court continued the hearing as counsel for the Debtor in Possession reported that the supplemental pleadings had not been filed due to a clerical error. On July 10, 2025, Debtor in Possession filed its Supplemental Pleadings. Docket 78. Debtor in Possession states it has been operating in compliance with the cash collateral orders and proposes an extension of the cash collateral budget generally in line with the prior cash collateral budget. Suppl. 3:7-9.

On July 21, 2025, Creditor Great American Insurance Company ("GAIC") filed an Opposition. Docket 85. GAIC states:

1. Debtor in Possession has not been paying adequate protection payments to GAIC from February through July 2025. *Id.* at 2:1-7.

2. Counsel for Zurich American Insurance Company ("Zurich") has informed GAIC's counsel that Zurich has not received its payments either. *Id.* at 2:8-9.

3. GAIC has now filed a Proof of Claim as Claim No. 19-1 dated April 24, 2025 as a secured claim in the amount of $11,162,408.03, which does not include interest or other charges. The proposed adequate protection payments of $2,500 per month are too low and the payments should be increased to GAIC to $10,000 per month. *Id.* at 2:3-8.

Teresa L. Polk, Esq., counsel for GAIC provides her Declaration with the Opposition. Dckt. 86. Her testimony includes that she has not received any of the required $2,500 a month adequate protection payment. She also checked with her client and they report not having received any adequate protection checks. Dec., ¶ 2; Dckt. 86.

Ms. Polk has requested that counsel for the Debtor in Possession send her evidence of any payments being made to GAIC and has not received any response. *Id.*; ¶ 4.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

California Environmental Systems, Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral in form of account receivables, equipment, machinery, tools and materials which may be used to generate post-petition proceeds, and to grant adequate protection to the secured creditors, Bank of America, N.A., Zurich American Insurance Company, Great American Insurance Company, Collectronics of California, assignee for Gary Looney dba Aaction Rents, Internal Revenue Service and Employment Development Department, that may have an interest in the Cash Collateral.

Debtor in Possession is a full-service mechanical contractor specializing in the installation and design/build of plumbing, heating, and air conditioning systems. With a focus on serving the healthcare, institutional, commercial, and industrial sectors across the western United States. At its peak, Debtor once employed 115 team members and experienced steady growth, fueled by a dedication to its employees, customers, and the construction industry. As of the Petition Date, Debtor employs a team of 55 professionals. Mot. 2:18-23.

Debtor in Possession provides the following table for which security interests are asserted in the cash collateral and the amount of corresponding adequate protection payments:

No.	Recorded	Creditor	Claim Amount	Proposed Adequate Protection Payment
1	2/10/2020	Bank of America, N.A.	$814,213.55	$7,000.00
2	12/3/2021	Zurich American Insurance Company	$332,045.10	$1,000.00
3	11/17/2023	Great American Insurance Company	$12,100,034.47	$2,500.00
4	2/15/2024	Collectronics of California, assignee for Gary Looney dba Aaction Rents	$7,994.89	$500.00
5	5/10/2024	Internal Revenue Service (940/941) for periods 09/30/2023, 12/31/2023	$961,332.89	$1,000.00
6	8/5/2024	Employment Development Department	$223,586.45	$1,000.00
7	11/25/2024	Internal Revenue Service (941) for period 06/30/2024	$40,052.86	$1,000.00
8	1/6/2025	Internal Revenue Service (941) for period 03/31/2024	$142,504.85	$1,000.00
			$14,621,765.06	$15,000.00

Debtor in Possession additionally proposes to use cash collateral for the expenses related to operating the business including equipment expenses, insurance expenses, payroll expenses, and other customary expenses associated with running the business. Interim Budget, Ex. A, Docket 11.

Debtor in Possession proposes that the cash collateral be approved on an interim basis through February 28, 2025, pending a final hearing, with a 15% variance permitted.

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

At the hearing, counsel for the Debtor in Possession addressed the rent expense of $15,000.00, excluding it from the interim budget. The Landlord is the Debtor's principal's Father and that matter will be addressed further, the U.S. Trustee having objected to the payment.

Counsel for the Debtor in Possession also stated that a second amendment to the budget was to increase the adequate protection payment to Bank of America to $8,000 (from the original budget amount of $7, 000). Counsel for Bank of America concurred with the amendment.

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 January 27, 2025, through February 28, 2025, including required adequate protection payments to the various creditors. 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 court continues the hearing to2:00 p.m. on March 5, 2024, for a final hearing.

MARCH 5, 2025 HEARING

The court continued the hearing on this Motion, having granted the prior Motion on an interim basis. On or before February 21, 2025, opposition was to be filed. A review of the Docket on February 28, 2025 reveals nothing regarding the Motion has been filed with the court.

At the hearing, no opposition was stated to the Motion. The one creditor appearing, which has an interest in the cash collateral being used stated it had no opposition to the use of cash collateral on the terms stated herein.

The Motion for Authority to Use Cash Collateral is granted, and the hearing is continued to 10:30 a.m. on July 10, 2025. Supplemental Pleadings for the further use of cash collateral shall be filed and served on or before June 27, 2025.

