UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 7, 2025 at 10:30 a.m.

1.	**22-90415-E-7** **KMT-3**	**JOHN MENDOZA** **Peter Macaluso**	**MOTION FOR TURNOVER OF PROPERTY** **7-24-25 [587]**

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 on July 24, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Turnover 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 Turnover is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 22622 Twain Harte Dr, Twain Harte, CA 95383 ("Property").

DEBTOR'S NON-OPPOSITION

Debtor John Mendoza filed a Non-Opposition on July 30, 2025. Docket 591. Debtor explains he has been living at the Property for many years and is finding a place to relocate. Debtor states he will have found a place to relocate by the hearing date of this Motion and does not oppose the Motion.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 Turnover of Property filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Turnover of Property is granted.

IT IS FURTHER ORDERED that John Mendoza ("Debtor"), and any other persons occupying the Property, and each of them, shall deliver on or before **XXXXXXX**, possession of the real property commonly known as 22622 Twain Harte Dr, Twain Harte, CA 95383 ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

2. 24-90615-E-11 RLL-8 | **JEA2, LLC** / **Anthony Asebedo** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF REYNOLDS LAW, LLP FOR ANTHONY ASEBEDO, DEBTORS ATTORNEY(S)** **7-17-25 [151]**

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 July 17, 2025. By the court's calculation, 21 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 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.

Reynolds Law, LLP, the Law Firm ("Applicant") for JEA2, LLC, the Chapter 11 Debtor in Possession ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 1, 2025 through July 11, 2025. The order of the court approving employment of Applicant was entered on November 8, 2024, with employment effective as of October 17, 2024. Dckt. 20. Applicant requests fees in the amount of $29,600.00 and expenses in the amount of $130.53

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 Applicant's services for the Estate include generally administering the case including having a Disclosure Statement heard and approved and the proposed Plan to be confirmed. 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.

General Case Administration (9.2 hours for $3,480.00): Applicant communicated with the Debtor's managing member regarding deadlines and administrative issues in the chapter 11 case; responded to inquiries from various creditors and their attorneys; reviewed, filed, and served Monthly Operating Reports; answered questions posed by the Debtor's managing member regarding administrative requirements and deadlines. Mot. 3:20-24.

Employment/Fee Applications (1.9 hours for $760.00): Drafted response to motion filed by secured creditor in the related chapter 11 case of Jeffrey Arambel (the Debtor's managing member) for relief from the automatic stay; reviewed the creditor's reply pleadings with view towards criticism of appraisal work done for JEA2. *Id.* at 4:3-6.

Relief From Stay Issues (4.7 hours for $1,880.00): Investigated and filed response to motion filed by Summit in the related chapter 11 case of Jeffrey Arambel (the Debtor's managing member) for relief from the automatic stay, where such motion initially appeared to encompass JEA2's real property. Mot. 4:11-14.

Claims Issues (1.7 hours for $680.00): Reviewed proofs of claim as filed and communicated with JEA2's manager regarding same and allowance process; communicated with counsel for creditor G&F Ag Services regarding potential compromise regarding claim amount. *Id.* at 4:7-10.

Business Operations (0.5 hours for $200.00): Communicated with JEA2's managing member regarding collection of rent from tenant and payment of ongoing business expenses. *Id.* at 4:11-13.

Plan and Disclosure Statement (56.1 hours for $22,360.00): The bulk of services provided by Counsel were this category, where the court ultimately confirmed JEA2's proposed Plan of Reorganization, and where services included but were not limited to: completion of drafts and final filed versions of Plan and Disclosure Statement and a modification to the Plan; communications with the U.S. Trustee and creditors and their attorneys regarding terms of Plan and treatment of claims; court appearances on approval of Disclosure Statement and on confirmation of the Plan; preparation and filing of all Plan confirmation materials, including ballots, ballot tabulation, declarations of appraiser, broker, and JEA2's manager in support of confirmation, and brief in support of confirmation of Plan; received and tabulated ballots; communicated with JEA2's professionals regarding terms of Plan and confirmation process; communicated with and answered questions of JEA2's manager regarding confirmation process; negotiated terms for treatment of secured creditor's claim and drafted Plan-confirmation order to incorporate agreed terms. *Id.* at 4:14-26.

Cash Collateral (0.8 hours for $320.00): Applicant made court appearance on cash collateral motion (Docket Control No. RLL-5) and drafted order granting motion. *Id.* at 4:27-28.

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**
Anthony Asebedo, Attorney	75.3	$388.84 (blended)	$29,600.00
Total Fees for Period of Application			$29,600.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$28,186.00	$28,186.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$28,186.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $130.53 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $1,983.47.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Mileage	----------	$70.00
Post office costs		$60.53
Total Costs Requested in Application		$130.53

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. Second and Final Fees in the amount of $29,600 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

Second and Final Costs in the amount of $130.53 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$29,600
Costs and Expenses	$130.53

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 Reynolds Law, LLP, the Law Firm ("Applicant") for JEA2, LLC, the Chapter 11 Debtor in Possession ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Name of Applicant is allowed the following fees and expenses as a professional of the Estate:

Reynolds Law, LLP, Professional employed by Debtor in Possession

Fees in the amount of $29,600
Expenses in the amount of $130.53,

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

IT IS FURTHER ORDERED that the fees and costs pursuant to this Motion, and fees in the amount of $28,186.00 and costs of $1,983.47 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

3. 19-22025-E-12 CAE-1 JEFFREY DYER AND JAN WING-DYER CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 4-1-19 [1]

Item 3 thru 4

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 6/20/25 for the court's case management.

[RLC-27] Second Amended Order on Motion to Authorize Borrowing filed 6/23/25 [Dckt 565]

The Status Conference is continued to xxxxxxx on xxxxxxx , 2025, to be conducted by the Hon. Fredrick C. Clement, Chief Judge of this Bankruptcy Court, to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, 7th Floor, Sacramento, California.

AUGUST 7, 2025 STATUS CONFERENCE

No updated Status Report has been filed.

At the Status Conference, **xxxxxxx**

JUNE 20, 2025 STATUS CONFERENCE

At the Status Conference counsel for the Debtor in Possession reported that there are a final set of amendments to be made to the order authorizing the borrowing, for which all Parties are in Agreement. The Amended Order authorizing the borrowing did not expressly address that the Chapter 12 Trustee would disburse the net loan proceeds, after payment of the claims secured by liens on the Lamb Property and costs of sale, to the Class 12 Creditors holding general unsecured claims.

The Trustee reported that based on preliminary calculations the net proceeds might be several thousand dollars short of a final distribution for a 100% dividend, and the Debtor requested that he be authorized to contribute that money as a final plan payment.

Counsel for the Chapter 12 Debtor in Possession presented in court a draft Second Amended Order that includes the provisions that the Parties have agreed need to be in the order so that the requested relief in the Motion to Approve the Secured Credit can be fully performed. These terms provide that the $750,000.00 in Loan Proceeds shall be disbursed as follows:

A. Directly from escrow the following claims secured by the Lamb Ranch, approximately 215 acres, Sutter County, California, APN 24-040-014, from the Loan Proceeds

1. The amount to pay the secured claim of Citizens Business Bank and remove its lien from the Lamb Ranch Property.

2. The amount to pay the secured claim of John Roth Business Bank and remove its lien from the Lamb Ranch Property.

3. The County of Sutter, California. for the delinquent property taxes secured by the Lamb Ranch Property.

4. The Trustee shall be entitled to demand from escrow for payment of Trustee's fees of $22,500 on constructive disbursement of $750.000.

5. Escrow and title costs as approved by Lilian G. Tsang as Chapter 12 Trustee.

6. The remaining balance of the loan proceeds shall be disbursed directly from the escrow to Lilian G. Tsang, the Chapter 12 Trustee, Ms. Tsang to pay all Class 12 claims with the balance of the funds. if any. to be paid to Rabo AgriFinance.

The Trustee reports that she will need approximately thirty (30) days after receiving the monies from escrow to make the disbursements on the general unsecured claims, confirm the cashing of the distribution checks, and get her final reports filed with the court.

With respect to the Motion to Dismiss, once the disbursements have been made, the Bankruptcy Case may be dismissed. Counsel for the Debtor in Possession requested that the hearing on the Motion to Dismiss be continued approximately forth-five (45) days to allow for this process to take place and an order dismissing the Case to be uploaded by the Chapter 12 Trustee.

The Status Conference and the hearing on the Motion to Dismiss are continued to 10:30 a.m. on August 7, 2025, for the court's case management. If the Chapter 12 Trustee has uploaded the dismissal order in advance of the hearing, the court may enter that order and remove both the Status Conference and continued hearing on the Motion to Dismiss from the Calendar.

MAY 29, 2025 STATUS CONFERENCE

At the Status Conference, the court addressed the efforts of the Debtor in Possession in seeking post-petition financing to refinance the junior secured claims and the property taxes for the Lamb Ranch Property.

The Status Conference is continued to 10:30 a.m. on June 20, 2025 (Specially Set Time).

APRIL 16, 2025 STATUS CONFERENCE

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

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

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

NOVEMBER 14, 2024 STATUS CONFERENCE

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

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

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

OCTOBER 3, 2024 STATUS CONFERENCE

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

4.	**19-22025-E-12** **RLC-26**	**JEFFREY DYER AND JAN** **Stephen Reynolds**	**CONTINUED MOTION TO DISMISS WING-DYER CASE** **4-16-25 [531]**

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

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

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

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

The Motion to Dismiss is xxxxxxx.

August 7, 2025 Hearing

The court continued the hearing on this Motion simply for the court's case management purposes. At the prior hearing there was an amended order in circulation for the agreed-upon structured dismissal of this case.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

> I have received a commitment to make a loan in the amount of $750,000 from Grower Direct Nut Company, Inc. to be secured by a second priority deed of trust secured by the Lamb Ranch, approximately 215 acres, APN 020-040-014. Interest at 7.0% annually with annual payments of interest only due on the anniversary of the loan closing. All due and payable in three years.

Decl. ¶ 1, Docket 541. Proceeds of the loan would be used as follows:

A. Pay the first priority lien of Rabo AgriFinance LLC ("Rabo"), Class 5 in the Plan the sum of $125,000.

B. Satisfy the second priority lien of Citizens Business Bank, Class 4 in the Plan, in the approximate amount of $124,803.60. The proposed lender requires the satisfaction of Citizens Business Bank as a condition precedent to the proposed borrowing.

C. Pay the third priority lien of John Roth held by John Roth and authorized by this Court's Order entered August 19, 2022 (Dckt. No. 362). With current interest the estimated payoff amount is $440,500. The proposed lender requires the satisfaction of Citizens Business Bank as a condition precedent to the proposed borrowing.

D. Pay Sutter County Property Taxes owing in the estimated amount of $26,543.00, escrow fees in the estimated amount of $9, 153.40 and Chapter 12 Trustee Fees in the estimated amount of $25,000.

Mot. 1:21-2:5, Docket 539.

SUTTER COUNTY'S REPLY

Sutter County Tax Collector ("Sutter County") filed a Reply on May 15, 2025. Docket 543. Sutter County argues it is actually first priority by virtue of being a tax lien that has priority over all other liens on the property, regardless of when the liens came into existence. Sutter County does not oppose being paid in full with proceeds of the loan.

RABO'S OPPOSITION

Rabo filed an Opposition on May 15, 2025. Docket 549. Rabo states:

1. Debtor in Possession is now on the Sixth Amended Plan that called for a sale of the Lamb Ranch by June 30, 2025. Debtor in Possession concedes another default is imminent, and so ignoring terms of the Sixth Amended Plan, Debtor in Possession proposes to pay Rabo in full within three years. This fails because Debtor in Possession is effectively seeking to extend the Plan beyond five years, all the way to eight years, which is prohibited under 11 U.S.C. § 1222(c). Opp'n 7:5-12.

    a. The first payment under the Original Plan was due June 30, 2020. The Sixth Amended Plan requires the Debtors to pay Rabo by June 30, 2025—exactly five years after the Original Plan payment was due. Now, the Dismissal Motion seeks to modify the Sixth Amended Plan to allow the Debtor to pay unsecured creditors in full on December 31, 2025—six months after the Original Plan payment was due. *Id.* at 10:25-11:1.

2. The Motion should also be denied because it violates the absolute priority rule. Debtor in Possession is proposing to leverage Rabo's collateral to pay other creditors, including unsecured creditors, after failing to timely sell Lamb Ranch as required by the Plan and then stretch out repayment to Rabo by an additional three and one-half years. *Id.* at 10:8-12. Rabo cites *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017) in support of this position.

DISCUSSION

Rabo raises the issue that the proposed borrowing agreement and structured dismissal violates the absolute priority rule. The Supreme Court has held:

> The Code also sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate. Secured creditors are highest on the priority list, for they must receive the proceeds of the collateral that secures their debts. 11 U.S.C. § 725. Special classes of creditors, such as those who hold certain claims for taxes or wages, come next in a listed order. §§ 507, 726(a)(1). Then come low-priority creditors, including general unsecured creditors. § 726(a)(2). The Code places equity holders at the bottom of the priority list. They receive nothing until all previously listed creditors have been paid in full.
>
> The Code makes clear that distributions of assets in a Chapter 7 liquidation must follow this prescribed order. §§ 725, 726. It provides somewhat more flexibility for distributions pursuant to Chapter 11 plans, which may impose a different ordering with the consent of the affected parties. But a bankruptcy court cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class. §§ 1129(a)(7), (b)(2).

Jevic, 580 U.S. at 457.

In this contested matter, Debtor in Possession is not proposing to use proceeds of the collateral securing Rabo's debts. Rabo will retain its priority status and be entitled to payment in full. It may be that absolute priority is not necessarily violated here where Rabo retains priority and its claim is entitled to payments in full. However, the court need not decide the matter of absolute priority because Debtor in Possession's proposal violates another rule: Fed. R. Bankr. P. 7001.

The Motion does not request that the new loan prime Rabo's lien or that the order extend the time for payment of the Rabo Bank secured claim. With respect to Rabo's claim, the Motion states:

> The proposed borrowing in the amount of$750,000 will be used as follows:
>
> 1. Pay the first priority lien of Rabo AgriFinance LLC, Class 5 in the Plan the sum of $125,000. [This is a partial payment.]

Motion, p. 1:20-22; Dckt. 539.

