UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 21, 2025 at 10:30 a.m.

1.	**22-90296-E-11** **DCJ-5**	**PROVIDENT CARE, INC.** **David Johnston**	**MOTION FOR COMPENSATION FOR DAVID C. JOHNSTON, DEBTOR'S ATTORNEY(S)** **7-28-25 [172]**

Items 1 thru 3

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 28, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

David C. Johnston, the Attorney ("Applicant") for Provident Care, Inc., the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of September of 2022, through July 28, 2025. The order of the court approving employment of Applicant was entered on October 28, 2022. Dckt. 43. Applicant requests fees in the reduced amount of $12,500.

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 and ultimately having a consensual Plan confirmed on October 1, 2023. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED
Fees

Applicant did not provide a task billing analysis, but Applicant did summarize his hours billed in the case. Applicant's work for Client and the Estate include filing the Chapter 11 petition and all related documents, prosecuting the case at various stages, review proof of claims, and finally obtaining consensual confirmation of the Plan of Reorganization. Mot. 4:9-5:11.

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**
David Johnston, Attorney	39.4	$420.00	$16,548.00
Total Fees for Period of Application			$16,548.00

However, Applicant seeks an award in the reduced amount of $12,500.

FEES ALLOWED
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $12,500.00 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 under the confirmed Plan.

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

Fees $12,500.00

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 David C. Johnston, the Attorney ("Applicant") for Provident Care, Inc., the 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 David C. Johnston is allowed the following fees and expenses as a professional of the Estate:
>
> David C. Johnston, Professional employed by Debtor in Possession
>
> Fees in the amount of $12,500.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.
>
> **IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

2. 22-90296-E-11 DCJ-6 | **PROVIDENT CARE, INC.** **David Johnston** | **MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 8-7-25 [177]**

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 August 7, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Final Decree was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Entry of Final Decree is granted.

Debtor and Debtor in Possession Provident Care, Inc. ("Debtor in Possession") moves this court for a final decree closing the case. 11 U.S.C. § 350(a) provides for closing a case, stating (emphasis added):

> **(a)After an estate is fully administered and the court has discharged the trustee, the court shall close the case**.
>
> (b)A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

Collier's Treatise states regarding a final decree under 11 U.S.C. § 350(a):

> Congress intended that the Bankruptcy Rules set the procedure for the closing of a case under title 11. Federal Rule of Bankruptcy Procedure 3022, which governs the closing of chapter 11 cases, corresponds with section 350(a) and is very similar in language to section 350(a). Under Rule 3022, an estate may be closed even though the payments required by a chapter 11 plan have not been completed. The 1991

Advisory Committee Note to Rule 3022 lists various factors to be considered in determining whether the estate has been fully administered:

> Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) **whether deposits required by the plan have been distributed**, (3) **whether the property proposed by the plan to be transferred has been transferred**, (4) whether the **debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan**, (5) **whether payments under the plan have commenced,** and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.
>
> **When these listed prerequisites have been met and the plan has been substantially consummated, the case should be closed, even if further reports or an accounting must be filed by liquidating agent with the United States trustee**. Chapter 11 debtors often wish to have their cases closed expeditiously to avoid further payments of the quarterly fees assessed under section 1930(a)(6) or (7) during the pendency of chapter 11 **cases. The fact that distributions remain to be made in a chapter 11 case does not preclude the case from being closed, nor does the fact that an individual debtor has not yet received a discharge**, which is usually entered after completion of plan payments. And a case may be closed even if a debtor has already defaulted on such distributions. If there is a subsequent material default on the plan, a creditor may move to reopen the case and seek conversion or dismissal.

3 COLLIER ON BANKRUPTCY ¶ 350.02[2] (emphasis added). "Fully administered" is not defined in the Code or in the Federal Rule of Bankr. P., so the court must consider various factors as described in the note to Fed. R. Bankr. P. 3022.

In this case, the Plan was confirmed on October 1, 2023. Docket 131. Debtor in Possession has made all payments required under the Plan. Mot. 2:8. The Chapter 11 Subchapter V Trustee ("Trustee") was granted compensation on January 1, 2026. Docket 146. Debtor in Possession anticipates there will be no more motions in the case after the hearing on this Motion.