July 10, 2025 Hearing

The court continued the hearing on the Motion having granted authority to use cash collateral through July 31, 2025. Order, Docket 55. Debtor in Possession was to file supplemental pleadings for the continued use of cash collateral by June 27, 2025. A review of the Docket on July 8, 2025 reveals no further supplemental pleadings have been filed.

At the hearing, counsel for the Debtor in Possession reported that the supplemental pleadings had not been filed due to a clerical error. The Debtor in Possession requested a continuance of the hearing. Creditor did not oppose the requested continuance.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:30 a.m. on July 31, 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 Authority to Use Cash Collateral filed by California Environmental Systems, 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 for Authority to Use Cash Collateral is **XXXXXXX**.

8. 23-23834-E-7 DNL-23 | **ANTONETTE TIN** | **Peter Macaluso** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)** **7-3-25 [360]**

Item 8 thru 10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 3, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 for Allowance of Professional Fees is granted.

Nikki B. Farris, the Chapter 7 Trustee ("Trustee") moves the court for an order approving first and final fees for her general counsel, Desmond, Nolan, Livaich, & Cunningham ("DNLC").

Fees are requested for the period October 30, 2023, through and including June 30, 2025. The order of the court approving employment of DNLC was entered on March 12, 2024. Dckt. 112. Trustee requests fees in the amount of $318,016.08 and costs in the amount of $6,983.92 on behalf of DNLC.

APPLICABLE LAW
Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that DNLC's services for the Estate were extremely comprehensive and detailed. Indeed, this case involved months of litigation, contested matters, negotiation, and ultimately settlement. This was a complicated case from the outset with two debtors owning various parcels of real property through various trusts. The case resulted in a success with properties being litigated and creditors being paid. Trustee Farris believes that, as of the date of the hearing on this Application, there will be sufficient funds in the estate to pay the fees and costs requested in this Application; 100% to priority claims totaling $143,516.04 and 0.05% or $5,036.30 to other general unsecured claims totaling $109,108.39 after paying 80% or $594,169.35 to the Claimants pursuant to the DNL-6 settlement agreement. The court finds the services were beneficial to the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED
Fees

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

Administration: DNLC expended 3.50 hours, which included reviewing the complaints and documents in all three adversary proceedings. Mot. 7:21-22.

Asset Marketing & Sales: DNLC expended 101.50 hours, which included communications with Trustee Farris, real estate professionals, Counsel for the Debtor and Creditor, Lenders and possible buyers for the care home businesses; drafting of motions to sell Estate Properties and appearing at the hearings on the sale motions. *Id.* at 7:23-27.

Case Administration: DNLC expended 8.40 hours, which included communications with the Trustee, Counsel for the Debtor and Counsel for Creditor regarding conversion of the Tin Case to Chapter 7; consolidation of the converted Tin Case and the LLC Case; and issues regarding fire insurance and code enforcement. *Id.* at 7:27-8:3.

Litigation & Contested Matters: DNLC expended 367.90 hours, which included preparing notice of removal of state court action; communications with Trustee Cusick's office regarding objections to Chapter 13 plan, possible dismissal or conversion of Chapter 13 case; drafting and filing of motion to convert Tin Case to Chapter 7; communications regarding consolidation of the Tin Case and LLC Case, drafting and filing of the motion to consolidate; drafting and filing of multiple motion for turnover; drafting and filing complaints in 3 separate Adversary Proceedings; review and analysis of multiple related trust documents; discussions with main creditor regarding substitution of Trustee Farris as plaintiff in litigation,

drafting and filing of motion to substitute; negotiating, drafting settlement agreement with main creditor and filing motion to approve the same. *Id.* at 8:4-13.

Hybrid: DNLC expended 0.10 hours, which included communication with the Trustee and Counsel for Creditor regarding the motion to convert the Chapter 13 case to one under Chapter 7. *Id.* at 8:14-16.

Asset Analysis & Recovery: DNLC expended 29.50 hours, which included communicating with the Trustee Farris, Counsel for the Debtor and Creditor regarding collection of rents from the running care-homes; consolidation of the Tin Case and LLC Case; potential buyer for businesses; valuations of the properties as businesses and solely residential; requests for Debtor financial information; research regarding Debtor undisclosed asset in prior Chapter 13 and implications of the same; and review of the turnover orders. *Id.* at 8:17-22.

Asset Disposition: DNLC expended 8.30 hours, which included communications with Trustee Farris, Counsel for the Debtor, Counsel for Creditor, Broker and Title regarding issues that needed to be cleared up as to potential title defects concerning the sales of the Estate Properties. *Id.* at 8:23-26.

Relief From Stay: DNLC expended 0.40 hours, which included communications with credit counsel about stay relief motion and the scope of the order. *Id.* at 8:27-28.

Meetings of and Communications with Creditors: DNLC expended 7.90 hours, which included communications with the Trustee, Counsel for the Debtor and Creditor regarding the 341 meeting of creditors; preparing for and attending the 341 meeting of creditors; and discussions regarding transfer avoidance issues. *Id.* at 9:1-4.