Going to the related Motion to either modify the Confirmed Modified Plan or dismiss this Bankruptcy case, that Motion states with respect to the Rabo secured claim:

> Because it is unlikely that a sale will be accomplished by June 30, 2025 as contemplated by the existing Plan, Debtor seeks to, in the alternative, modify the Plan to allow for the payment of nearly all creditors through the Plan or to dismiss the case after the payment of loan proceeds by the Chapter 12 Trustee to pay all creditors other than Classes 5 [Rabo secured claim], 6 [Banner Bank secured claim] and 9 [Yolo County Realty secured claim].
>
> This is essentially the treatment earlier versions of Debtor's Plan accomplished. Debtor intends to pay Rabo in full within three years, **it is Debtor's hope that Rabo will accept such treatment**. Rabo maintains as senior secured creditor on the Lamb Ranch.
>
> . . .
>
> 1225(a)(5) Secured Creditors will retain their liens and will receive the value of their claim.
>
> Remaining creditor Classes Six [Rabo], Seven, Eight, Nine and Ten will receive payments per the original terms of those obligations directly by the Debtors. **Of these Classes Six [Rabo]** and Eight **will have the term of their obligations extended.** All other classes will be paid by the Trustee during the Plan term.
>
> All secured creditors have agreed to the treatment proposed in the Chapter 12 Plan.
>
> . . .
>
> **WHEREFORE**, Debtors respectfully request that the Court modify the Chapter 12 Plan as proposed or in the alternative dismiss the case in a manner that allows the Chapter 12 Trustee to pay the remaining Class 2, 4 and 12 claims from the proposed refinance of the Lamb Ranch.

Motion, p. 2:17-3:2, 5:11-17, 6:4-7; Dckt. 531.

Though the language in the Motion states that all "secured creditors" have agreed to this modification extending the repayment period three years, Rabo's Opposition states that it does not so agree.

Without such agreement, even if the court could confirm a consensual Chapter 12 plan that goes beyond five years, the relief requested is the dismissal of this case in conjunction with allowing the Debtor in Possession to obtain a loan, secured by a lien junior to that of Rabo, which will make a partial payment to Rabo and pay off the junior liens (substituting in the lender , who is the entity identified as the potential buyer). In such a situation there would be nothing barring Rabo from proceeding with a foreclosure, forcing the lender/potential buyer to pay off Rabo or buy the property at the foreclosure sale (quite possibly for less than it would buy the Property from the Debtors post dismissal).

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

However, in light of the constructive approach to wrapping up this case and persuasive advocacy of counsel for the Debtor in Possession, the court so authorizes it (as well as the court having dismissed the portion seeking to modify the plan).

The court having granted the Debtor in Possession motion to obtain secured credit to refinance the junior liens and property taxes relating to the Lamb Ranch Property, as well as generating funds for general unsecured claims, the hearing on the Motion is continued.

The hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 20, 2025 (Specially Set Day and Time).

JUNE 20, 2025 HEARING

At the Status Conference conducted in conjunction with the hearing on this Motion to Dismiss, counsel for the Debtor in Possession reported that there are a final set of amendments to be made to the order authorizing the borrowing, for which all Parties are in Agreement. The Amended Order authorizing the borrowing did not expressly address that the Chapter 12 Trustee would disburse the net loan proceeds, after payment of the claims secured by liens on the Lamb Property and costs of sale, to the Class 12 Creditors holding general unsecured claims.

The Trustee reported that based on preliminary calculations the net proceeds might be several thousand dollars short of a final distribution for a 100% dividend, and the Debtor requested that he be authorized to contribute that money as a final plan payment.

Counsel for the Chapter 12 Debtor in Possession presented in court a draft Second Amended Order that includes the provisions that the Parties have agreed need to be in the order so that the requested relief in the Motion to Approve the Secured Credit can be fully performed. These terms provide that the $750,000.00 in Loan Proceeds shall be disbursed as follows:

A. Directly from escrow the following claims secured by the Lamb Ranch, approximately 215 acres, Sutter County, California, APN 24-040-014, from the Loan Proceeds

1. The amount to pay the secured claim of Citizens Business Bank and remove its lien from the Lamb Ranch Property.

2. The amount to pay the secured claim of John Roth Business Bank and remove its lien from the Lamb Ranch Property.

3. The County of Sutter, California. for the delinquent property taxes secured by the Lamb Ranch Property.

4. The Trustee shall be entitled to demand from escrow for payment of Trustee's fees of $22,500 on constructive disbursement of $750.000.

5. Escrow and title costs as approved by Lilian G. Tsang as Chapter 12 Trustee.

6. The remaining balance of the loan proceeds shall be disbursed directly from the escrow to Lilian G. Tsang, the Chapter 12 Trustee, Ms. Tsang to pay all Class 12 claims with the balance of the funds. if any. to be paid to Rabo AgriFinance.

The Trustee reports that she will need approximately thirty (30) days after receiving the monies from escrow to make the disbursements on the general unsecured claims, confirm the cashing of the distribution checks, and get her final reports filed with the court.

With respect to the Motion to Dismiss, once the disbursements have been made, the Bankruptcy Case may be dismissed. Counsel for the Debtor in Possession requested that the hearing on the Motion to Dismiss be continued approximately forth-five (45) days to allow for this process to take place and an order dismissing the Case to be uploaded by the Chapter 12 Trustee.

The Hearing on this Motion to Dismiss and the Chapter 12 Post-Confirmation Status Conference are both continued to 10:30 a.m. on August 7, 2025, for the court's case management. If the Chapter 12 Trustee has uploaded the dismissal order in advance of the hearing, the court may enter that order and remove the Status Conference and continued hearing on the Motion to Dismiss from the Calendar.

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 this Chapter 12 Case filed by Jeffrey Dyer and Jan E Wing-Dyer, the Chapter 12 Debtors and Debtors in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxxx**.

5. 23-90171-E-7 CJL-3 | **JOSHUA MILLER** **Jenna Dakroub** | **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY** **6-15-25 [63]**

AS STATED IN THE TENTATIVE RULING BELOW, IF THE PARTIES HAVE CONFERRED AND HAVE AN AGREED AMOUNT FOR ATTORNEY'S FEES AND COSTS, THE COURT WILL ALLOW IT TO BE PRESENTED AT THE HEARING FOR CONSIDERATION AS PART OF THE PRESENT MOTION.

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 other parties in interest on June 13, 2025. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion for Contempt and Damages for Violation of the Automatic Stay is granted and damages of $4,875.00 are awarded to Debtor and against Creditor. Attorney's fees and costs, if any, shall be requested by Debtor by post order (judgment, Fed. R. Bankr. P. 9001(b)(7)) motion as provided in Federal Rule of Bankruptcy Procedure §§ 7054(b) and 9014(c).

Debtor, Joshua Scott Miller, ("Debtor") moves this court for an order finding creditor Lafayette Federal Credit Union ("Lafayette") is in contempt for violating the Automatic stay and awarding compensatory and punitive damages to Debtor resulting from Lafayette's violations pursuant to 11 U.S.C. § 362. Debtor pleads with particularity:

1. In or around February 2021, Debtor applied for, and received, a personal loan from Lafayette. Mot. 3.

2. The Debtor's Bankruptcy Case was filed on April 20, 2023.

3. On or about April 26, 2023, the Bankruptcy Noticing Center ("BNC") mailed notice of Debtor's bankruptcy petition, and the resultant Automatic stay, to Lafayette, at the business address for the Rockville, MD Lafayette branch location. *Id.*

4. On May 1, 2023, after Debtor filed his Chapter 7 petition and while the automatic stay was in place, Lafayette filed a UCC-1 Financing Statement ("File No. 2023-003115) (the "Financing Statement") in order to perfect Lafayette's security interest in Debtor's inground pool at his residence (the "Property"). *Id.* at

5. Thereafter, on or about July 24, 2023, Debtor received a Chapter 7 bankruptcy discharge, and the bankruptcy case was closed on or about November 3, 2023.

6. Debtor then attempted to relocate to the east coast, in order to be closer to relatives living in Tennessee and Georgia. Debtor and his family were highly motivated to relocate to the east coast, as Debtor wished for his young son to meet his great grandfather, who was ninety-one years of age and in ailing health, for the first time. *Id.* at 3-4.

7. In January of 2024, Debtor listed the Property for sale. *Id.* at 4. However, Lafayette's action in filing the Financing Statement caused Debtor to lose out on profits from the sale of the Property, as initial potential buyers who had made offers backed out upon discovering the existence of the Financing Statement. *Id.*

8. On or about February 16, 2024, Debtor's attorney mailed a demand letter (the "Demand Letter") to Silverman: (1) explaining that Lafayette's filing of the Financing Statement constituted a violation of the Automatic stay; (2) explaining that Debtor had suffered financial harm due to the Lafayette's violation; and (3) making a reasonable offer to settle Debtor's automatic stay violation claim informally. *Id.*

9. On or about February 21, 2024, Silverman filed a UCC-1 Financing Statement Amendment (the "Amendment") terminating Lafayette's lien on the Property. *Id.* at 5.

10. Despite taking action to terminate the lien, however, Silverman failed to provide either Debtor or Resolve with a copy of the Amendment, despite repeated requests by both Debtor and Resolve. It was crucial that Debtor be provided with a copy of the Amendment as immediately as possible, as

without one, Debtor could not demonstrate to potential buyers that Lafayette's lien on the Property was void, and had been terminated. *Id.*

11. On or about March 26, 2024 – more than a month after the Amendment was actually filed and past the point of it being useful to Debtor in the efforts to sell the Property quickly – Silverman finally provided Debtor with a copy of the Amendment. *Id.* at 6.

12. This is Debtor's second Motion of this kind, the first one being denied for evidentiary shortcomings. *See* Order, Docket 62.

Debtor's Declaration in
Support of Motion

Debtor filed his own Declaration in support of the Motion, authenticating the facts alleged. Decl., Filed as Exhibit 1, Docket 65. Debtor testifies that the residence was listed for $955,000, and Debtor almost immediately received an offer from a potential buyer at that price. Dec., ¶ 8,9. Debtor testifies that this was a "cash buyer." *Id*. at ¶ 10. This was in January 2024.

However, when the Lafayette lien was discovered in a title search, the listing price buyer "backed out" of the sale. *Id.* at ¶ 11.

Debtor then, in or around February 2024, has his attorney contact Lafayette's counsel demanding that the lien be terminated. *Id*.; ¶ 12.

Additionally, Debtor "reached out" via phone and email to Lafayette's counsel "on multiple occasions" in February and March 2024to Lafayette, but "was ignored." *Id*.; ¶ 13.

Debtor testifies that as every day passed, the health of his extended family members became worse and worse, and he grew more anxious. *Id.* at 14. Debtor states the entire situation was a nightmare.

After learning about a lien that should not have existed in January 2024, it took three (3) months for Lafayette to provide Debtor with the lien termination statement. Throughout that time, Debtor testifies he and his husband had no way of knowing whether Lafayette was doing anything to terminate the lien or not. *Id.* at 18.

As a result, Debtor testifies he spent every day anxious and in fear for those entire three months. *Id.* at ¶ 19. Every day the move was delayed caused extra stress due to the fear of Debtor's son not being able to meet and form a relationship with his aging great-grandfather. *Id.* at ¶ 20. Debtor's son was eventually able to meet Debtor's grandfather, but Debtor testifies he was nonetheless robbed of spending significant time with him, due to the delay in moving caused by the lien's existence. *Id.* at 21.

Review of Exhibits

In reviewing the Exhibits filed by Debtor, the court notes the following.

Exhibit 2 is a copy of the Preliminary Title Report dated January 12, 2024. Dckt. 66. This includes as Item 23:

23. A financing statement recorded in the office of the County Recorder, showing

Debtor : Joshua Miller
Secured Party : Lafayette Federal Credit Union
Recorded : May 1, 2023 in Official Records under Recorder's Serial Number 2023-003115
Property Covered : 6457 Southworth Road, Valley Springs, CA 95252.

Exhibit 7 is a copy of the February 16, 2024 letter from Debtor's counsel to Gary S. Silverman, Esq., counsel for Creditor, providing him notice of the Bankruptcy Case having been filed and the Lien being recorded in violation of the automatic stay. Dckt. 72. The letter professionally provides an explanation of the law relating to the automatic stay, and provides notice of the pending sale of the property, stating:

> Here, the debtor is in the process of selling his home, he was made aware that Lafayette Federal Credit Union recorded a UCC Financing Statement years after taking out the loan, and weeks after filing his Chapter 7 Bankruptcy causing debtor anxiety and delay in listing his home for sale. As a result, a substantial award for Mr. Miller's emotional distress is likely here.
>
> Debtor listed his property for sale on January 24, 2024. Since UCC filings are a matter of public record, Debtor believes he may have lost out on potential offers due to this purported UCC lien.
>
> In addition, Joshua Scott Miller involved the undersigned counsel and accrued attorneys' fees to halt further violations of the discharge order by Lafayette Federal Credit Union. A significant award is likely on that basis as well.

Id. at 4.

The Letter also includes a settlement proposal for the violation of the Automatic stay, with the dollar amount redacted in the Exhibit.

Exhibit 9 is a UCC Financing Statement Amendment stating that the lien has been terminated. Dckt. 73. However, it does not bear any recording data and does not indicate that it has been recorded with the County Recorder.

Exhibit 10 is a email dated March 1, 2024, from Debtor's counsel to Gary Silverman, Creditor's counsel, requesting a copy of the recorded Amended UCC Financing Statement. Dckt. 74. This indicates that as of March 1, 2024, Creditor had failed to communicate that the Amended UCC-1 Financing Statement had actually been filed and the violation of the automatic stay remedied.

Exhibit 11is a copy of a letter dated September 5, 2024, from Landon Maxwell, as the attorney for Debtor, to the Silverman Theologou Law Firm addressing the Automatic stay violation, the damages that may flow from such Automatic stay violation, the basis for emotional distress, and stating a settlement demand amount (with the amount redacted in the Exhibit). Dckt. 75.

LAFAYETTE'S OPPOSITION

On July 22, 2025, Lafayette filed its Opposition. Docket 79. Lafayette states:

1. The Court made clear at the last hearing that speculative or self-serving testimony without corroborating documents, declarations under penalty of perjury, or third-party evidence would not satisfy Debtor's burden under § 362(k). That burden remains unmet. For the second time, Debtor has failed to carry the evidentiary burden required under § 362(k). The renewed Motion should be denied in its entirety and this time, with prejudice, to prevent continued abuse of judicial resources. Opp'n 3:7-12.

2. A prerequisite to relief under § 362(k) is a showing of actual damages proximately caused by an Automatic stay violation. *See In re Risner*, 317 B.R. 830, 837 (Bankr. D. Idaho 2004). The current motion, like the last, offers no credible evidence that LFCU's conduct caused any measurable financial harm. Opp'n at 3:17-20.

3. Debtor presents no third-party declarations, no escrow cancellation notice, no buyer correspondence, no appraisal or market analysis, and no expert testimony to support the alleged loss. *Id.* at 3:21-23.

4. Debtor has not provided any title report showing the lien was the cause of delay; any communications from prospective buyers stating the lien was a deal-breaker; any documentation of financial loss (e.g., reduced offers, lost deposits); or admissible evidence under penalty of perjury from individuals with personal knowledge of the impact. Without such evidence, Debtor's allegations amount to rank speculation, which is insufficient as a matter of law. *See In re Lighty*, 513 B.R. 489, 499 (Bankr. D.S.C. 2014) ("[S]elf serving testimony unsupported by documentation is insufficient to establish actual damages under § 362(k)."). Opp'n at 3:26-4:6.