In considering the stage of the case, the court finds the case has been fully administered and orders the entry of a final decree closing the 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 Entry of Final Decree filed by Debtor and Debtor in Possession Provident Care, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the clerk of the court is ordered to enter a final decree closing the case pursuant to 11 U.S.C. § 350(a).

3. 22-90296-E-11 CAE-1 **PROVIDENT CARE, INC.** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-29-22 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 5/1/25. Counsel for the Debtor in Possession reported that the SBA loan has been paid and that the first distribution to the entity that paid the SBA loan. Pursuant to oral motion of counsel for the Debtor in Possession, the court waived the task billing requirement for Debtor in Possession's counsel final fee application.

[DCJ-5] Motion for Allowance of Compensation of Attorney for Debtor in Possession filed 7/28/25 [Dckt 172]; set for hearing 8/21/25 at 10:30 a.m.

[DCJ-6] Debtor's Motion to Close Chapter 11 Case and Enter Final Decree filed 8/7/25 [Dckt 177]; set for 8/21/25 at 10:30 a.m.

The Status Conference is xxxxxxx

AUGUST 21, 2025 STATUS CONFERENCE

The hearings on the Motion for Allowance of Fees for Debtor in Possession counsel and the Motion to Close the Bankruptcy Case were conducted on August 21, 2025, and **xxxxxxx**

At the Status Conference, **xxxxxxx**

MAY 1, 2025 POST-CONFIRMATION STATUS REPORT

It does not appear that counsel for the Debtor in Possession has filed his Motion for Allowance of Professional fees for having successfully navigated this case to a confirmed Plan.

At the Status Conference, counsel for the Debtor in Possession reported that the SBA loan has been paid and that the first distribution to the entity that paid the SBA loan.

Pursuant to the oral motion of counsel for the Debtor in Possession, the courts waives the task billing requirement for Debtor in Possession' counsel final fee application.

JANUARY 30, 2025 POST-CONFIRMATION STATUS CONFERENCE

A review of the Docket indicates that counsel for the Debtor/Debtor in Possession, who has diligently represented his client and confirmed the Subchapter V Plan, has not yet filed a Motion for Allowance of Fees.

At the Status Conference, counsel for the Reorganized Debtor reported that Subchapter V Trustee has been paid in full for her allowed fees and expenses.

Counsel stated that he will have his fee application filed and served on or before February 28, 2025.

The Status Conference is continued to 2:00 p.m. on May 1, 2025.

AUGUST 29, 2024 POST-CONFIRMATION STATUS CONFERENCE

On August 23, 2024, the Subchapter V Trustee filed a report stating that she has received the $9,402.15 in fees allowed her as Subchapter V Trustee.

At the Status Conference, counsel for the Reorganized Debtor reported that the Plan was consensually confirmed. The only remaining matter to address before closing is that Debtor/Debtor in Possession counsel needs to file his fee application.

The Post-Confirmation Status Conference is continued to 2:00 p.m. on November 21, 2024.

JUNE 27, 2024 POST-CONFIRMATION STATUS CONFERENCE

The court's June 25, 2024 review of the Docket indicates that nothing further has been filed in this case since the court allowed the fees of the Subchapter V Trustee.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the only remaining matter is counsel's fee application, which has been delayed due to health issues.

The Plan has been completed, with a 100% dividend to creditors holding general unsecured claims.

The Status Conference is continued to 2:00 p.m. on August 29, 2024.20

MARCH 28, 2024 POST-CONFIRMATION STATUS CONFERENCE

On January 26, 2024, the court entered its order allowing compensation for the Subchapter V Trustee. Dckt. 146. No compensation has been allowed for counsel for the Debtor/Debtor in Possession.

4. **24-23927-E-7 KMT-3**

BLUE LEAD GOLD MINING, LLC
Kristy Hernandez

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD FOR GABRIEL P. HERRERA, TRUSTEES ATTORNEY(S)
7-28-25 [41]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 28, 2025. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Nikki B. Farris, the Chapter 7 Trustee ("Trustee") for the Estate of Blue Lead Gold Mining, LLC ("Debtor"), moves the court for an award of first and final fees for her counsel, Kronick, Moskovitz, Tiedemann & Girard ("KMTG").