Fee/Employment Applications: DNLC expended 53.70 hours, which included preparing the applications to employ DNLC; preparing the applications to employ the Broker and includes preparing this application for fees. *Id.* at 9:5-7.

Tax Issues: DNLC expended 0.10 hours, which included communications with Counsel for Creditor regarding payroll tax issue. *Id.* at 9:8-9.

Claims Administration & Objections: DNLC expended 1.90 hours, which included analyzing filed proofs of claim and evidence supporting same; communicating with the Trustee and the claimant regarding the same. *Id.* at 9:10-12.

Settlement/Non-Binding ADR: DNLC expended 90.10 hours, which included negotiating settlement agreements and stipulations; negotiating resolution of the adversary proceedings; drafting settlement agreements; preparing motions to approve the settlement agreements; communicating with the Trustee and the relevant interested parties regarding the settlement agreements and motions to approve the same; and conducting mediation which led to settlement agreement regarding estate property and the parties interests in the same. *Id.* at 9:13-18.

Other Case Assessment, Development and Administration: DNLC expended 1.00 hours, which included review of motion to consolidate; motion to approve settlement; and reading the transcript from the motion to consolidate. *Id.* at 9:19-21.

Discovery/Written Discovery/Other Discovery: DNLC expended 32.30 hours, which included multiple applications for 2004 examinations including the Debtor, affiliates of the Debtor, and banks; review and analysis of responses and documents produced in response to subpoenas; and communications regarding the same. *Id.* at 9:22-25.

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

Names of Professionals	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
J. Russell Cunningham	442.70	$450.00 $495.00 $550.00	$235,706.50
Kristen D. Renfro	0.70	$300.00	$210.00
Benjamin C. Tagert	40.60	$275.00 $325.00	$12,945.00
Talvinder S. Bambhra	195.00	$425.00	$82,875.00
James N. Silverthorn	1.5	$190.00	$285.00
Mikayla E. Kutsuris	26.10	$195.00	$5,089.50
Total Fees for Period of Application			$337,111.00

DNLC is requested a slightly reduced amount of fees in the amount of $318,016.08.

Costs & Expenses

DNLC also seeks the allowance and recovery of costs and expenses in the amount of $6,983.92 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10	$997.20
Postage		$974.30
Miscellaneous		$1,455.21
Deposition Costs		$612.00
Travel Expenses		$109.21

Court Costs		$2,836.00
Total Costs Requested in Application		$6,983.92

FEES AND COSTS & EXPENSES ALLOWED
Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that DNLC effectively used appropriate rates for the services provided. First and Final fees in the amount of $318,016.08 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $6,983.92 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$318,016.08
Costs and Expenses	$6,983.92

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Nikki B. Farris, the Chapter 7 Trustee ("Trustee") on behalf of her general counsel, Desmond, Nolan, Livaich, & Cunningham ("DNLC") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Desmond, Nolan, Livaich, & Cunningham is allowed the following fees and expenses as a professional of the Estate:
>
> Desmond, Nolan, Livaich, & Cunningham, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $318,016.08
> Expenses in the amount of $6,983.92,

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

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

9.	**23-23834-E-7** **DNL-25**	**ANTONETTE TIN** **Peter Macaluso**	**MOTION FOR COMPENSATION FOR NIKKI FARRIS, CHAPTER 7 TRUSTEE(S)** **7-3-25 [366]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 3, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Trustee Fees 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 for Allowance of Trustee Fees is granted.

Nikki Farris, the Chapter 7 Trustee, ("Applicant") for the Estate of the substantively consolidated cases of Antonette Tin and The Retreat at Royal Green, LLC, makes a Request for the Allowance of Fees and Expenses in this case. Applicant a capped amount of fees in the amount of $125,000 for her work in connection with the case.

However, as discussed below, it appears Applicant made an error in computing Chapter 7 Trustee's fees. The court finds the proper amount of the award of fees to be $105,521.96.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate were extremely comprehensive and detailed. Indeed, this case involved months of litigation, contested matters, negotiation, and ultimately settlement. This was a complicated case from the outset with two debtors owning various parcels of real property through various trusts. The case resulted in a success with properties being litigated and creditors being paid. Trustee Farris believes that, as of the date of the hearing on this Application, there will be sufficient funds in the estate to pay the fees and costs requested in this Application; 100% to priority claims totaling $143,516.04 and 0.05% or $5,036.30 to other general unsecured claims totaling $109,108.39 after paying 80% or $594,169.35 to the Claimants pursuant to the DNL-6 settlement agreement. The court finds the services were beneficial to the Estate and were reasonable.

FEES REQUESTED
Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $2,742,398.87	$137,119.94
Calculated Total Compensation	**$142,869.94**
Total First and Final Fees Requested	$125,000

However, this computation is incorrect. 11 U.S.C. § 326(a) provides:

(a)In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

As shown in the above computation provided by Applicant, there is a request for 5% of the next $2,742,398.87. That is not what the Code provides. The Code states that a chapter 7 trustee can be paid 5% of the next $950,000 and then 3% of any amounts in excess of the first $1,000,000. The court's computation is as follows:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$47,500.00
3% of the balance of $1,742,398.87	$52,271.96
Calculated Total Compensation	**$105,521.96**
Total First and Final Fees Requested	$125,000

The court authorizes fees in the amount of $105,521.96 based on the proper statutory computation. Applicant has not provided any reasons why the court should enter an increased award of $125,000.