5. Even assuming *arguendo* a technical violation occurred, the law does not entitle Debtor to recovery absence proof of quantifiable damages. Emotional distress or inconvenience, standing alone, is not compensable without contemporaneous evidence. *See In re Snowden*, 769 F.3d 651, 656 (9th Cir. 2014). Opp'n at 5:11-14.

On this point, rather than just addressing it below, the court preliminarily addresses it now. Recording post-petition a lien for a prepetition debt is not a *"technical violation*" of the automatic stay. It is an actual, positive act by Creditor that violated the automatic stay. Even if taken without knowledge of the bankruptcy case having been filed, it is in violation of the automatic stay and is void.

In such a situation, a good faith creditor, upon learning of the automatic stay and the recording of the lien violating the Automatic stay takes one of two actions: (1) immediately correcting the violation and rescind the void lien document appearing on record title and document such for the debtor, or (2) immediately file a motion to annul the Automatic stay and obtain retroactive relief from the Automatic stay so that the recorded lien is not void and is not in violation of the automatic stay.

6. Debtor seeks attorneys' fees and damages without providing any computation, breakdown, or supporting documentation. There are no billing records supporting attorneys' fees, no receipts or medical records, and no valuation report showing the property lost value due to any Automatic stay violation. *Id.* at 5:15-18.

Lafayette submits no evidence to support its Opposition.

DEBTOR'S REPLY

Debtor filed a Reply on July 31, 2025. Docket 80. Debtor states:

1. Debtor has, in fact, provided credible evidence of his damages, and that those damages were caused by Lafayette's conduct. *Id.* at 3:11-12.

2. While there may be "no controlling law in the Ninth Circuit" on this point, "the general trend among trial courts in this district is to allow emotional distress damages." *In re Griffin*, 2024 Bankr. LEXIS 1050, at *6-7 (Bankr. D. Mont. Apr. 29, 2024) (citing to *In re Breul*, 533 B.R. 782, 796 (Bankr. C.D. Cal. 2015); *In re Go*, 651 B.R. 981, 903 (Bankr. D. Nev. 2023); *In re Nordlund*, 494 B.R. 507, 522 (Bankr. E.D. Cal. 2011). *Id.* at 3:17-20.

3. Debtor is not requesting an award for any reduced sale profits. Debtor, as his Motion clearly details, is only seeking his emotional distress damages stemming from Lafayette's (undisputed) violation of the discharge injunction, and has met his burden in establishing such damages. *Id.* at 5:15-18.

4. To recover damages for emotional distress, "an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay." *In re Dawson*, 390 F.3d 1139, 1149 (9th Cir. 2004). Reply at 5:19-6:2.

5. Debtor suffered damages related to this violation, including emotional distress.

APPLICABLE LAW

Once the creditor learns or has notice of a bankruptcy case having been filed, any actions that it intentionally undertakes are deemed willful. [Fn.1.] As the Ninth Circuit Court of Appeals explained in *Goichman v. Bloom*, 875 F.3d 224, 227 (9th Cir. 1989):

> A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property

is not relevant to whether the act was "willful" or whether compensation must be awarded.

FN. 1. *See Thompson v. GMAC, LLC*, 566 F.3d 699, 702-3 (7th Cir. 2009); *Eskanos and Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002); *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (holding that the knowing retention of estate property violates the automatic stay); and *In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004).

The Ninth Circuit Court of Appeals discussed the automatic stay and the obligations of a party violating the Automatic stay in *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2009). In short, there is the affirmative duty on the person violating the Automatic stay to correct the violation, not on the bankruptcy debtor to force the person to correct the violation. In the plain language of the Ninth Circuit Court of Appeals (emphasis added):

> **To comply with his "affirmative duty" under the automatic stay, Sternberg needed to do what he could to relieve the violation. He could not simply rely on the normal adversarial process.** *See Johnston Envt'l Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 615-16 (9th Cir. 1993) (holding that parties who attempted to exempt a debtor from their unlawful detainer action with a unilateral stipulation still violated the automatic stay because "the stipulation might not [have] accomplish[ed] its intended purpose" and thus the parties "could have, and should have, pursued the orthodox remedy: relief from the automatic stay"). At a minimum, he had an obligation to alert the state appellate court to the conflicts between the order and the automatic stay. As we have explained before, "[t]he automatic stay is intended to give the debtor a breathing spell from his creditors." *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 226 (9th Cir. 1989) (internal quotation marks omitted). The state court order intruded upon Johnston's "breathing spell." Sternberg did not act to try to fix that problem.
>
> . . .
>
> **Johnston [the debtor] was not required to ask Sternberg [the creditor] to modify the order for Sternberg's violation to be willful**. *See In re Del Mission Ltd.*, 98 F.3d at 1151-52 (concluding that the retention of taxes was a violation of the stay even though the debtor never requested their return). **Likewise, Sternberg needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful**. *See Eskanos*, 309 F.3d at 1214-15 (rejecting the law firm's assertion that something more than maintaining an active collection action was needed to violate the stay); *In re Goodman*, 991 F.2d at 618 ("Whether the [defendant] believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' . . . ." (internal quotation marks omitted)). All that is required is that Sternberg "knew of the automatic stay, and [his] actions in violation of the stay were intentional." *Eskanos*, 309 F.3d at 1215. Both of these elements were satisfied here.

Sternberg v. Johnson, Id. at 944-945.

The U.S. Supreme Court somewhat recently addressed the violation of the discharge injunction, which is akin to the automatic stay, protecting a debtor after the automatic say has expired. In discussing such violations and sanctions issued for violation thereof, the U.S. Supreme Court in *Taggart v. Lorenzen*, 578 U.S. 554 (2019), states (emphasis added):

> Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to "coerce the defendant into compliance" with an injunction or "compensate the complainant for losses" stemming from the defendant's noncompliance with an injunction. *United States v. Mine Workers*, 330 U. S. 258, 303-304, 67 S. Ct. 677, 91 L. Ed. 884 (1947); see D. Dobbs & C. Roberts, Law of Remedies §2.8, p. 132 (3d ed. 2018); J. High, Law of Injunctions §1449, p. 940 (2d ed. 1880).
>
> The bankruptcy statutes, however, do not grant courts unlimited authority to hold creditors in civil contempt. Instead, as part of the "old soil" they bring with them, the bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction.
>
> **In cases outside the bankruptcy context, we have said that civil contempt "should not be resorted to where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct.**" *California Artificial Stone Paving Co. v. Molitor*, 113 U. S. 609, 618, 5 S. Ct. 618, 28 L. Ed. 1106, 1885 Dec. Comm'r Pat. 295 (1885) (emphasis added). This standard reflects the fact that civil contempt is a "severe remedy," *ibid.*, and that principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt, *Schmidt v. Lessard*, 414 U. S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974) (*per curiam*). *See Longshoremen, supra*, at 76, 88 S. Ct. 201, 19 L. Ed. 2d 236 (noting that civil contempt usually is not appropriate unless "those who must obey" an order "will know what the court intends to require and what it means to forbid"); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2960, pp. 430-431 (2013) (suggesting that civil contempt may be improper if a party's attempt at compliance was "reasonable").
>
> **This standard is generally an objective one**. We have explained before that **a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable**. As we said in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599 (1949), "[t]he absence of wilfulness does not relieve from civil contempt." *Id.*, at 191, 69 S. Ct. 497, 93 L. Ed. 599.
>
> We have not held, however, that **subjective intent is always irrelevant**. Our cases suggest, for example, **that civil contempt sanctions may be warranted when a party acts in bad faith.** *See Chambers v. NASCO, Inc.*, 501 U. S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Thus, in *McComb*, we explained that a party's "record of continuing and persistent violations" and "persistent contumacy" justified placing "the burden of any uncertainty in the decree . . . on [the] shoulders" of the party who violated the court order. 336 U. S., at 192-193, 69 S. Ct. 497, 93 L.

> Ed. 599. On the flip side of the coin, **a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction**. *Cf. Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787, 801, 107 S. Ct. 2124, 95 L. Ed. 2d 740 (1987) ("[O]nly the least possible power adequate to the end proposed should be used in contempt cases" (quotation altered)).
>
> These traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. The typical discharge order entered by a bankruptcy court is not detailed. *See supra*, at 2-3. **Congress, however, has carefully delineated which debts are exempt from discharge**. See §§523(a)(1)-(19). **Under the fair ground of doubt standard, civil contempt therefore may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope**.

Lorenzen, 587 U.S. at 559-60.

Collier's Treatise on Bankruptcy provides a further discussion of this issue and provides some additional insight:

> A violation of the stay is punishable as contempt of court. Most courts will impose contempt sanctions for a knowing and willful violation of a court order, and the automatic stay is considered as equivalent to a court order. If the conduct is willful, even if based upon advice of counsel, contempt is an appropriate remedy. When a violation of the stay is inadvertent, contempt is not an appropriate remedy. Nevertheless, the creditor has a duty to undo actions taken in violation of the automatic stay. Failure to undo a technical violation may elevate the violation to a willful one. . .
>
> Section 362(k)(1), which was designated as section 362(h) prior to the 2005 amendments, provides for a recovery of damages, costs and attorney's fees by an individual damaged by a willful violation of the stay. In an appropriate case, an individual injured by a stay violation may also recover punitive damages. There also appears to be an "emerging consensus" that emotional distress damages may be recovered in an award of actual damages under section 362(k)(1). . .
>
> In *Sternberg v. Johnston,* the Court of Appeals for the Ninth Circuit held that a debtor may recover attorney's fees under section 362(k)(1) to the extent that they are an element of the debtor's actual damages. Applying this narrow construction of the statutory language providing for recovery of "actual damages, including costs and attorneys' fees," the Sternberg court held that attorney's fees may be recovered only for work involved in bringing about an end to the stay violation and not for pursuing an award of damages. The court said that "actual damages" was an ambiguous phrase and that more explicit statutory language was required to deviate from the American Rule in which parties bear their own attorney's fees, at least with respect to fees related to the recovery of damages.

3 COLLIER ON BANKRUPTCY ¶ 362.12[2] &[3].

Subsequently, in *America's Servicing Co. V. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015), that the statutory attorney's fees include prosecution of an action seeking recovery relating to violation of the automatic stay, not merely attorney's fees in having the violation of the automatic stay corrected. Further, that 11 U.S.C. § 362(k) makes the award of reasonable attorney's fees mandatory. *Id*.

The Ninth Circuit Court of Appeals has held that damages for emotional distress constitute actual damages and are recoverable if caused by a violation of the automatic stay. *In re Dawson*, 390 F.3d 1139, 1147-48 (9th Cir. 2004) (" We conclude, then, that the "actual damages" that may be recovered by an individual who is injured by a willful violation of the automatic stay,4 11 U.S.C. § 362(h), include damages for emotional distress."). The standard for a debtor to recover damages for emotional distress as described by *Dawson* is as follows:

> **We hold that a claim for emotional distress damages is available if the individual provides clear evidence to establish that significant harm occurred as a result of the violation,** a standard on which we will elaborate below. . .
>
> Although pecuniary loss is not required in order to claim emotional distress damages, not every willful violation merits compensation for emotional distress. Like the *Aiello* court, 293 F.3d at 880, we are concerned with limiting frivolous claims. To that end, we hold that, to be entitled to damages for emotional distress under § 362(h), an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process).

Id. at 1148-49.

> Fleeting or trivial anxiety or distress does not suffice to support an award; instead, an individual must suffer significant emotional harm. See, e.g., In re Skeen, 248 B.R. 312, 319 (Bankr.E.D.Tenn.2000) (holding that " '[b]ecause the emotional distress suffered ... was fleeting, inconsequential, and medically insignificant, ... it is not compensable' ") (alteration in original) (quoting *Crispell v. Landmark Bank*, (*In re Crispell*), 73 B.R. 375, 380 (Bankr.E.D.Mo.1987)).
>
> Consequently, it must be clear that the individual suffered significant emotional harm. An individual may establish emotional distress damages clearly in several different ways.
>
> • Corroborating medical evidence may be offered. *See, e.g., In re Briggs*, 143 B.R. 438, 463 (Bankr.E.D.Mich.1992) (requiring specific and definite evidence to establish an emotional distress claim arising from violation of the automatic stay); *Stinson*, 295 B.R. at 120 n. 8 ("The majority of the courts have denied damages for emotional distress where there is no medical or other hard evidence to show something more than a fleeting or inconsequential injury." (internal quotation marks omitted)); *Diviney v. NationsBank of Tex.* (*In re Diviney*), 211 B.R. 951, 967 (Bankr.N.D.Okla.1997) (holding that, where emotional distress seemed trivial and

no medical evidence corroborated the claim, damages for emotional distress were not warranted).

• Non-experts, such as family members, friends, or coworkers, may testify to manifestations of mental anguish and clearly establish that significant emotional harm occurred. *See, e.g., Varela v. Ocasio* (*In re Ocasio*), 272 B.R. 815, 821–22 (1st Cir. BAP 2002) (per curiam)(holding that testimony from the debtor's wife—that he suffered from headaches, did not feel well for a week, and went to the doctor to have his nerves checked—was sufficient to support emotional distress damages of $1,000 without medical testimony).

• In some cases significant emotional distress may be readily apparent even without corroborative evidence. For instance, the violator may have engaged in egregious conduct. *See, e.g., Wagner v. Ivory* (*In re Wagner*), 74 B.R. 898, 905 (Bankr.E.D.Pa.1987) (awarding emotional distress damages, based on the debtor's testimony, when a creditor entered the debtor's home at night, doused the lights, and pretended to hold a gun to the debtor's head). Or, even if the violation of the automatic stay was not egregious, the circumstances may make it obvious that a reasonable person would suffer significant emotional harm. *See, e.g., United States v. Flynn* (*In re Flynn*), 185 B.R. 89, 93 (S.D.Ga.1995) (affirming $5,000 award of emotional distress damages, with no mention of corroborating testimony, because "it is clear that appellee suffered emotional harm" when she was forced to cancel her son's birthday party because her checking account had been frozen, even though the stay violation was brief and not egregious).

Dawson, 390 F.3d at 1149-50.

DISCUSSION

In this case, the uncontroverted facts before the court are simple and clear. Debtor filed the case on April 20, 2024. Lafayette then committed an act that would have violated the automatic stay by perfecting its interest under 11 U.S.C. § 362(a)(5), assuming Lafayette received proper notice of the case. Importantly, the notice question becomes moot as Lafayette at the prior hearing on this Motion's predecessor admitted in their own Opposition that they had knowledge of the case and the discharge injunction on August 2, 2023, almost four months after commencement of the case but less than two weeks after Debtor received a discharge. Opp'n 3:20-21, Docket 54. It then became incumbent upon Lafayette to remedy its violation of the Automatic stay promptly upon learning of the case. Lafayette did not do so until being prompted in February of 2024, approximately six months after learning of the case and its violation of the Automatic stay. Failing to remedy the violation amounts to a knowing and wilful violation of the automatic stay.