Fees are requested for the period September 1, 2024 through, and including, July 27, 2025. The order of the court approving employment of Applicant was entered on September 24, 2025. Dckt. 11. Applicant requests fees in the reduced amount of $11,000.00 and costs in the amount of $163.19.

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 KMTG's services for the Estate include general case administration services as well as diligently investigating the mining property for any valuable assets. The Estate has $22,000 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED
Fees

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

Employ and Fee Applications: KMTG spent 5.1 hours in this category. KMTG prepared its Motion to Employ and this Application.

Investigation of Mining Property and Abandonment: KMTG spent 41 hours in this category. KMTG went through great effort to determine if there would be any value in assets of the Estate, specifically mining assets. The efforts ultimately led to abandonment.

General Case Administration: KMTG spent 1.2 hours in this category. KMTG attended the 341 Meeting and communicated with Trustee regarding case closure.

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

Names of Professionals	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gabriel P. Herrera	3.5	$375.00	$1,312.50
Margaret Salisbury	1.6	$295.00	$472.00
Gabriel P. Herrera	20.4	$350.00	$7,140.00
Russell Frink	19.6	$335.00	$6,566.00
Gabriel P. Herrera	1.2	$350.00	$420.00
Meredith Marley	1	$195.00	$195.00
Total Fees for Period of Application			$16,105.50

Fees are requested in the reduced amount of $11,000.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $163.19 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Courtcall	----------	$49.00
Postage and Photocopies		$114.19
Total Costs Requested in Application		$163.19

The court does not authorize reimbursement for the expense of court call. This expense is factored into attorney billing rates, and attorneys are always free to appear in person. Therefore, the expenses are reduced by $49 and expenses of $114.19 are awarded.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

KMTG seeks to be paid a single sum of $11,000 for its fees incurred for the Estate. First and Final Fees in the amount of $11,000 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $114.19 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$11,000.00
Costs and Expenses	$114.19

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

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

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

The Motion for Allowance of Fees and Expenses filed by Nikki B. Farris, the Chapter 7 Trustee ("Trustee") for the Estate of Blue Lead Gold Mining, LLC ("Debtor"), on behalf of her counsel, Kronick, Moskovitz, Tiedemann & Girard ("KMTG") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kronick, Moskovitz, Tiedemann & Girard is allowed the following fees and expenses as a professional of the Estate:

Kronick, Moskovitz, Tiedemann & Girard, Professional employed by the Chapter 7 Trustee

Fees	$11,000.00
Costs and Expenses	$114.19,

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

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

5. 18-90029-E-11 CAE-1 JEFFERY ARAMBEL

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

Debtor's Atty: Chris D. Kuhner

Notes:
Continued from 6/26/25. Counsel for the Plan Administrator reported that Mr. Arambel's late mother's home is listed for sale. The Plan Administrator reported that there is a tax refund which should be recovered under the Plan.

Operating Reports filed: 7/23/25

[SAD-1] Motion for Relief from Automatic Stay [Movant, U.S. Bank Trust National Association] filed 6/27/25 [Dckt 2136]

[FWP-28] Order Granting Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation with SBN V AG I LLC and Continuing Hearing to 11:00 a.m. on September 23, 2025 filed 7/30/25 [Dckt 2173]

The Status Conference is continued to 11:00 a.m. on October 28, 2025, to be conducted by the Hon. Christopher D. Jaime, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 32 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

No updated Status Report has been filed.

At the Status Conference, **XXXXXXX**

JUNE 26, 2025 STATUS CONFERENCE

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

At the Status Conference, counsel for the Plan Administrator reported that in addition there is Mr. Arambel's late mother's home is listed for sale. The Plan Administrator reports that there is a tax refund of $207,000 which should be recovered under the Plan.

The Status Conference is continued to 10:30 a.m. on August 21, 2025 (Specially Set to the Court's Law and Motion Calendar).