At the hearing, **xxxxxxx**

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $105,521.96 are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $1,218,408.07 of unencumbered monies to be administered. Applicant's efforts have resulted in an impressive realized gross of $2,751,898.87 recovered for the estate. Mot. 5:19-25.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees $105,521.96

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Nikki Farris, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Nikki Farris is allowed the following fees and expenses as trustee of the Estate:

Nikki Farris, the Chapter 7 Trustee

Fees in the amount of $105,521.96

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

10. 23-23834-E-7 NBF-2

ANTONETTE TIN
Peter Macaluso

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)
7-3-25 [354]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 3, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Nikki B. Farris and the Estate of the substantively consolidated cases of Antonette Tin and The Retreat at Royal Green, LLC, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 20, 2024 through July 2, 2025. The order of the court approving employment of Applicant was entered on January 17, 2024. Applicant requests $15,900.50 in fees and $91.45 in expenses.

APPLICABLE LAW
Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A

professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include tax consultation services and administrative functions for preparing this Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Analyzed Fund Transfer Activity at Retreat at Royal Green, LLC: Applicant spent 7.8 hours in this category. This category included reviewing and analyzing five years of bank records for various bank accounts involving transfers of funds to various individuals from The Retreat at Royal Green bank accounts, including communication with counsel and preparation of a detailed report of findings, and review of incorporated financial information in counsel's legal filings with the court. Mot. 2:16-26.

Tax Return Preparation: Applicant spent 8.9 hours in this category. This category included preparing 2023 estate income tax returns for Antonette Tin bankruptcy estate and 2023 federal and California S Corporation income tax returns for The Retreat at Royal Green, LLC ("RRG"), including reconstruction of RRG financial statements from bank records. Mot. 3:1-10.

Analyzed Tax Implications of Real Property Sales and Proposed Settlement Payments: Applicant spent 17.0 hours in this category. This category included reviewing and analyzing numerous individual and business entity tax returns, financial records, closing statements and banking records, and other documents provided to determine the capital gains as a result of various real property asset sales, and the computation of proposed distribution to judgment creditor based on cash position less specified payroll related and administrative expenses to be included in court filings for a proposed settlement, including reconstruction

of depreciation history for real properties in light of conflicting historical tax information, and communication with counsel to discuss provided documents and discuss settlement detail. Mot. 3:12-21.

Preparing the Fee Application: Applicant spent 1.2 hours in this category.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	16.4	$445.00	$7,298.00
Michael Gabrielson	18.5	$465.00	$8,602.50
Total Fees for Period of Application			$15,900.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $91.45 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	----------	$13.35
Copying Charges	----------	$78.10
Total Costs Requested in Application		$91.45

FEES AND COSTS & EXPENSES ALLOWED
Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $15,900.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $91.45 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$15,900.50
Costs and Expenses	$91.45

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Nikki B. Farris and the Estate of the substantively consolidated cases of Antonette Tin and The Retreat at Royal Green, LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael Gabrielson is allowed the following fees and expenses as a professional of the Estate:
>
> Michael Gabrielson, Professional employed by the Chapter 7 Trustee
>
> | | |
> |---|---|
> | Fees | $15,900.50 |
> | Costs and Expenses | $91.45, |
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as the Accountant for Chapter 7 Trustee Nikki B. Farris.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

11. 25-21657-E-7 KMT-2 | **JAHIR J/FAVIOLA ALVAREZ** Eric Seyvertsen | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** 6-27-25 [23]

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

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 June 27, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is xxxxxxx.

The Chapter 7 Trustee, Loris L Bakken ("Trustee") objects to Jahir J Ayala Alvarez and Faviola Salcedo Alvarez's ("Debtors") claimed exemptions under California law against eight (8) firearms identified as:

(a) $519.97 for the Springfield Armory XD Tactical 9mm;

(b) $319.99 for the American Tactical 1911 22 Long Rifle;

(c) $499.99 for the Sig Sauer P365 9mm Luger;

(d) $550.00 for the Springfield Armory Saint Victor;

(e) $289.99 for the CZ 612 12 Gauge Shotgun;

(f) $729.99 for the Sig Sauer P320-M18 9mm;

(g) $529.86 for the Tipmann Arms M4-22; and

(h) $479.99 for the Kel-Tec Sub2000 9mm (collectively, "Eight Firearms").

Trustee objects as follows:

A. Debtors have claimed their interest in the Eight Firearms as exempt under Cal. Code of Civil Procedure § 704.020 in full. The claim of exemption asserted under Cal. Code of Civil Procedure § 704.020 must be "ordinarily and reasonably necessary to, and personally used or procured for use by" the Debtors at their principal place of residence, and the Eight Firearms are not ordinarily and reasonably necessary. Obj. 1:25-28, Docket 23.