In its Opposition it appears Lafayette does not contest it violated the automatic stay. Rather, Lafayette argues damages have not been shown. Debtor argues damages have been shown, not of a pecuniary nature, but strictly related to emotional distress. As detailed above, Debtor testifies in his Declaration he spent at least three months in fear and anxiety that he and his husband would be unable to sell their home and relocate to the east coast. Debtor testifies the anxiety was especially severe because he wanted his son to meet his aging great-grandfather. The emotional distress is directly linked to Lafayette's violation of the automatic stay.

The court considers Debtor's testimony. The court further considers the fact that Debtor and his family were eventually able to relocate, and Debtor's son was able to meet and spend time with his great-grandfather. The delay by Debtor's calculation was approximately three months, which is not an overly large period of time when moving. Debtor does not request a specific amount of the award or for related attorney's fees in the pleadings. Debtor has not given the court any additional evidence to corroborate emotional distress damages, including from experts or non-experts, and relies solely on the law and Debtor's testimony.

Here, the violation of the automatic stay was brought to Debtor's attention by the January 12, 2024 Preliminary Title Report (Exhibit 2; Dckt. 66). Then, on February 16, 2024, Debtor's counsel set a letter to Creditor's counsel notifying him of the violation, demanding correction, and explaining the problems it was creditor. Exhibit 7; Dckt. 72. While the included a settlement proposal, it is clear that Creditor and its counsel were on notice of the violation of the automatic stay shortly after February 16, 2024. This is not disputed by Creditor.

Creditor then took some action to correct the violation, but did not provide Debtor and Debtor's counsel with a copy of the Amended UCC-1 terminating the purported lien as of record.

In late March 2024, a new preliminary title report obtained by a prospective buyer showed that the record title had been cleared and on March 24, 2024, Debtor accepted the contract for the sale of the Property. Dec., ¶ 16; Dckt. 65.

Thus, the window of time with respect to the claim for emotional distress damages in which the violation of the Automatic stay existed and the correction not documented by Creditor is from Mid-January 2024 (Exhibit 2, Preliminary Title Report dated January 12, 2024; Dckt. 66) until the end of March 2024, the Debtor was aware of the violation of the automatic stay, the cloud on the title to Debtor's property, and the impediment to Debtor moving forward with the sale of the Property and relocating to the East Close. [Fn.1.]

FN. 1. Given the April 20, 2023 filing of the Bankruptcy Case and the May 1, 2023 recording of the UCC-1 Financing Statement to perfect the lien, the court can see how such could happen for a creditor acting in good faith an inadvertently violating the automatic stay.

However, what has not been addressed that when Creditor (a federally insured credit union) received the Bankruptcy Notice, presumably in May 2023, or as of August 2, 2023, the date Creditor admits having actual knowledge of the Bankruptcy Case, why Creditor did not review the Debtor's file and realize that Creditor had violated the Automatic stay by recording the UCC-1 Financing Statement post-petition. Sophisticated creditors, such as a federally insured credit union, maintain policies and procedures to comply with state and federal laws, including the Bankruptcy Code.

Creditor offered no explanation why no action was taken to correct the violation of the automatic stay when Creditor learned of the Bankruptcy Case in August 2023, but waited until Debtor made his demand in February 2024.

In reviewing the matters further, the court finds it curious that while the Loan Agreement was made in February 2021, a sophisticated creditor would wait until May 1st of 2023, which coincidentally was eleven (11) days after the bankruptcy case was filed, to record and perfect its lien. Presumably a sophisticated creditor would make sure the lien was recorded prior to lending any money.

Additionally, as the court has observed in other unrelated cases, a person in Creditor's shoes who inadvertently violated the Automatic stay and then was notified of it by the debtor would take the following action: immediately notify debtor and debtor's counsel that there was a mistake, correct the mistake (here rescinding or terminating the lien), and then providing documentation that the violation of the automatic stay had been remedied (provide a copy of the recorded termination of the lien). While Creditor eventually corrected the violation, Creditor failed to document the correction to the Debtor.

Alternately, if the person believes that while the violation of the automatic stay was inadvertent termination of the Automatic stay is proper, then that person would immediately file a motion to annul the Automatic stay as provided in 11 U.S.C. § 362(d).

It is clear that a creditor, with knowledge of the violation of the automatic stay and not promptly correcting and documenting such correction, will cause emotional distress to a debtor, especially to a consumer debtor. Here, the Debtor provides testimony concerning the frustration over the loss of the first sale, and the delay in being able to market the Property. There was also the personal angst over the delay in being able to move to the East Coast to be with elderly family members.

Creditor offers no explanation or excuse as to why or how it failed to act and failed to document correction of its violation of the automatic stay.

What makes the emotional distress worse, is that Creditor went silent and was "ghosting" Debtor and Debtor's counsel with documentation that the violation of the automatic stay had been corrected. It was only through the action of an interested third-party purchaser of the Property obtaining a preliminary title report in March 2024 that Debtor learned of corrective action having been taken. This inaction by Creditor and its counsel compounded the emotional distress.

The court finds that the emotional distress suffered by Debtor was significant and caused emotional harm. The testimony provided clearly establishes the harm that was caused by Creditor's failure to correct its violation of the Automatic stay, and then to not document the correction with a copy of the recorded lien release. The continuing violation of the Automatic stay by Creditor is clearly shown in the evidence, for which Creditor has chosen not to provide any contrary evidence.

A significant benefit afforded a Chapter 7 debtor is the "fresh start" that one gets upon obtaining a discharge. Here, though the Debtor had obtained his "fresh start" and Creditor could no longer enforce the pre-petition debt against Debtor, Creditor was doing so by the lien recorded in violation of the automatic stay. By this act and then not immediately documenting that the violation of the Automatic stay had been corrected, Creditor inflicted on Debtor the mental anguish of the pre-petition discharged debt impairing Debtor's fresh start.

The court does not need the assistance of any expert to testify as to how this causes emotional distress. The court can compute the emotional distress damages for the approximate two and one-half moth period that Debtor was aware of the violation and the cure of the violation was document by the preliminary title report obtained by an interested third-party purchaser of the Property.

For the two and one-half months of emotional distress, the court grants the Motion and awards $4,875.00 in damages to Debtor, and against Lafayette Federal Credit Union.

While Debtor includes in the Motion a request for attorney's fees, Federal Rules of Bankruptcy Procedure 7054(b) and 9014(c) provide that the requests for attorney's fees and costs will be made post-judgment (with Federal Rule of Bankruptcy Procedure 9001(b)(7) providing that the term "judgment" means any appealable order). This will require a motion for attorney's fees and costs, which will itself require the Debtor to incur additional attorney's fees and costs which would be included as part of the motion.

If the Parties, after having had the benefit of reviewing the court's tentative ruling chose to meet and confer, and have a stipulation for the attorney's fees and costs, the court will entertain such at the hearing and could include such amounts in the order on this Motion (saving time and costs for all parties).

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 Contempt and Damages for Violation of the Automatic Stay filed by Debtor, Joshua Scott Miller, ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted. Creditor Lafayette Federal Credit Union ("Lafayette") is found to be in contempt of court for violating the automatic stay when it recorded a lien on May 1, 2023 (a UCC-1 Financing Statement, File No. 2023-003115), and when it failed to remove that lien despite having learned of the case on or around August 2, 2023.
>
> **IT IS FURTHER ORDERED** that Debtor is awarded, and Lafayette is ordered to pay Debtor, the sum of $4,875.00 for emotional distress damages directly stemming from Lafayette's willful violation of the automatic stay.
>
> Attorney's fees and costs, if any, shall be requested by Debtor by post order (judgment, Fed. R. Bankr. P. 9001(b)(7)) motion as provided in Federal Rule of Bankruptcy Procedure §§ 7054(b) and 9014(c).

6.	**24-25180-E-11** **RJR-1**	**KAMALJIT KALKAT** **Robert Marticello**	**MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO APPOINT TRUSTEE** **7-10-25 [180]**

Items 6 thru 7

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 parties in interest on July 10, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss or Convert, or Appoint a Chapter 11 Trustee 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, or Appoint a Chapter 11 Trustee ~~is xxxxxxx and the court orders the United States Trustee to appoint a Chapter 11 Trustee in the case.~~

Secured Creditors ATG Capital 401(k) Plan; Austin Tarzana Group, LLC ("ATG") and Unsecured Creditors The Juliet Family, 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. ("Private Money") (collectively, "Movants") move the court for an order dismissing or converting the Chapter 11 cases of Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K") (collectively, "Debtors in Possession") in accordance with 11 U.S.C. 1112 (b). Alternatively, Movants request the appointment of a Chapter 11 Trustee pursuant to 11 U.S.C. §1104(a) and/or (b). Movants plead:

1. This case is languishing, resulting in substantial or continuing loss to or diminution of the estate in the absence of a reasonable likelihood of rehabilitation. Since the case was filed on November 15, 2024, the Debtors only sold one property and that was after the filing of a Motion for Relief from Stay, the property on Rexford Avenue in Beverly Hills, that closed escrow on February 7, 2025. That resulted in $1.5 Million loss, as the Debtor had overpaid for the property. Mot. 3:13-16.

2. Debtor in Possession have also failed to employ an accountant on behalf of the estate, notwithstanding the fact that a tax return on behalf of the estate must be filed by September 15, 2025 on behalf of Diamond K and on October 15, 2025 on behalf of Ms. Kalkat. *Id.* at 3:28-4:3.

3. A review of some of the secured claims in this case shows that the properties are only insured because the secured creditors placed forced insurance on them+. With no incomes, how are Debtors in Possession obtaining proper insurance? *Id.* at 4:7-9.

4. Debtor in Possession are not filing timely monthly operating reports ("MORs") and this is cause for relief under 11 U.S.C. 1112 (b)(4)(F). In addition, the reports that are filed are essentially meaningless, because all of the gross income goes to partnerships that are not before this court that are completely controlled by Ms. Kalkat and are the subject of secured claims by RAABCO. Ms. Kalkat appears to have her monthly living expenses (which are several thousand dollars a month), paid by some unknown party or family member. That would include the car payment, car insurance, etc. That is also not disclosed. Mot. 4:10-16.

5. Debtors in Possession are not paying post-petition taxes. *Id.* at 4:17-20.

6. Debtors in Possession are not paying U.S. Trustee's fees. *Id.* at 4:21-22.

7. It is also submitted that layering on additional administrative expense of a Chapter 11 Trustee is appropriate given that the Debtors in Possession are attempting to layer on additional administrative expense by way of appointment of various advisors and an "independent sale officer" stepping into the Debtors' in Possession shoes, and doing what the Debtors in Possession can't or won't do. *Id.* at 8:24-9:2.

Movants submit the Declarations of Babak Bobby Younessi (Docket 182) and Alex Guralnik (Docket 183) in support. Mr. Younessi testifies that the property commonly known as 7546 Caminito Avola, La Jolla, California 92037 ("Caminito Property") has been listed at an excessive price on the Multiple Listing Service. The listing expired May 16, 2025. Decl. ¶ 4, Docket 182. Mr. Younessi further testifies On February 13, 2025, the court granted the motion to employ Chico, Ginter & Brown as broker to market and sell the real property commonly known as 7071 River Road in Colusa, California 95932 ("Colusa Property"). Despite supposedly being on the market for almost six months, Debtor in Possession has not come forward with an offer. *Id.* at ¶ 5.

Mr. Guralnik testifies that the property commonly known as 623 Rexford Drive, Beverly Hills, CA 90210 ("Rexford Property") is the only asset sold in the case, and it was sold at a $1.5 million loss. Private Money's secured claim was only partially paid off from the sale, and Private Money now holds an unsecured claim for the remainder. Decl. ¶ 1, Docket 183. Mr. Guralnik further testifies that there has been an extreme lack of progress in liquidating any assets of this estate, and he, as an unsecured creditor, is concerned that the Debtor has not employed accountants on behalf of the estate so as to advise the Debtors in Possession as to the utility between keeping property in the estate or abandoning it. *Id.* at ¶ 4.

RABO AGRIFINANCE LLC'S
LIMITED OPPOSITION

Secured creditor Rabo AgriFinance, successor in interest to Rabobank, N.A. ("RAF") filed a limited opposition on July 24, 2025. Docket 212. RAF argues that the case should be dismissed or a Chapter 11 Trustee appointed, not converted to Chapter 7, because the farms operating as a going concern is in the best interest of creditors. Limited Opp'n 2:23-27. RAF further states any assignment of farm proceeds RAF receives is from non-debtor entities. Therefore, the proceeds it is collecting are not estate property. *Id.* at 3:1-9.

LORETZ FAMILY TRUST JOINDER

The Frank Loretz Family Trust dated November 26, 2013, its successors and/or assignees ("Loretz Creditor") submitted a Joinder in support of the Motion on July 24, 2025. Docket 214. Loretz Creditor states that although Debtors in Possession are filing MORs, since Kalkat is relying on contributions from family and friends, the monthly operating reports do not show how the Debtors' in Possession personal expenses are being paid. Joinder at 2:21-25. Loretz Creditor argues that the MORs are devoid of any relevant information.

Moreover, Debtors in Possession have been engaging in gross mismanagement of the Estate. Kalkat is majority owner of two general partnerships, Kalkat Orchard Co. and Jaspal Orchards (collectively, the "Orchard GPs"). All proceeds from the Orchard GPs go to RAF. Kalkat is farming the various properties with the Orchard GPs and outside the purview of the bankruptcy court. *Id.* at 4:24-25. A review of the MORs does not provide that the Orchard GPs are paying Kalkat anything for use and farming of the Properties despite generating income. This circumstance is questionable as Kalkat could presumably lease the Properties out to an independent third party to farm the Properties for the benefit of the estate.

DEBTORS' IN POSSESSION
EVIDENTIARY OBJECTIONS

A Table of the court's rulings on evidentiary objections to the Declaration of Babak "Bobby" Younessi (Docket 182):

Objectionable Material	Grounds for Objection	Ruling
¶ 4, lines 16-17: "That property since the inception, has been listed at an excessive price on the Multiple Listing Service."	Lack of foundation (FRE 602) Hearsay (FRE 801) Improper opinion (FRE 701)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
¶ 6, lines 24-25: "At least some of the properties owned by the Debtors have insurance only because secured lenders have placed force insurance. Property taxes are not being paid."	Speculation (FRE 901) Lack of personal knowledge (FRE 602) Improper opinion (FRE 701)	Sustained. No foundation provided for the statement "At least some of the properties owned by the Debtors have insurance only because secured lenders have placed forced insurance." Rule 901.