B. Debtors have the burden of proof in showing how the Eight Firearms may be exempted under California law. The Debtors have merely explained that the Eight Firearms are needed for "personal security" and for the "shooting range." No further explanation was provided. The need for eight separate firearms is excessive, and the Debtors must demonstrate how the claims are reasonable. Otherwise, the objection should be sustained. *Id.* at 3:19-25.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on July 13, 2025. Docket 33. Debtor states:

1. Debtors assert that each firearm serves a distinct and legitimate household function, including: Home defense, Family safety education, and Recreational target shooting. Opp'n 1:26-2:3.

2. Each firearm is functionally distinct, used lawfully, and tailored to the needs of a five-person household living in a high-crime area. *Id.* at 2:5-6.

3. Trustee has failed to articulate any individualized factual or legal basis for why any particular firearm does not meet the "ordinarily and reasonably necessary" standard. *Id.* at 2:26-27.

4. *In re Dunnaway*, 466 B.R. 515 (Bankr. E.D. Cal. 2012), emphasizes a case-by-case approach. Courts should evaluate the debtor's actual use of the item, its practical or recreational function, and the cultural and community norms surrounding similar ownership. *Id.* at 4:27-5:3.

5. Where, as here, a five-person household uses firearms for defense, education, and recreation in a high-crime environment, the exemption squarely fits the statute's intent. *Id.* at 5:4-45.

6. Below is a table of the following function of each firearm:

Firearm	**Primary Function**
Sig Sauer P320-M18 (9mm)	Jahir's primary home defense weapon
CZ 612 12-Gauge Shotgun	Faviola's designated home defense firearm
Tipmann M4-22 (.22 LR Rifle)	Firearm safety training for the 13-year-old daughter

Springfield Saint Victor (5.56mm)	Recreational target shooting; skill development
Kel-Tec Sub2000 (9mm Carbine)	Recreational shooting; compact backup
American Tactical 1911 (.22 LR)	Low-recoil training pistol for safety instruction
Springfield XD Tactical (9mm)	Emergency preparedness training; compact handling practice
Sig Sauer P365 (9mm)	Compact platform familiarity; family training tool

Attached to the Opposition, improperly and in violation of LOCAL BANKR. R. 9004-2(c)(1), are Debtors' Declarations authenticating the facts alleged in the Opposition. Debtors also attach exhibits to the Opposition that show the exact firearms and their current values.

TRUSTEE'S REPLY

Trustee filed a Reply to Debtor's Opposition on July 24, 2025. Trustee states Debtors fail to meet their burden to demonstrate that eight separate firearms are ordinary and reasonably necessary for the use at their principal residence. Reply 1:25-27, Docket 35.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Cal. Code Civ. P. § 704.020 permits an exemption in household goods and states:

> (a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempt in the following cases:
>
> > (1) If ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence.
> >
> > (2) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if ordinarily and reasonably necessary to, and personally used or procured for use by, the spouse and members of the spouse's family at the spouse's principal place of residence.
>
> (b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

> (1) The extent to which the particular type of item is ordinarily found in a household.
>
> (2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

Both Parties cite the court to *In re Dunnaway*, 466 B.R. 515 (Bankr. E.D. Cal. 2012) in support of their position. The court agrees that *Dunnaway* colors the standard for exemption firearms pursuant to Cal. Code Civ. P. § 704.020 well. *Dunnaway* states:

> While the Trustee argues for a *per se* rule prohibiting the exemption of firearms as "household property," such a rule would ignore the BAP's analysis in Lucas and would fail to acknowledge the breadth and flexibility of the relevant California exemption statutes. There is no reason why firearms of moderate value, owned and used for hunting, protection, or general recreational purposes cannot exist in the same category as golf clubs, camera equipment, and an exercise bike. . .
>
> This inquiry would require the court to consider several factors, including, but not limited to, the debtor's personal use and purpose for keeping the firearm(s), any potential recreational value for the firearm(s), the reasonable necessity of the firearm(s), and the local community standards. Such use does not necessarily have to be for survival but may be for recreational purposes as well, as long as use of the firearm "permit[s] debtors to physically and mentally 'recharge their batteries' thereby improving both their performance and contribution to society and themselves." *Thornton*, 91 B.R. at 916; *see also Lucas*, 77 B.R. at 245 (considering the "manner of comfortable living to which [the debtor] has become accustomed " (emphasis added)).
>
> The court should also consider whether the firearm is reasonably necessary to the debtor. The term "reasonably necessary" is not meant to be defined as "indispensable." *See Independence Bank*, 275 Cal.App.2d at 88, 79 Cal.Rptr. 868. Additionally, reasonable necessity should not limit a debtor to only the bare essentials necessary for survival. *See In re Frazier*, 104 B.R. 255, 260 (Bankr.N.D.Cal.1989) (allowing debtor to exempt two, rather than one, televisions). At the same time, the court cannot allow a debtor to abuse the California exemption scheme by claiming an exemption in luxury items. *Id.*
>
> Lastly, evidence regarding the general custom and practice in the debtor's community may also be relevant to the inquiry. This would provide the court with information to show whether a firearm is "ordinarily found in a household" within the debtor's community, and may support a finding that the debtor's use and ownership of a firearm is ordinary and reasonable under the circumstances.

In re Dunnaway, 466 B.R. at 524-25.

In this case, Debtors, living in a household of five (including three minor children), are attempting to claim eight separate firearms as exempt under Cal. Code Civ. P. § 704.020. The court finds that the claimed exemption is proper as to the following firearms: Sig Sauer P320-M18 (9mm), CZ 612

12-Gauge Shotgun, Tipmann M4-22 (.22 LR Rifle), and Springfield Saint Victor (5.56mm). The court disallows the exemption as to the following firearms: Kel-Tec Sub2000 (9mm Carbine), American Tactical 1911 (.22 LR), Springfield XD Tactical (9mm), and Sig Sauer P365 (9mm). The court addresses each firearm in turn.

Sig Sauer P320-M18 (9mm)

This weapon is claimed as exempt as it is Debtor Jahir's primary self-defense weapon. Self-defense is indeed reasonably necessary to household use, especially as Debtor Jahir has provided testimony that the Debtors live in a high-crime neighborhood in Stockton. Decl. ¶ 3, p. 13, Docket 33. Exempting a firearm need not be for survival purposes as firearms may be exempted for recreational purposes. However, the exemption appears clearly properly claimed especially when the firearm is used for survival purposes.

CZ 612 12-Gauge Shotgun

This weapon is claimed as exempt as it is Debtor Faviola's primary self-defense weapon. Each Debtor is entitled to a firearm for self-defense purposes. It is reasonably necessary for household use for Debtor Faviola to have access to her own firearm in the event of an emergency in a survival scenario.

Tipmann M4-22 (.22 LR Rifle)

This weapon is claimed as exempt for firearm safety-training for Debtors' 13-year old daughter. The court finds that safety training is reasonable necessary for household use. Specifically, as Debtors live in a high crime area, it is a useful skill in a survival situation for Debtors' daughter to be prepared. The court also notes that this weapon, a .22 caliber assault rifle, is a good sized caliber for training an inexperienced or young person in self-defense. The exemption is properly claimed in this firearm.

Springfield Saint Victor (5.56mm)

Finally, Debtors are entitled to claim as exempt the Springfield Saint Victor (5.56mm) as a recreational target-shooting weapon and for training purposes. This weapon is like the big brother of the Tipmann M4-22 and has clear training, recreational, and self-defense uses reasonably necessary for household use.

The court notes that the four firearms permitted to be claimed exempt are unique and separate calibers and do not otherwise appear duplicative in their claimed uses.

Kel-Tec Sub2000 (9mm Carbine)

This weapon was claimed exempt for recreational shooting and as a compact backup. The court finds that the given reasons are duplicative and claiming this firearm as exempt becomes a luxury and not reasonably necessary for household use. Specifically, the Kel-Tec Sub2000 (9mm Carbine) shares the same characteristics as the Tipmann and the Springfield. It is a rifle-style weapon used for training and recreation. As for being a compact backup, the Tipmann is suitable for such a use, and so is the Sig Sauer P320-M18 (9mm). For these reasons the exemption is disallowed in the Kel-Tec Sub2000 (9mm Carbine).

American Tactical 1911 (.22 LR)

This weapon was claimed as exempt being a low-recoil training pistol for safety instruction. However, this reason again is duplicative and claiming this firearm as exempt becomes a luxury and not reasonably necessary for household use. The court finds the Sig Sauer P320-M18 (9mm) provides a similar low-recoil option for training. Nothing about the Sig Sauer P320-M18 (9mm) being used for self-defense would limit the Sig Sauer P320-M18 (9mm) being used for training purposes as well. In fact, it is beneficial to use your self-defense firearm for training so the user is more familiar with the weapon in a survival emergency. It is true that the .22 has a sightly less recoil that the 9mm; however, the difference is negligible and allowing an exemption in the American Tactical 1911 (.22 LR) would be ultimately duplicative. For these reasons the exemption is disallowed in the American Tactical 1911 (.22 LR).

Springfield XD Tactical (9mm)

This weapon was claimed as exempt being a weapon for emergency preparedness training and compact handling practice. Again, the court finds the Sig Sauer P320-M18 (9mm) provides a similar option for training. These two weapons are the same size and caliber and handle similarly. Allowing the exemption in the Springfield XD Tactical (9mm) would be duplicative. The Springfield XD Tactical (9mm) is a luxury item and this claim exemption is disallowed.

Sig Sauer P365 (9mm)

Finally, this weapon was claimed as exempt being a weapon for compact platform familiarity and family training tool. . Again, the court finds the Sig Sauer P320-M18 (9mm) provides a similar option for training. These two weapons are a similar size and caliber and handle similarly. Allowing the exemption in the Sig Sauer P365 (9mm) would be duplicative. The Sig Sauer P365 (9mm) is a luxury item and this claim exemption is disallowed.