¶ 6, lines 25-27: "Attached and incorporated as Exhibit 3 is a true and correct copy of the property tax bill and the default property tax bill for the Bellevue property."	Hearsay (FRE 801) Speculation (FRE 901) Irrelevant (FRE 402)	Overruled. Evidence properly identified and authenticated. Rule 901.
¶ 6, lines 27-28: "Attached and incorporated as Exhibit 4 is a true and correct copy of the property tax bill and default property tax bill for the Caminito property."	Hearsay (FRE 801) Speculation (FRE 901) Irrelevant (FRE 402)	Overruled. Evidence properly identified and authenticated. Rule 901.
¶ 7, lines 2-5: "To my knowledge no secured creditor on any of the properties on which I have a lien have been paid since before the bankruptcy petition was filed on November 14, 2024. Accordingly, to the extent there is equity, it is being eaten up by tens of thousands per month of interest carry costs."	Improper opinion (FRE 701) Speculation (FRE 901) Lack of foundation (FRE 602)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
¶ 8, lines 13-14: "The property is not worth that price, and I have no doubt that this property could be sold but I have no faith in this debtor in selling it."	Lack of personal knowledge (FRE 602) Improper opinion (FRE 701) Speculation (FRE 901)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.

A Table of the court's rulings on evidentiary objections to the Declaration of Alex Guralnik (Docket 183):

Objectionable Material	**Grounds for Objection**	**Ruling**
¶ 1, lines 11-12: "Previously, Debtor Diamond K, which is a limited liability company with all losses and profits going to Kalkat as an individual, purchased the Rexford property on December 2, 2021 for $7 Million Dollars."	Lack of foundation as to "Debtor Diamond K, which is a limited liability company with all losses and profits going to Kalkat as an individual" (FRE 602) Improper opinion (FRE 701)	Sustained. No foundation provided for the statement "Debtor Diamond K, which is a limited liability company with all losses and profits going to Kalkat as an individual." Rule 602.

¶ 1, lines 14-15: "Therefore, at the present time since no other properties have been sold, the bankruptcy estate has the loss carry forward of at $1.5 Million Dollars."	Speculation (FRE 901) Lack of personal knowledge (FRE 602) Improper opinion (FRE 701)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
¶ 3, lines 22-23: "Ms. Kalkat essentially rebuilt the home of Bellevue, although I am not aware of what was spent and what can be used to offset gains."	Speculation (FRE 901) Lack of personal knowledge (FRE 602) Improper opinion (FRE 701) Lack of foundation (FRE 602) Irrelevant (FRE 402)	Sustained. No foundation provided for the statement "Ms. Kalkat essentially rebuilt the home of Bellevue, although I am not aware of what was spent and what can be used to offset gains." Rule 602.
¶ 4, lines 24-27: "There has been an extreme lack of progress in liquidating any assets of this estate, and I, as an unsecured creditor, am concerned that the Debtor has not employed accountants on behalf of the estate so as to advise the Debtors in Possession as to the utility between keeping property in the estate or abandoning it."	Speculation (FRE 901) Improper opinion (FRE 701) Irrelevant as to "I, as an unsecured creditor, am concerned that the Debtor has not employed accountants on behalf of the estate so as to advise the Debtors in Possession as to the utility between keeping property in the estate or abandoning it" (FRE 402)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
¶ 5, lines 2:28-3:1: "In addition, since Mr. Kalkat's husband died many years ago, and he was the actual farmer, I do not have faith in her ability to farm the farming assets in this bankruptcy estate."	Improper opinion (FRE 701) Speculation (FRE 901) Lack of foundation (FRE 602) Irrelevant (FRE 402)	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.

DEBTORS' IN POSSESSION OPPOSITION

Debtors in Possession filed their Opposition on July 24, 2025. Docket 219. Debtors in Possession assert:

> 1. The Motion is largely devoid of admissible evidence and relevant case law supporting the Movants' various arguments. Instead, many of the Movants' factual assertions constitute unsupported speculation by persons' lacking personal knowledge and mean-spirited potshots irrelevant to the standard before the Court. Opp'n 2:13-17.

2. Movants' primary concern is contradicted by the concrete steps taken in this case before the Motion was filed. The Movants want the Debtors' in Possession properties sold. A sale process is already occurring. The Debtors in Possession have employed brokers to list all of the Debtors' in Possession real properties for sale, with the exception Ms. Kalkat's residence. In fact, ATG is to be paid in full from a sale that is already pending. *Id.* at 2:20-24.

3. The appointment of a trustee in either chapter 11 or 7 will not address the primary challenge in the Debtors' in Possession cases—the current lack of cash. To the contrary, at this stage, a trustee (whether by conversion or appointment) adds nothing to these Cases other than a significant layer of administrative expense. While certain expenses have not been paid because the estates lack the cash currently to pay such expenses, a trustee does not solve this concern but makes it worse by increasing estate costs. *Id.* at 3:6-11.

4. Finally, even assuming that "cause" exists, unusual circumstances exist here that argue against conversion or dismissal. Each alleged instance of "cause" has been cured or will be cured within a reasonable period of time. Moreover, as demonstrated by the analysis designated as Exhibit 1 (the "Sales Analysis") to this Opposition, the Debtors' in Possession anticipate that the sale program will maximize the proceeds available for creditors (over the alternatives) and will yield sufficient proceeds to fund a chapter 11 plan. The sales process could generate proceeds sufficient to pay all general unsecured creditors in full. Accordingly, the Motion should be denied. *Id.* at 3:12-19.

5. Debtors in Possession argue that all monthly operating reports have been filed, insurance is current and secured on the properties, unpaid post-petition taxes and U.S. Trustee fees will be paid from sale proceeds, and interest will be paid from sale proceeds to mitigate diminution in value. *Id.* at 5:1-8.

6. The rest of the "cause" alleged by the Movants all stem from the same issue—the Debtors' in Possession lack of cash. As noted above, this is primarily because the proceeds on account of the Debtors' in Possession 2024 crops are being paid to Rabo on account of a pre-petition assignment. The Debtors' in Possession lack of liquidity is not a symptom of mismanagement but the result of a typical commercial transaction with a lender in which the economic bases for the transaction are no longer favorable due to changing market conditions and other factors. *Id.* at 5:24-6:2.

7. Based on the Sales Analysis, so long as the case maintains its status quo – no conversion or appointment of a trustee - the sale of the Orchards is projected to generate sufficient funds to fund a liquidating plan. (See Exhibit 1.) The marketing and sale of the Orchards are to take place over a

reasonable period, approximately 105 days from the Court's approval of the Sale Procedures through the proposed sale hearing. Opp'n 6:4-8.

8. The fact that the Orchard GPs are not in bankruptcy is not cause for granting the Motion. The reality is that, as disclosed from the very outset of the case, 2024 crop proceeds have been paid directly by the crop processors to Rabo on account of a preexisting pre-petition assignment of such crop by the non-debtor Orchard GPs. The Orchard GPs granted the assignment in exchange for the line of credit that Rabo provided. *Id.* at 11:9-12.

9. The Debtors in Possession have a reasonable likelihood of rehabilitation, even if that rehabilitation is the result of an organized liquidation. *Id.* at 12:3-4.

10. There is no gross mismanagement of the Estates that would justify appointing a Chapter 11 Trustee. *Id.* at 17:16-18:5.

Debtors in Possession filed the Declarations of Joshua Nahas (Docket 217) and Kamaljit Kalkat (Docket 220) in support of their Opposition.

Mr. Nahas is a Managing Director of Dundon Advisers LLC ("Dundon"), the court approved financial adviser to the Debtors in the above-captioned jointly administered Chapter 11 cases of Kamaljit Kaur Kalkat and Diamond K LLC. Mr. Nahas testifies, in support of refinancing or selling assets, Dundon has completed a comprehensive analysis of the properties, the claims against the estates, and the transaction costs to completion of either a global refinancing or completion of the sales program and exit from these cases. As part of this analysis, Dundon has analyzed the impact of the appointment of a trustee on the estates in both chapter 7 and chapter 11. Decl. ¶ 7, Docket 217. Mr. Nahas authenticates the sealed Exhibit 1. *Id.* at ¶ 8.

Ms. Kalkat testifies generally as to the facts alleged in the Motion. Decl., Docket 220. In the Declaration Ms. Kalkat states that the farming operations for the agricultural properties of the Bankruptcy Estate by two general partnerships for which the Bankruptcy Estate now holds Ms. Kalkat's partnership interests. *Id.*; ¶¶ 4, 5.

Ms. Kalkat testifies that she manages the farming operations. *Id.*; ¶ 7. In light of the responsibility for the farming operations having been "transferred" to the two general partnerships, then Ms. Kalkat is not overseeing the farming operations as the Debtor in Possession, but as the general partner of the partnerships. Schedule A/B does not identify any contracts or leases with the general partnerships. Dckt. 32.

The court also notes that on Schedule A/B Debtor Kamaljit Kalkat states that she owns $1,467,447.77 of equipment related to Kalkat Orchard and $414,540.00 of equipment related to Jaspal Orchards. *Id.*; Sch A/B, ¶ 49. There are no lease or rental agreements identified on the Schedules for this equipment that is "related to" the two general partnerships of which Debtor Kamaljit Kalkat holds the majority interest.

MOVANTS' REPLY AND EVIDENTIARY OBJECTIONS

A Table of the court's rulings on evidentiary objections to the Declaration of Joshua Nahas (Docket 217), the Opposition (Docket 219), and the sealed Exhibit 1:

Objectionable Material	Grounds for Objection	Ruling
Opp'n 21:28; 22:21: "The Sales Analysis proves that the Debtors' can propose a feasible plan that may pay all creditors in full."	Unsupported	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
Decl. ¶ 8	Lacks foundation under Rule 104 of the Federal Rules of Evidence, and the expert opinion sought to be given does not comply with Rules 702 or 703 of the Rules of Evidence	Overruled. Proper opinion, Rule 701, and relevant, Rule 402.
Exhibit 1	It is submitted that it is wholly inappropriate to be using such a sealed document under the guise of proprietary information, when its purpose is to defeat a Motion to Dismiss, Convert or to Appoint a Chapter 11 Trustee based on a lack of progress in this case, and the Debtor's failure to properly manage the assets. . . because of the fact that it is under seal, responding party cannot actually address what is and is not in the document.	Overruled. Proper foundation, Rule 901, and relevant, Rule 402.

Movants filed their Reply on July 31, 2025. Docket 231. Movants assert there are still issues with the MORs, namely, the MORs contain false statements. The MORs state that there are no post-petition taxes payable and past due, although the record demonstrates there are post-petition taxes due. *Id.* at 2:13-19. There is also no evidence of insurance. *Id.* at 3:9-15. Debtors in Possession cannot confirm a Plan, this case being over eight months in without any meaningful progress. Movants argue appointment of a Chapter 11 Trustee is in the best interest of the Estate.

APPLICABLE LAW
Dismissal or Conversion

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.

Movants move for relief pursuant to 11 U.S.C. § 1112(b)(4)(A), (B), (C), (F), and (I). 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].

> The example of subsection (b)(4)(B) focuses on the management of the estate and not on the debtor. Since the focus is on the bankruptcy estate, the inquiry cannot include mismanagement by the debtor prior to the bankruptcy filing. However, if mismanagement continues after the petition has been filed, it is not in the interest of creditors to permit continuance of gross mismanagement.
>
> "A debtor in possession is vested with significant powers under the provision of the Bankruptcy Code. As is often the case, those powers come with certain responsibilities. Significantly, a debtor in possession owes a fiduciary duty to its

creditors." Gross mismanagement may be found notwithstanding the debtor's management's good intentions. Failure to maintain an effective corporate management team has been held to constitute gross mismanagement. Mismanagement may include failure by debtor's manager to comply with the requirements of the Bankruptcy Code, including seeking approval for postpetition lending and borrowing, and the failure to keep the court and other parties in interest apprised of the debtor's business operations.

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].

The ninth example of cause enumerated in section 1112(b)(4) is "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." Before the inclusion of this example of cause in section 1112(b), some courts held that the failure to pay postpetition taxes could constitute grounds for conversion or dismissal under section 1112(b). The example includes both the failure to pay postpetition taxes as well as the failure to file tax returns that come due postpetition. Courts have disagreed whether the timeliness requirement under the language of section 1112(b)(4)(I) applies solely to the payment of taxes or also to the filing of any postpetition return.

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

> The types of insurance that may be necessary to protect the estate and the public, depending on the debtor's business, may include all or some combination of fire and extended liability insurance, general liability insurance, worker's compensation and unemployment insurance, employee health insurance, malpractice insurance, product liability insurance and liquor or dramshop insurance. The United States trustee, who is charged with responsibility for supervising chapter 11 cases, also requires the debtor to maintain appropriate insurance coverage. "The dollar amount of the insurance coverage must be sufficient to cover the fair market value of the estate's property. . ."
>
> The United States trustee is charged with, inter alia, monitoring plans and disclosure statements, verifying reports and schedules, reporting possible criminal activity and supervising the progress of cases under chapter 11 and may gather information from the debtor regarding operations in order to perform these duties. In small business cases, the United States trustee may require extensive access to the debtor's operations and business records in order to comply with the requirements of the office. The failure to comply with these requests, if the requests are reasonable, constitutes cause to convert or dismiss the case. However, a delayed response by the debtor is not always viewed as "cause" to dismiss or convert a case.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][c] & [h].

Appointment of a Chapter 11 Trustee

An alternative to dismissing or converting a Chapter 11 case is appointing a Chapter 11 Trustee. 11 U.S.C. § 1104(a) states:

> (a)At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—
>
> > (1)for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
> >
> > (2)if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

Collier's states in regards to appointment of a Chapter 11 Trustee:

> Normally in chapter 11 cases, the debtor remains in possession of its assets and continues to operate its business as it restructures or sells and attempts to formulate a reorganization plan. The concept of the debtor remaining in possession recognizes that the debtor's managers are most familiar with the business and normally will be

able to provide the most capable and efficient management during the chapter 11 process. In addition, continuation of the debtor's management encourages managers to be willing to commence a chapter 11 case at an appropriate time, without undue fear that they will be ousted upon commencement of the case. Moreover, the debtor in possession concept, coupled with the debtor's exclusive period for proposing a reorganization plan, enables the debtor to protect its interests and, to some extent, those of its owners and managers, during the reorganization process.

Although there is generally a presumption that the debtor is entitled to remain in possession during a chapter 11 case, there are cases in which it is inappropriate to permit the debtor and its management to continue in possession. The clearest examples are those in which the debtor or its managers have engaged in serious fraud or dishonesty or have grossly mismanaged the business. A debtor in possession may also be inappropriate when there are irremediable conflicts or when creditors have completely lost confidence in the management of the business.