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 Objection to Claimed Exemptions filed by The Chapter 7 Trustee, Loris L Bakken ("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 Objection is sustained, and the claimed exemptions for the following assets:
>
> 1. $479.99 for the Kel-Tec Sub2000 9mm;
>
> 2. $319.99 for the American Tactical 1911 22 Long Rifle;
>
> 3. $519.97 for the Springfield Armory XD Tactical 9mm; and
>
> 4. $499.99 for the Sig Sauer P365 9mm Luger;

are disallowed in their entirety.

IT IS FURTHER ORDERED that claimed exemptions for the following assets:

1. $729.99 for the Sig Sauer P320-M18 9mm;

2. $289.99 for the CZ 612 12 Gauge Shotgun;

3. $529.86 for the Tipmann Arms M4-22; and

4. $550.00 for the Springfield Armory Saint Victor;

are allowed in their entirety.

12. 24-25180-E-11 RFL-10 | **KAMALJIT KALKAT** | **Mark Melickian**

MOTION TO AUTHORIZE AND APPROVE BID PROCEDURES AND/OR MOTION TO APPROVE THE NOTICE PROCEDURES, MOTION TO SET A DATE FOR THE SALE HEARING TO CONSIDER APPROVAL OF THE SALE FREE AND CLEAR TO THE SUCCESSFUL BIDDER
7-8-25 [174]

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 July 8, 2025. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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, ----------.

The Motion is denied without prejudice.

Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K"), the above captioned debtors and debtors in possession ("Debtors in Possession") move the court for an order (a) authorizing and approving procedures for the Debtors in Possession with respect to the sale of certain real property, (b) approving the form and manner of the sale notice (the "Notice Procedures"), and (c) setting the time, date, and place of a hearing (the "Sale Hearing") to consider the sale of the Debtors' in Possession right, title, and interest in the Property free and clear of all liens, claims, encumbrances, and interests. Movant states:

1. The proposed procedures contemplate the appointment of an independent sale officer (the "Independent Sale Officer") employed by the estate to act on the Debtors' in Possession behalf, in consultation with the Debtors in Possession and the Debtors' in Possession Court-approved counsel, financial advisors, and real estate broker (collectively, the "Advisors"), with

respect to all aspects of the sale process, including, without limitation, the qualification of bidders and the selection of the most favorable bid. Mot. 3:1-6.

2. As a backstop to a refinancing, the Debtors in Possession will offer the Orchards for sale. If and to the extent that a concrete refinancing is secured on or before the Bid Deadline (as defined below), the Debtors in Possession, in their sole discretion, reserve the right to forgo the sale of all or any portion of the Orchards. The Debtors in Possession also may, in their business judgment, as well as in consultation with their Advisers, and if approved by the Independent Sales Officer, determine not to sell some of the Orchards until a later date. *Id.* at 4:9-14.

3. There are a series of "key dates and deadlines" summarized in the table found on pages four and five of the Motion. Mot. 4:23-5:17.

4. There are a series of bid procedures suggested on pages five through nine of the Motion. *Id.* at 5:21-9:15.

5. Debtors in Possession propose that any objections to the Sale (a "Sale Objection") must (a) be in writing; (b) comply with the Bankruptcy Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Court, 501 I Street, Courtroom 33, 6th Floor, Department E, Sacramento, California 95814, together with proof of service, on or before 4:00 p.m. (prevailing Pacific Time) seven (7) days before the Sale Hearing (the "Sale Objection Deadline") and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the following parties (collectively, the "Objection Notice Parties"): (i) Debtors' in Possession counsel, Raines Feldman Littrell LLP, Attn: Robert S. Marticello, Esq., 4675 MacArthur Ct, Suite 1550, Newport Beach, California 92660 (rmarticello@raineslaw.com), and Mark S. Melickian, Esq., 30 North LaSalle Street, Suite 3100, Chicago, IL 60602 (mmelickian@raineslaw.com); and (ii) the Office of the United States Trustee for Region 17, Attn: Deanna K. Hazelton, Esq., 501 I Street, Suite 7-500, Sacramento, California 95814, (deanna.k.hazelton@usdoj.gov). Mot. 10:2-13.

6. At the Sale Hearing, the Debtors in Possession will seek Court approval of the Sale to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances pursuant to § 363 of the Bankruptcy Code, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Property prior to the Sale. The Debtors in Possession will also seek an order of the Court prohibiting all persons holding liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, from asserting them against the Successful Bidder under § 363(f) of the Bankruptcy Code. Mot. 11:14-21.

7. The Successful Bidder Should Be Granted the Protection of Bankruptcy Code Section 363(m). *Id.* at 16:14-15.

8. Debtors in Possession seek authority to sell and transfer the Debtors' in Possession right, interest, and title in the Orchards to the Successful Bidder free and clear of all liens, claims, encumbrances, and interests, except as set forth in the proposed purchase and sale agreement, with such liens, claims, encumbrances, and interests, to attach to the proceeds of the sale of the Orchards, subject to any rights and defenses of the Debtors in Possession and other parties in interest with respect thereto. *Id.* at 17:13-19.

CREDITOR'S OPPOSITION

Creditors ATG Capital 401(k) Plan; Austin Tarzana Group, LLC and The Juliet Family Trust, Andrew L. Jones Defined Benefit Plan, Andrew Louis Jones Trustee of the Groundhog Trust dated Feb 2, 2022 and any amendments thereto and Private Money Solutions, Inc. ("Creditors") filed an Limited Opposition on July 17, 2025. Docket 202. Creditors want any order to not be binding on a Trustee if appointed in this case, or a Chapter 7 Trustee.

It is concerning Debtors in Possession are moving to employ an ISO. It appears a Chapter 11 Trustee would be necessary if an ISO is necessary to handle affairs of the Estate.

DEBTORS' IN POSSESSION REPLY

Debtor in Possession filed a Reply on July 24, 2025. Docket 223. Debtors in Possession state that the ISO is not further cause for appointment of a Chapter 11 Trustee. In fact, the ISO will lighten the burden on the estates' professionals related to sale-related activities. The ISO will also allow the Debtors' principal, Kamal Kalkat, to focus on managing farming operations at the Orchards as they enter harvest season. Reply at 3:1-3.

DISCUSSION

The court finds that the Motion simply asks for too much, he relief requested becoming muddled, and so it is denied without prejudice. There is omnibus relief requested here, including a request to appoint an ISO who is going to apparently monitor bids and referee the sales process. Then, there is relief requested that the court approve the bid and sale procedures themselves. The Motion then requests that the sale be made free and clear of liens and the buyer be subject to 11 U.S.C. § 363(m) protections.

As to the ISO, it is unclear what the roles and responsibilities will be. It appears the ISO is going to judge whether a bid is competitive or not, and eventually to whom the various properties will be sold. However, it appears Debtors in Possession retain veto power, and so the ISO lacks any real power to actually effectuate the sale. Debtors in Possession, if they believe it is necessary to hire such a professional, may bring a Motion to Employ the ISO and detail what his or her role will be, and the matter can be properly considered there.

The sale and the bid procedures appear reasonable and may be adopted in practice by the Debtors in Possession as they proceed in selling assets of the Estate. However, this District's Local Rules already provide for how and when opposition to a Motion can be filed. Local Bankruptcy Rule 9014-1(f).

Regarding 11 U.S.C. § 363(m) protection and 11 U.S.C. § 363(f) sale free and clear, the court has not been presented with any evidence that would allow it to enter such orders. Requests for 11 U.S.C. § 363(m) protection and for selling assets free and clear of liens may be made with sufficient evidence at the time of the Motion to Sell. If the Motion simply states that Debtors in Possession will be requesting this relief at the time of the sale, then they are certainly free to do so and that does not require an order from court.

Debtors in Possession may operate the Estate and work to liquidate assets in a reasonable manner. The court does not now approve this Motion, but as the court denies the Motion without prejudice, Debtors in Possession are free to file the Motion again before the Judge whom this matter is being transferred, Judge Klein.

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 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 without prejudice.

FINAL RULINGS

13. 25-90259-E-7 DCJ-2 | **DUAL ARCH INTERNATIONAL, A CALIFORNIA CORPORATION** **David Johnston** | **MOTION TO EXTEND TIME 6-29-25 [55]**

Final Ruling: No appearance at the July 31, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 30, 2025. By the court's calculation, 31 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 denied, this case having been converted to one under Chapter 7 on July 17, 2025. Docket 63.

The case having been converted to one under Chapter 7 on July 17, 2025, the relief requested is moot. The Motion is denied.

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 denied, this case having been converted to one under Chapter 7 on July 17, 2025. Docket 63.

14. 25-90173-E-11 DCJ-3 | **MONTFER PROPERTY INVESTMENTS LLC** **David Johnston** | **MOTION TO EXTEND DEADLINE FOR FILING SUBCHAPTER V PLAN** **6-30-25 [34]**

Final Ruling: No appearance at the July 31, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 30, 2025. By the court's calculation, 31 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 July 31, 2025.

Debtor in Possession moves the court for an order extending the deadline for filing a Subchapter V plan by 31 days to July 31, 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. The primary reason this additional time is needed is that the 18 month old daughter of Jose Montejano, the Debtor's Managing Member, has been in University of California San Francisco Medical Center ("UCSF") for a serious respiratory problem and hydrocephalus, causing seizures and an inability to breathe. This hospitalization lasted 38 days. Mot. 2:17-22.

2. There are two creditors in this case whose claims are secured by real property. The remaining assets are nominal. The dividend on general unsecured claims will be modest dividend so a delay of 31 days in the plan confirmation process will not prejudice creditors. *Id.* at 3:10-13.

The Chapter 11 Subchapter V Trustee, Walter Dahl ("Trustee"), filed a Non-Opposition on July 1, 2025. Docket 38.

DISCUSSION

In this case, the court concludes a 31-day extension is warranted. Debtor's infant daughter has been undergoing medical issues that have delayed the filing of the Plan. These circumstances are outside the Debtor in Possession's control.

Therefore, pursuant to 11 U.S.C. § 1189(b), the court extends the deadline for filing a Chapter 11 Subchapter V Plan to June 30, 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 July 31, 2025.