In such extraordinary cases, section 1104 authorizes the court to order the appointment of a trustee. Under section 1104(a)(1), upon request (which would be in the form of a motion) of a party in interest, the court must order the appointment of a trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor." The fact that a creditor's claim is disputed by the debtor does not deprive that creditor of standing to move for the appointment of a trustee under section 1104. Under section 1104(a)(2), upon request of a party in interest, the court must order the appointment of a trustee if such an appointment "is in the best interests of creditors, any equity security holders, and other interests of the estate." Finally, under Bankruptcy Code section 1112(b), if cause exists to dismiss or convert a chapter 11 case to chapter 7, the court is required to do so unless it "determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." Courts have opted to appoint a trustee under section 1104(a) rather than dismissing or converting a case where there is at least a reasonable prospect that the debtor can be successfully reorganized.

7 COLLIER ON BANKRUPTCY ¶ 1104.02[1].

The flexible standards embodied in section 1104(a) are intended to accommodate two goals: (1) facilitation of the debtor's reorganization; and (2) protection of the public interest and of creditors. According to the House Report, these goals could best be accomplished by flexible standards that envisioned the debtor remaining in possession unless some strong reason existed to remove the debtor in favor of a trustee. The House Report suggested that, in most cases, the debtor will have entered bankruptcy as a result of honest business reverses, and appointment of a trustee, with the attendant disruption of business management, would not benefit, and indeed might harm, creditors. A trustee unfamiliar with the business and its creditors will usually cause delay and expense learning facts and circumstances that the trustee needs to know in order to facilitate the debtor's reorganization. Nevertheless, the House Report recognized that in some cases fraud, gross mismanagement, or other circumstances might be present under which the benefit of a trustee would outweigh

> the detriment. In view of this expressed purpose, it would seem that a court considering a motion to appoint a trustee should generally balance the benefit to be gained from such an appointment against the detriment to the reorganization effort and the rights of the debtor that may result from such an appointment.

7 COLLIER ON BANKRUPTCY ¶ 1104.02[3][a].

> The appointment of a trustee in a chapter 11 case is an extraordinary remedy. The drafters of the Code recognized that, as a general rule, in the absence of fraud, dishonesty, incompetence, gross mismanagement, or similar grounds, the debtor's management should be given an opportunity to propose a plan of reorganization for the debtor. For this reason, there is a strong presumption that the debtor should be permitted to remain in possession absent a showing of need for the appointment of a trustee or a significant postpetition change in the debtor's management.

Id. at 1104.023[b][i].

DISCUSSION

In considering whether conversion, dismissal, or appointment of a Chapter 11 Trustee is warranted, the court considers how the bankruptcy case has been prosecuted, whether there has been shown gross mismanagement, and, in this Case, questions of conflicts of interest arising. The court includes the table of real property assets in the Kalkat case as described in her Schedules:

Address	**Type Of Property**	**Acreage**	**Current Value of Property Stated by Debtor**	**Mortgagee**	**Notes**
1447 Hillgate Road, Arbuckle, CA 95912	Almonds	442.3	$11,055,750	$5,795,950 Rabo Agrifinance	
941 Wildwood Rd., Arbuckle, CA 95912	Almonds, Walnuts, Prunes	48.5	$1,212,500	$1,000,000 Austin Tarzana Group	Austin Tarzana - Same loan crosscollater-alized across 4 properties in this case and 2 properties in the related case of Diamond K.

Arbuckle, CA 95912	Almonds	31	$775,000	None	
Husted Road & Husted Laternz Road, Williams, CA 95987	Almonds	33.56	$839,000	None	
Ord Ranch Road E, Gridley, CA 95948	Almonds, Peaches, and Prunes	197.2	$3,944,000.00	$ 1,000,000.00 1st - Rabo Agrifinance; 2nd - Austin Tarzana Group	Austin Tarzana - Same loan crosscollater-alized across 4 properties in this case and 2 properties in the related case of Diamond K.
Arbuckle, CA 95912	Almonds	74.67	$1,866,750.00	$700,000.00 Loretz Frank Family Trust	
46 & 66 Ord Ranch Rd., Gridley, CA 95948	Residential / Walnuts	28.9	$1,011,500.00	None	
7071 River Road, Colusa, CA	Walnuts and Prune	127.4	$2,540,000.00	$1,000,000.00 Austin Tarzana Group	Austin Tarzana - Same loan crosscollater-alized across 4 properties in this case and 2 properties in the related case of Diamond K.

NE Corner of Pease Rd. and Township Rd., Yuba City, CA 95991	Walnuts		$660,000.00	$1,000,000.00 Austin Tarzana Group	Austin Tarzana - Same loan crosscollater-alized across 4 properties in this case and 2 properties in the related case of Diamond K.
2377 Clark Road, Live Oak, CA 95953	Primary Residence / Walnuts		$8,000,000.00	$2,500,000.00 5th Street Capital	

Schedule C at 25, Docket 32. The court provides a similar table for the Diamond K real property assets as described in the Schedules:

Address	**Type Of Property**	**Acreage**	**Current Value of Property Stated by Debtor**	**Mortgagee**
5762 Bellevue Ave, La Jolla, CA	Residential / Investment		$5,500,000.00	$4,247,548.00 1st - APC CS Trust, a DE Statutory Trust
7546 Caminito Avola, La Jolla, CA	Residential / Investment		$5,995,000.00	$3,449,017.00 1st - APC CS Trust, a DE Statutory Trust
623 N. Rexford, Beverly Hills, CA	Residential / Investment		$6,100,000.00	$5,426,935.04 Private Money Solutions, Inc.
SE Corner Hwy 162 and Road D, Willows, CA 95988	Almonds	137.57	$3,439,250.00	$2,370,487.04 AgWest Farm Credit

Case no. 24-25181, Schedule A/B at 12, Docket 45.

Kalkat, in addition to her portfolio of real property assets, enjoys the luxury of driving her $140,000 2022 Mercedes G-Class, which results in a car payment expense of $3,000 per month. Schedule I / J at 46, Docket 32. This is the only vehicle listed on Schedules A/B. Dckt. 32 at6 15.

On Schedule D the Debtor lists Mercedes Benz Financial as having a secured claim in the amount of ($159,893.00) that is secured by the $140,000.00 2022 Mercedes. *Id*. at 28. No Motion for Relief from the Automatic Stay has been filed by Mercedes Benz Financial with respect to its undersecured claim.

Looking at the recently filed Monthly Operating Reports for June 2025 (filed July 23, 2025; Dckt. 210), May 2025 (filed July 21, 2025; Dckt. 208), and April 2025 (filed July 21, 2025; Dckt 206), the Debtor has been "gifted" $18,062 in June 2025, $8,411 in May 2025, and $8,250.00 in April 2025.

The Debtor in Possession is Dependant on Gifts for Everyday Expenses

The Debtor Ms. Kalkat, serving as the Debtor in Possession in her case, is unable to generate any income to pay her regular and normal living expenses, much less to be funding the ongoing operations of prosecuting the Bankruptcy Cases. Looking at the last three monthly operating reports, an unknown source is gifting her an average of $11,574 a month. On an annualized basis this total gifts of $138,888, which could result in some substantial gift taxes owed by her benefactors.

Kalkat is also majority shareholder of the Orchard GPs for which she apparently works for free, not deriving any income from business operations.

The MORs show Debtors in Possession generally are not faring well. *See* MORs, Dockets 206, 208, and 210. Debtors in Possession are deriving no income and apparently surviving totally off of "Disbursements made by third party for the benefit of the estate" in the amount of $8,250. Docket 206. In reading Kalkat's Declaration at Docket 220, it appears these are "gifts" from her son. Decl., ¶ 12, Docket 220.

At the hearing, the benefactors making the gifts were identified as **xxxxxxx**

Her son is not named in the Declaration, and the court wonders what his relationship is to the Orchard GPs. It may be that her son, as an executive, is being paid from the Orchard GPs, along with RAF, at the expense of other creditors in the case. It may be that Kalkat is therefore indirectly collecting income from the Orchard GPs through her son and is attempting to bypass requirements of a Chapter 11 Debtor in Possession.

At the hearing, the son's possible business relationship was explained as **xxxxxxx**

Progression of the Bankruptcy Case

Debtors in Possession have explained to the court over the life of this case that Debtors in Possession are reorganizing under a dual-approach, either liquidating properties or entering into a refinancing agreement to repay secured creditors. As the Schedules indicate, there may be millions of dollars of equity as presented to the court, so the refinancing is the primary objection of the Debtor in Possession, with an eventual sale of the properties only as a secondary alternative if she is unable to obtain the refinancing.

And yet, in over eight months, Debtors in Possession have managed to only sell the Rexford property, and at a loss to the Estate. The court expects to see a sense of haste where a debtor in Chapter 11 has no income, is making no payments, and has no hope of reorganization beyond liquidation or refinance.

The Debtors in Possession have been in control of these two Bankruptcy Cases since November 14, 2024, and the court has not been presented with any substance for any refinance or how if the refinancing was obtained how it would be paid back.

While it is true that the Debtors in Possession have sold one property, the benefit of that sale was to generate an unsecured claim and a tax loss.

The Debtor in Possession filed a Motion to sell the 7071 River Road Property on July 10, 2025. Dckt. 185. The sales price is $1,625,000, which the Motion states is the highest offer priced received as of the filing of the Motion. That property is stated to be encumbered by the lien of ATG Capital 401(k) Plan; Austin Tarzana Group, LLC, which secured a debt in the amount of ($1,242,280.52). Motion, § II, ¶ B; Dckt. 185. The hearing on that Motion is set for August 21, 2025.

Conduct of Debtor in Possession Kalkat

It appears Kalkat threatens to cease working for free in the event a Chapter 11 Trustee is appointed. In Exhibit 1 cited by counsel for the Debtors in Possession a Debtor in Possession Plan analysis, a Chapter 11 Trustee analysis, and a Chapter 7 Trustee liquidation analysis are provided. Under the Debtor in Possession analysis, Debtor in Possession Kamaljit Kalkat states that she is providing farm managing services for free. For the Chapter 11 trustee analysis, it is stated that the Trustee will have no funds (because the bankruptcy estates do not have any revenue) to hire someone to manage the farms.

This would appear to indicate that if a trustee were appointed, Debtor Kamaljit Kalkat would cease managing the farms and cause both herself and the Bankruptcy Estate financial detriment.

Such an outcome would make little difference in the cases, Kalkat not deriving any income for the Estates through her efforts. Indeed, in considering whether to appoint a Chapter 11 Trustee, the court must consider that it is a debtor who knows the business better than an appointed trustee. Such consideration weighs in support of appointing a Chapter 11 Trustee, however, where the Trustee would not be operating the business but liquidating assets. As the Estates generate no income, the Chapter 11 Trustee would not be hindered in assuming the role of the Debtors in Possession.

Debtors in Possession argue Movants have not demonstrated gross mismanagement. Opp'n 17:16, Docket 219. The court disagrees. Any equity cushion in real property assets continues to shrink as payments are not made and Debtors in Possession continue delaying. A competent, focused Debtor in Possession would have sold these properties and maximized value for the Estates expeditiously. Yet, over eight months into the case, the court is being told that a sales process is underway. Nothing on the Docket or in the evidentiary record supports these contentions. Equity cushions continue to dwindle and assets remain unsold. There is no clear track toward reorganization, the court being told the pathway may be this, or it may be that. The court finds Debtors in Possession have engaged in gross mismanagement of the Estates.

Debtors in Possession argue that creditor acrimony is not enough to support appointing a Chapter 11 Trustee. Yet Collier's instructs "A debtor in possession may also be inappropriate when there are

irremediable conflicts or when creditors have completely lost confidence in the management of the business." 7 COLLIER ON BANKRUPTCY ¶ 1104.02[1]. Creditors have lost confidence in Debtors in Possession, and the court finds this as another factor weighing in favor of appointing a Chapter 11 Trustee.

Finally, Debtors in Possession argue appointing a Chapter 11 Trustee is not in the best interest of creditors because Debtors in Possession are already moving forward toward a sale of the various properties, including orchards. Opp'n 20-21, Docket 219. The court disagrees. Debtors in Possession will be assisted by a Chapter 11 Trustee in maximizing value for the Estates. If Debtors in Possession already have a clear plan to reorganize, a Chapter 11 Trustee would be duty-bound to adopt the plan and work with Debtors in Possession in reorganizing, or else risk being subject to a lawsuit for breach of fiduciary duty. The court sees appointment of a Chapter 11 Trustee as an opportunity for Debtors in Possession and the Trustee to work together constructively in maximizing value for the Estates.

Possible Conflicts of Interest

Here, while owning the orchard properties, all of the operation of the orchards is done outside of the Bankruptcy Case by the general partnerships of which the Debtor Kamaljit Kalkat is the majority partner. On Schedule A/B Debtor Kamaljit Kalkat states that she owns 98% of Kalkat Orchard Co general partnership and 98% of Jaspal Orchards general partnership. Sch A/B, ¶ 10; Dckt. 32. On Schedule A/B Debtor states under penalty of perjury that the values of her 98% interest in these two general partnerships operating are only "TBD," and no value is stated. *Id*.

The Debtor Kamaljit Kalkat has fiduciary duties as the general partner that runs to the partnerships and other obligations and duties that run to creditors of the partnership. Additionally, Debtor Kamaljit Kalkat, as the general partner, owes fiduciary duties to the Bankruptcy Estates in exercising the powers of a bankruptcy trustee (11 U.S.C. § 1107) which Bankruptcy Estates now hold the two 98% general partnership interests. [Fn.1.]

FN. 1. As the Ninth Circuit discussed in *Everett v. Perez (In re Perez)*, 30 F.3d 1209, FN.5 (9th Cir. 1994):

> As the Supreme Court put it, "If a debtor remains in possession . . . the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession." *CFTC v. Weintraub*, 471 U.S. 343, 355, 85 L. Ed. 2d 372, 105 S. Ct. 1986 (1985); *see also Wolf v. Weinstein*, 372 U.S. 633, 649-652, 10 L. Ed. 2d 33, 83 S. Ct. 969 (1963); *In re Intermagnetics Am., Inc.*, 926 F.2d 912, 917 (9th Cir. 1991) ("Officers of a debtor-in-possession are officers of the court because of their responsibility to act in the best interests of the estate as a whole and the accompanying fiduciary duties.").

While the Debtor in one of the cases is an individual and the other a limited liability company, Kamaljit Kalkat is serving as the Debtor in Possession in her individual case and the Responsible Representative of the LLC debtor in the Diamond K LLC Case. As the Debtor in Possession and the Responsible Representative (the managing member) she has fiduciary duties running to the respective bankruptcy estates and cannot act in what she believes is in her personal or the LLC's interests that are contrary to her fiduciary duties running to the two Bankruptcy Estates.

Debtor Kamaljit Kalkat is attempting to serve as the fiduciary Debtor in Possession owing such fiduciary duties to the Bankruptcy Estate, and also as the fiduciary general partner owing fiduciary duties to the partnership and duties to its creditors.

What Debtor Kamaljit Kalkat is doing as the general partner of the two partnerships is known only by her, for which there is no fiduciary of the Bankruptcy Estate watching and enforcing the rights of the Bankruptcy Estate if Debtor Kamaljit Kalkat "favors" the partnerships and its creditors over the Bankruptcy Estate. Everything being done in the "privacy" of the general partnerships, with only the Debtor Kamaljit Kalkat, as the general partner, (and the other general partners) having knowledge of what is being done and the impact on the Bankruptcy Estate's general partnership interests.

Here, after nine months in this Bankruptcy Case, no plan has been proposed, no revenues are being generated, and the Debtor in Possession is living off very substantial financial "gifts" from family members.

The court would note that appointment of a Chapter 11 Trustee is in line with Debtors' in Possession own stated strategy. Debtors in Possession proposed the idea of appointing an independent sales officer, Opp'n at 20:5, to assist in marketing and selling real property assets. A Chapter 11 Trustee will perform the same or similar functions on behalf of the Estates, being an independent party assisting in selling real properties. The two Chapter 11 Debtors could then focus on moving forward with a Chapter 11 Plan while the Chapter 11 Trustee holds creditors at bay while actively marketing the real property for sale in a commercially reasonable manner. This can include the Debtor actively pursuing her desired refinance without being "distracted" by her fiduciary duties as the Debtor in Possession.

Debtors in Possession and Creditors Addressing
Whether There is An Agreement for the Debtors in Possession
to Proceeding With the Marketing and Sale of the Properties of the Bankruptcy Estates

At the prior hearing on the Debtors in Possession Motion for Approval of Marketing Procedures, counsel for creditors and counsel for the Debtors in Possession stated that they would meet further to determine whether agreed terms for the marketing of the properties by the Debtors in Possession was possible.

At the hearing, **xxxxxxx**

~~Therefore, the Motion is granted, and the United States Trustee is directed to appoint a Chapter 11 Trustee in the jointly administered Chapter 11 cases of Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K") (collectively, "Debtors in Possession") pursuant to 11 U.S.C. § 1104(a) and in accordance with Fed. Rs. Bankr. P. 2007.1, 2008, 2009, 2010, 5002, and 6009.~~

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, or Appoint a Chapter 11 Trustee filed by Secured Creditors ATG Capital 401(k) Plan; Austin Tarzana Group, LLC ("ATG") and Unsecured Creditors The Juliet Family, 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. ("Private Money") (collectively, "Movants") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that ~~the Motion is **xxxxxxx**, and the United States Trustee shall appoint a Chapter 11 Trustee in the jointly administered Chapter 11 cases of Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K") (Case nos. 24-5180, 24-25181) pursuant to 11 U.S.C. § 1104(a) and in accordance with Fed. Rs. Bankr. P. 2007.1, 2008, 2009, 2010, 5002, and 6009.~~

7.	**24-25180-E-11** **RFL-10**	**KAMALJIT KALKAT** **Mark Melickian**	**CONTINUED MOTION TO AUTHORIZE AND APPROVE BID PROCEDURES , 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.

The Motion is xxxxxxx.

August 7, 2025 Hearing

The court continued the hearing to be heard in conjunction with the Motion to Dismiss, Convert, or for appointment of a Chapter 11 Trustee. Order, Docket 235.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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 Debtor in Possession requested that the hearing be continued to August 7, 2025, when there is a hearing on a motion to sell property and a motion to convert or dismiss this case, or appoint a Chapter 11 Trustee. The Debtor in Possession will work with creditors to see if an agreed marketing order to provide for the reasonable marketing of the property.

The hearing is continued to 10:30 a.m. on August 7, 2025, to allow the Parties to negotiate possible agreed terms for marketing of the properties of the Bankruptcy Estate.

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 **xxxxxxx**.

8. 25-90393-E-12 CAE-1 **COSTA FARMS** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-23-25 [1]**

Item 8 thru 10

Debtor's Atty: Peter G. Macaluso

Notes:
Continued from 7/9/25 to be conducted in conjunction with the continued hearing on the Motion to Authorize Employment of Counsel by the Debtor in Possession.

AUGUST 7, 2025 STATUS CONFERENCE

On July 31, 2025, a Status Report was filed by the Debtor in Possession identified as "Costa Farms." Dckt. 49. The Status Report does not include any information concerning the existence of a partnership that is "Costa Farms," and if it is a partnership, who the partners are.

The "updated" Status Report filed on July 31, 2025, at Docket 49, is merely a copy and paste repeat of the Status Report filed on July 2, 2025, at Docket 43.

On the Statement of Financial Affairs the response to the ¶ 28 Question:

> 28. **List the** debtor's officers, directors, managing members, **general partners**, members in control, controlling shareholders, or other people **in control of the debtor at the time of the filing of this case**.

is left blank. Dckt. 15 at 19.

Looking at the proof of claims filed in this Bankruptcy Case, the creditors are asserting claims against the following persons:

1. Proof of Claim 1-1; Wright's Petroleum, Inc.; Valley Pacific Petroleum Services, Inc. Creditors.

   a. Default Judgment against Defendant David R. Costa dba Dave Costa Farms. POC 1-1 Attachment at p. 3; Judgment ¶ 5.a.

2. Proof of Claim 2-1; J.M. Equipment Company, Inc. Creditor.

   a. Abstract of Judgment, Judgment Debtor Dave Costa individually and dba Costa Farms. POC 2-1, Attachment 1 at p. 1.

3. Proof of Claim 3-1; Tilbury Auto Parts, Inc. Creditor.

a. Abstract of Judgment, Judgment Debtor Dave Costa. POC 2-1 Attachment 1 at p. 2.

4. Proof of Claim 4-1; American AgCredit, FLCA Creditor.

a. Master Loan Agreement entered into September 16, 2009.

(1) Borrower is "Costa Farms, a California General Partnership, Cecelia A. Costa, Cecelia Costa as trustee of the Costa Revocable Trust, and David Costa. POC 4-1, p. 8.

(2) Cecelia Costa, trustee, and David Costa are identified as the general partners. *Id*.; p. 30.

b. A deed of trust in which Costa Farms, a California General Partnership, is the trustor granting a deed of trust to American AgCredit, FLCA. *Id*.; p. 50.

5. Proof of Claim 5-1; George W. Lowry, Inc. Creditor.

a. Abstract of Judgment, Judgment Debtor David Costa, individually and dba Costa Farms. POC 5-1, p. 7.

It appears that Creditors are filing claims which are owed by David Costa, individually and personally using the dba "Costa Farms."

At the prior hearing, counsel for secured creditor American Ag Credit FLCA informed the court the obligor on its deed of trust is Costa Farms, a California General Partnership. Counsel stated that the partners were listed as Roy A. Costa, Trustee of the Costa Revocable Trust Dated January 13, 1993; Cecelia A. Costa, Trustee of the Costa Revocable Trust Dated January 13, 1993; and David R. Costa. However, the information in the schedules and the claims appear to relate to David Costa individually.

At the Status Conference, **XXXXXXX**

JULY 8, 2025 STATUS CONFERENCE

This Chapter 12 Case was filed for "Costa Farms" in *pro se* on May 23, 2025. On May 29, 2025, Peter Macaluso, Esq. substituted in as counsel for the Debtor in Possession.

As discussed in the Civil Minutes for the hearing on the Motion to Use Cash Collateral, a question exists as to who is the Debtor in this case. Is there a legal entity known as "Costa Farms" or is that the d.b.a. used by David Costa. On the Petition, it is stated that Costa Farms uses the name "David Costa" in doing business. Civ. Minutes, p. 1; Dckt. 36.

The has continued the hearing on Counsel's Motion to be Employed to 10:30 a.m. on July 10, 2025. Order; Dckt. 39. The court continued the hearing to allow Counsel and the "Debtor" to document who the Debtor is in this Case and who is employing counsel. Civ. Minutes; Dckt. 28.

On July 2, 2025, a Status Conference Statement was filed by Costa Farms, who is identified as the "Debtor," and not the Debtor in Possession. In the upper left hand corner of this Pleading Counsel states that he is the attorney for "Debtor in Possession Costa Farms." Dckt. 43.

No information is provided as to what form of legal entity is "Costa Farms" – whether it be a partnership of sole proprietorship.

Two Proofs of Claim have been filed. The first, Proof of Claim 1-1 is filed by Valley Pacific Petroleum Services, Inc. in the amount of ($236,835.29). It is asserted to be a secured claim based on an abstract of judgment. POC 1-1, ¶ 9. A copy of the California Superior Court Judgment is filed as attachment to Proof of Claim 1-1. The basic information from the State Court Judgment includes:

A. Case CV-23-000039 in the California Superior Court for the County of Stanislaus.

B. The Parties to the State Court Action are:

1. Plaintiff: Wright Petroleum, Inc.; Valley Pacific Petroleum Services, Inc.

2. Defendant: **David R. Costa dba Dave Costa Farms**, et al.

C. Judgment entered on April 14, 2023 by default.

D. Amount of Judgment: $30,418.29.

The attachments also include the Abstract of Judgment that was recorded on May 4, 2023, in Stanislaus County California. The Judgment Debtor listed on the Abstract of Judgment is **David R. Costa dba Dave Costa Farms**.

Proof of Claim 2-1 has been filed by J.M. Equipment Company, Inc., asserting a secured claim in the amount of ($28,513.03), with interest accruing at the rate of 10% per annum. POC 2-1, ¶ 9. It is asserted that the lien is pursuant to a recorded abstract of judgment. *Id*.

Attachment 2 to Proof of Claim 2-1 is a copy of an Abstract of Judgment recorded on October 8, 2024 with the Stanislaus County Recorder. The information provided on the Abstract of Judgment includes:

A. Case CV-24-001652 in the California Superior Court for the County of Stanislaus.

B. The Parties to the State Court Action are:

1. Plaintiff: J.M. Equipment Company, Inc.

2. Defendant: **David R. Costa individually and dba Costa Farms**.

C. Judgment entered on May 30, 2024.

D. Amount of Judgment: $30,418.29.

The two Proofs of Claim so far filed in this Bankruptcy Case are for Judgments against David Costa for doing business as Costa Farms.

On Amended Schedule D, prepared with the assistance of counsel, the "Debtor" states under penalty of perjury having the following creditors with secured claims:

A. American AgCredit, FLCA

1. ($353,493.21) secured claim- Mortgage Lien.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

B. George Lowry, Inc. - Judgment.

1. ($126,541.84) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

C. J.M. Equipment Company, Inc. - Judgment

1. ($25,969.74) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

D. N&S Tractor, Inc dba N&S Tractor - Judgment

1. ($24,836.491) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

E. Stanislaus County Recorder.

1. ($147,65) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

F. Stanislaus County Recorder.

1. ($147.61) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

G. Stanislaus County Recorder.

1. ($180.33) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim

H. Stanislaus County Recorder.

1. ($269.47) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim

I. Tilbury Auto Parts, Inc. - Judgment

1. ($15,310.22) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

J. Wright's Petroleum, Inc. - Judgment

1. ($30,418.29) secured claim.

a. Collateral is listed as 9100 Woodward Lake Dr.

2. Lists that no one else is liable on this Claim.

Amd. Sch. D; Dckt. 33 at 3-7. This Schedule D states under penalty of perjury that only the "Debtor" in this Bankruptcy Case is liable on these secured claims. From the two Proofs of Claim filed, the judgment debtor owing those two obligations is David R. Costa, and not some other legal entity known as Costa Farms.

On the Statement of Financial Affairs, which was prepared and filed by David Costa prior to obtaining counsel, is signed by David Costa as the "100% Partner" of the "Debtor." Dckt. 15 at 20. A "100%" Partner is the individual and there is no "partnership."

The Statement of Financial Affairs lists business income for 2023, 2024, and 2025 to the date of filing. *Id*. at 14. It also states that Debtor received $200,000 in interest payments in 2024. *Id*.

All other questions in the Statement of Financial Affairs, Questions 2 through 32, are answered under penalty of perjury "No." These include stating (identified by the paragraph number for the question):

¶ 3. No payments were made to any creditors of "Debtor" within 90 days of the filing of the Bankruptcy Case.

¶ 7. There were no legal actions or proceedings involving the "Debtor" within one year of the May 23, 2025 commencement of the Bankruptcy Case. However, on Schedule D there are a number of creditors holding judgments listed for which abstracts of judgments are outstanding.

¶ 11. No payments were made to anyone to assist with the filing of the Bankruptcy Case.

¶ 26. There are no accountants or bookkeepers have maintained any books or records for the "Debtor."

¶ 28. No person or persons are listed as the general partners for the "Debtor."

¶ 29. There is no person or persons who were general partners within one year of the Bankruptcy Case filing who no longer serve in that capacity.

¶ 30. No compensation, distribution, or disbursement was made to any insider of the "Debtor" within one year before the filing of this Bankruptcy Case.

Id.

On Schedule A/B David Costa under penalty of perjury states that as of the filing of the Bankruptcy Case the "Debtor" had the following assets (identified by paragraph number for the question):

¶ 1. "Debtor" has no cash or cash equivalents.

¶ 7. "Debtor" has $25,000.00 on deposit at Oak Valley Community Bank.

¶ 10. "Debtor" has $1,123,140.00 of Accounts Receivable, all of which are collectable.

¶ 28. "Debtor" has 140 acres of planted crops with a value of $200,000.

¶ 30. "Debtor has farming equipment with a value of $201,000.

¶ 31. "Debtor" has miscellaneous supplies with a value of $2,000.00.

¶ 41. "Debtor" has office equipment and a computer with a value of $1,500.

¶ 47. "Debtor" has three trucks with a value of $63,000.

¶ 55. "Debtor" states that it is the "Owner/Surviving Partner" of the 9100 Woodward Lake Dr. property with a value of $3,000,000.

Dckt. 15.

The Status Conference is continued to August 7, 2025 10:30 a.m. , to be conducted in conjunction with the continued hearing on the Motion to Authorize Employment of Counsel by the Debtor in Possession.

9. 25-90393-E-12 PGM-1 **COSTA FARMS** **Peter Macaluso** **CONTINUED MOTION TO EMPLOY PETER G. MACALUSO AS ATTORNEY(S) 6-2-25 [16]**

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)(2) Motion—Hearing Required.

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

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

The Motion to Employ is ~~granted.~~

August 7, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the continued Motion for Authority to Use Cash Collateral. Nothing further has been filed in support of the Motion.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

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

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

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Existence of Costa Farms

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

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

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

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

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

The Legal Agreement for the Chapter 12 representation has been filed as Exhibit A in support of this Motion. Dckt. 19. The Agreement contains some clerical errors, with reference being made for filing

a Chapter 13 bankruptcy case. It is also not clear from the Agreement who counsel is representing, it merely stating that Costa Farms and David Costa agree to pay for the filing of a Chapter 13 bankruptcy case.

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

At the hearing, Counsel reported that the $10,000.00 was paid to him by David Costa, but the Disclosure of Compensation (Dckt. 10) states that the $10,000.00 was paid to him by the Debtor. Counsel said that this is a clerical error in the Disclosure of Compensation.

Counsel could not clearly state whether his client is David Costa or an entity that consists of one partner.

Counsel only recently substituted into this Case and has been working to "straighten out" the pleadings and proceedings.

The hearing on the Motion to Employ is continued to 10:30 a.m. July 10, 2025. A subsequent order authorizing employment is effective beginning thirty-days prior to the Motion having been filed on June 2, 2025.

July 10, 2025 Hearing

The court continued the hearing on this Motion as the court expressed concerns over the true identity of the Debtor in Possession in this case, it appearing there is no partnership known as Costa Farms and the client in this case may actually be David Costa. A review of the Docket on July 8, 2025 reveals nothing new has been filed with the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Costa Farms ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is ~~granted.~~

10. 25-90393-E-12 PGM-2 | **COSTA FARMS** Peter Macaluso | **CONTINUED MOTION TO USE CASH COLLATERAL 6-5-25 [25]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on June 5, 2025. By the court's calculation, 7 days' notice was provided. The court set the hearing for June 12, 2025. Dckt. 34.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Authority to Use Cash Collateral is xxxxxxx .

August 7, 2025 Hearing

The court continued the hearing on this Motion as the court granted the use of cash collateral through August 31, 2025. Interim Order, Docket 40. The court set a briefing schedule with Debtor in Possession to file and serve supplemental pleadings by July 31, 2025. On July 31, 2025, Debtor in Possession filed a Status Statement. Docket 49. Debtor in Possession states:

1. Debtor in Possession is in substantial compliance with all duties in Chapter 12. Status Report 1:24-2:15.

2. Debtor in Possession meets the definition of family farmer being a partnership whose debts arise from farming operations and who is currently engaged in farming. *Id.* at 2:16-3:1.

3. Debtor in Possession is ready willing and able to proceed in paying the creditors at 100% over the 60 month term, and seek the funds in excess of $1,000,000.00, from Mid Valley Nut Company, Inc., Case #24-90741-E-11,

and making quarterly payments from the nut harvests in the future. *Id.* at 3:2-7.

There is no proposed updated budget for the continued use of cash collateral.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

A debtor identified as Costa Farms, the Debtor and serving as the Debtor in Possession ("Debtor in Possession") moves for an order approving the use of cash collateral. This Bankruptcy Case was filed in pro se and counsel for the Debtor in Possession filed a Substitution on May 29, 2025. Dckt. 10.

On the Petition the Debtor is stated to be Costa Farms. However, the Petition, ¶ 2, states that Costa Farms has used another name in the past 8 years, that being "David Costa." Dckt. 1.

The Petition further states that the Debtor is a partnership. *Id*. at ¶ 6.

On Schedule A/B the Debtor lists various items of personal property, including crops, for which a value of $1,615,640 is stated. Sch. A/B; Dckt. 15 at 3-6. Debtor also lists 80 acres of real property in Oakdale, California, stating a value of $3,000,000. *Id*. at 6. The Debtor states that its interest in the real property is that of "Owner/Surviving Partner." *Id*.

On the Statement of Financial Affairs, ¶ 28 requires all partners who were in control of the Debtor when the case was filed to be listed. *Id*. at 19. No persons are listed in response to ¶ 29.

On the signature page to the Statement of Financial Affairs, David Costa signs it, stating that his position with the Debtor is "100% Partner."

This causes a question to arise - whether Costa Farms is a separate legal entity (such as a partnership, corporation, limited liability company, and the like) or just a business that is operated by David Costa as a sole proprietorship.

On the Schedules, the only creditor listed is American AgCredit, FLCA with a claim secured by the real property. Scheduled D, E/F; Dckt. 15 at 9-11.

In reviewing the Statement of Financial Affairs, the Debtor lists having "Interest Payments Received in 2024 in the amount of $200,000 from as non-business revenue. Stmt Fin Affairs, ¶ 2; Dckt. 15. The court does not see an asset or assets listed on Schedule A/B that would generate $200,000 on interest income for the Debtor.

Possible Additional Rights of a Farmer or Assets of the Estate

David Costa states that it has been the failure of Mid Valley Nut Company to pay for the agricultural products purchased that has cause the financial distress. The court does not see on Schedule A/B any rights or assets listed arising under the Perishable Agricultural Commodities Act ("PACA"). 7 U.S.C. § 499a - § 499t.

Interestingly, the Mid Valley Nut Bankruptcy Case, 24-90741, is assigned to the same judge as this case. On the Mid Valley Nut Schedules, Costa Farms is listed as having a ($1,369,906.74) claim which is secured by a lien described as a "First priority lien against cash, accounts receivable, and nut oil." 24-90741; Schedule D, ¶ 2.14.

REVIEW OF THE MOTION

Debtor in Possession seeks authorization to use $6,000.00 of cash collateral to pay the following expenses:

1. Payment to secured creditor:

    a. American AgCredit, FLCA: $ 3,000.00

2. Average Monthly expenses;

    a. Materials $ 2,000.00

    b. Utilities $ 500.00

    c. Inventory: $ 100.00

    d. Insurance $ 400.00.

Mot. 2:19-25. Debtor in Possession states there is cash on hand of $25,000.00 with accounts receivable in the amount of $1,123,140.00. *Id.* at 3:1-2.

Debtor in Possession explains the largest reason for filing is an unpaid debt owed to the Debtor in Possession by Mid Valley Nut Company, Inc., which is in its own bankruptcy case. Mot. 4:21-22. Therefore, Debtor in Possession seeks authority to use the cash collateral to operate and maintain the business and pay critical expenses during the pendency of this case.

Debtor in Possession files the Declaration of David Roy Costa, who is identified as the owner of Costa Farms, in support to authenticate the facts in the Motion. Decl., Docket 27. There is an attach six-month estimated budget filed as Exhibit A, Docket 28.

In his Declaration, Mr. Costa states that due to the Chapter 11 Bankruptcy Case of Mid-Valley Nut Company, he has not been paid $1,369,906.74. Dec., ¶ 2; Dckt. 27. Due to that non-payment by Mid Valley Nut Company, Mr. Costa went into default for the house payments. *Id*.

At this point, if there is a legal entity known as Costa Farms, the filing of bankruptcy by that entity would not protect Mr. Costa's home from foreclosure. The automatic stay provisions of 11 U.S.C. § 362(a) only apply to the debtor, specific property of the debtor, and property of the bankruptcy estate.

Mr. Costa says that he solely manages the farm's daily operations, there are no employees, and contractors are hire on an as-needed basis.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. 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

In the Motion, the Debtor in Possession states that the following entities hold an interest in the Bankruptcy Estate's (not the Debtor's) cash collateral:

A. American AgCredit: $353,493.21

B. Stanislaus County Tax Collector: $745.05

C. Tilbury Auto Parts: $15,310.22

D. Wright's Petroleum: $30,418.29

E. George W. Lowry, Inc.: $126,541.84

F. J.M. Equipment Company: $25,969.74

G. N&S Tractor, Inc.: $24,836.49

Motion, ¶ 14; Dckt. 25. American AgCredit is the only creditor listed on the Schedules and it is stated to have a "mortgage lien" on the real property listed on Schedule A/B. It is unclear how the other creditors listed above may have a lien on the cash collateral.

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 operating the farm business and generating income to fund a Chapter 12 plan.

While the Motion requests very limited use of cash collateral, it is unclear who is the debtor in this Bankruptcy Case. It is also unclear as to how and what David Costa is doing in light of Mid Valley Nut Company having defaulted in the plan payments and how other non-business debts are being paid.

At the hearing, the main creditor with the secured claim, the Chapter 12 Trustee, and the Debtor in Possession addressed issues for which further information, clarification, or correction will be necessary.

The Parties agreed to the use of cash collateral on an interim basis, anticipating constructive communications and advancing this Bankruptcy Case given that the Debtor in Possession is represented by bankruptcy counsel.

The Motion for Authority to Use Cash Collateral is granted on an interim basis for the period of June 23, 2025 through August 31, 2025.

The hearing is continued to 10:30 a.m. on August 7, 2025. Supplemental Pleadings shall be filed and served by the Debtor in Possession on or before July 31, 2025, and Replies, if any, may be presented orally at the hearing.

Counsel for the Debtor in Possession shall prepare a proposed order consistent with the Ruling above, and lodge the order with this court.

FINAL RULINGS

11. 24-90514-E-7 FAT-1 | **MELINDA AMADOR** Flor De Maria Tataje | **MOTION TO COMPEL ABANDONMENT** 7-8-25 [18]

Final Ruling: No appearance at the August 7, 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 electronically served on parties in interest on July 8, 2025. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Melinda Raquel Amador ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property commonly known as 1701 Trellis Court, Modesto, CA 95357("Property"). The Property is encumbered by the lien of JPMCB Home Lending, securing a claim of $150,161.55. Debtor has claimed an exemption in the amount of $189,000. The Declaration of Melinda Raquel Amador has been filed in support of the Motion and values the Property at $318,150.00. Decl. ¶ 6, Docket 20.

The Chapter 7 Trustee filed a Non-Opposition on July 10, 2025.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Melinda Raquel Amador ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 1701 Trellis Court, Modesto, CA 95357("Property") and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Nikki B. Farris to Melinda Raquel Amador by this order, with no further act of the Trustee required.

12.	**25-20329-E-11** **CAE-1**	**CALIFORNIA ENVIRONMENTAL SYSTEMS, INC.**	**CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION** **1-27-25 [1]**

Final Ruling: No appearance at the August 7, 2025 Status Conference is required.

The Status Conference is continued to 11:00 a.m. on September 30, 2025, to be conducted by the Hon. Christopher D. Jaime, the judge to whom this case is being transferred, in Courtroom 32 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

AUGUST 7, 2025 STATUS CONFERENCE

On August 6, 2025, counsel for the Debtor in Possession lodged with the court the proposed order authorizing the further use of cash collateral. Lodging the order with the court, counsel for the Debtor in Possession affirms that the $15,000.00 adequate protection cure payment was made by the Debtor in Possession. The court is issuing the order authorizing the use of cash collateral.

This court addressed the Status Conference matters at the July 31, 2025 Status Conference, with it being continued to August 7, 2025, to be conducted in conjunction with the Motion to Use Cash Collateral if the court had not issued its order authorizing such use prior to that time.

The Status Conference is continued to 11:00 a.m. on September 30, 2025, to be conducted by the Hon. Christopher D. Jaime, the judge to whom this case is being transferred, in Courtroom 32 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

JULY 31, 2025 STATUS CONFERENCE

At the Status Conference counsel for the Debtor in Possession reported that a Stipulation for the further use of cash collateral was signed and filed on July 31, 2025. The court continued the hearing on the Motion to Use Cash Collateral one week to allow for the $15,000.00 adequate protection payment default under the prior order authorizing the use of cash collateral to be cured. Creditor agrees in the Stipulation that upon the cure payment being made (it was in process as of the time of the Status Conference), it stipulates to the further use of cash collateral.

The Debtor in Possession has not yet filed a proposed plan in this Bankruptcy Case.

The Status Conference is continued to 10:30 a.m. on August 7, 2025, to be conducted in conjunction with the continued hearing on the Motion to Use Cash Collateral.

JULY 9, 2025 STATUS CONFERENCE

As of the court's July 8, 2025 review of the Docket, no updated Status Report had been filed. Additionally, no supplemental pleadings were filed in support of the Motion for Use of Cash Collateral.

At the Status Conference, counsel for the Debtor in Possession reported that after the proof of claim deadline ends, July 21, 2025, the Debtor in Possession will then put together a Plan.

The Status Conference is continued to 10:30 a.m. on July 31, 2025 (Specially Set Day and Time), to be conducted in conjunction with the continued hearing on the Motion to Use Cash Collateral.

JUNE 4, 2025 STATUS CONFERENCE

An updated Status Report was filed on May 21, 2025. Dckt. 66. The Debtor in Possession reports that the Bankruptcy Estate is holding significant cash reserves and there are substantial accounts receivables for more revenue.

The Debtor in Possession plans on having a plan filed within 30 days after the July 28, 2025 deadline for filing governmental proofs of claims.

At the Status Conference, counsel for Bank of America, N.A. reported that the May 2025 adequate protection payment has not yet been received. The Debtor in Possession tried but it was to an account that could not accept the form of transfer.

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

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

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

The Chapter 11Status Conference having been conducted by the court, and upon review of the pleadings, reports of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is is continued to **11:00 a.m. on September 30, 2025,** to be conducted by the Hon. Christopher D. Jaime, the Judge to whom this case is being transferred, in Courtroom 32 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

13.	**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]**

Final Ruling: No appearance at the August 7, 2025 Status Conference is required.

Local Rule 9014-1(f)(2) Motion—Initial 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 granted.

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.

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, counsel for the Debtor in Possession reported that an agreement has been reached with GAIC. The Debtor in Possession shall make an immediately $15,000 cure payment for the adequate protection payments defaults, and the monthly adequate protection payment increased to $ 3,500.00 beginning in August 2025.

The Stipulation provides for the use of cash collateral through December 31, 2025.

As of the July 31, 2025 hearing, the $15,000.00 adequate protection cure payment was in process. With that payment being made, Creditor consents to the further use of Cash Collateral as provided in the Stipulation filed by the Parties on July 31, 2025 (Dckt. 96).

The Parties agreed that the hearing on the Motion to Use Cash Collateral is continued to 2:00 p.m. on August 7, 2025. If the $15,000.00 cure payment is made prior to the continued hearing, counsel for the Debtor in Possession shall lodge with the court a proposed Order further authorizing the use of cash collateral on the terms and conditions set forth in the Stipulation (Dckt. 96). The Stipulation provides for extension of the prior use of cash collateral, modifying the terms to increase the adequate protection payment to creditor to $3,500.00 a month, which was heretofore provided for at $2,500.00 a month.

The court authorizes the use of cash collateral through and including August 15, 2025, on the same terms and conditions as set forth in this court's prior order authorizing the use of cash collateral, Dckt. 55, which is incorporated herein by this reference.

The hearing on the Motion to Use Cash Collateral is continued to 10:30 a.m. on August 7, 2025.

August 7, 2025 Hearing

The court continued the hearing on this Motion to allow Creditor to confirm that the $15,000.00 adequate protection payment default had been made. If the payment was made, Debtor in Possession was to lodge with the court an order authorizing continued use of cash collateral.

On August 6, 2025, counsel for the Debtor in Possession lodged with the court the proposed order, thereby affirming and representing to the court (subject to the Federal Rule of Bankruptcy Procedure certifications) that the cure payment had been made by the Debtor in Possession.

The proposed order includes the increase of the monthly adequate payment to Creditor Great American Insurance Company to $3,500.00.

The Motion is granted.

Counsel for the Debtor in Possession has lodged with the court the Proposed Order, which the court shall sign.