APRIL 3, 2025 STATUS CONFERENCE

Focus Management Group USA, Inc., the Chapter 11 Plan Administrator, filed an updated Status Report on March 20, 2025. Dckt. 2099. The Plan Administrator reports that the sales of the Murphy Ranches and the Westley Lot have closed. The net sales proceeds have been disbursed to Summit.

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

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

Status Report, ¶ 4; Dckt. 2009.

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

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

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

6. **24-90741-E-11 CAE-1** **MID VALLEY NUT COMPANY INC.** **CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION 11-30-24 [1]**

Debtor's Atty: Robert G. Harris

Notes:
Continued from 7/9/25 in light of the Debtor in Possession anticipating setting hearings on motions for 8/21/25 at 10:30 a.m.

Operating Report filed: 7/15/25

The Status Conference is continued to 11:00 a.m. on October 28, 2025, to be conducted by the Hon. Christopher M. Klein, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 35 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession. On August 19, 2025, the Debtor in Possession filed a Motion to Sell Equipment, Buildings, and Interests in Limited Liability Company Free and Clear of Liens and Interests. Mtn.; Dckt. 136. In January 2025 the Debtor shut down all of its business operations. The property to be sold consists of substantially all of the property of the Bankruptcy Estate.

Though this Bankruptcy Case was filed in November 2024, the Debtor in Possession has not yet filed a proposed Chapter 11 plan or motion to approve disclosure statement.

At the Status Conference, **xxxxxxx**

JULY 9, 2025 STATUS CONFERENCE

As of the court's July 7, 2025 review of the Docket, no updated Status Report has been filed by the Debtor in Possession. In the prior Status Report, which was filed on February 28, 2025, the Debtor in Possession reported that all of its cash and accounts receivable are encumbered by producer liens which have senior priority. Status Report, p. 3:8-4:5; Dckt. 22. The Debtor in Possession further reported that "time is of the essence" and it intends to immediate proceed with a sale of its assets to WFP, a 50% owner of and entity that is a shareholder the Debtor. *Id*.

On April 7, 2025, the court entered an Order authorizing the Debtor in Possession to enter into a Subordination, Nondisturbance, and Attornment Agreement. Order; Dckt. 83. The Order further authorized the limited use of cash collateral.

No motions relating to the sale of any assets have been filed.

On July 2, 2025, a Status Statement was filed by Costa Farms, a creditor grower asserting a secured claim in this case. It is stated that the Debtor in Possession and Debtor are attempting to structure "inside deals," with the details not being disclosed to the court.

At the Status Conference, counsel for the Debtor in Possession reported that the tax returns have been filed (no taxes owed). Further, that the negotiations with the stalking horse buyer are proceeding and documents are being circulated. It is hoped to have the hearing on the motion to sell the assets of the Estate.

Counsel for WFP noted that there has been a long, extensive negotiations, which now appears to be coming to a conclusion.

Counsel further stated that both of the Costa Farms addresses are listed on the Mailing Matrix, and it should be getting notice.

The court continues the Status Conference to 10:30 a.m. on August 21, 2025, in light of the Debtor in Possession anticipating setting hearings on motions for that date and time.

MAY 1, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor in Possession reported that updated sales documents have received and they are nearing a final draft.

The Status Conference is continued to 2:00 p.m. on July 9, 2025, which is the court's next regularly schedule Status Conference date. The Status Conference will be conducted in the **Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California**, with Telephonic Appearances permitted.

As of June 1, 2025, there will no longer be any hearings, proceedings, or any other Bankruptcy Court matters conducted at what has been the Modesto Division Courthouse. That Courthouse has been permanently closed as of June 1, 2025, with all of the formerly Modesto Division Cases transferred to the Sacramento Division. All hearings and proceedings in the Bankruptcy Case and Adversary Proceedings after May 31, 2025, **will be conducted in the Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California**, with Telephonic Appearances permitted.

APRIL 17, 2025 STATUS CONFERENCE

No updated Status Conference Statement has been filed. At the Status Conference, counsel for the Debtor in Possession reported that a sale of the property has been delayed by a financing requirement by a stalking horse buyer. The Debtor in Possession is working on getting a broker lined up.

The Debtor in Possession has obtained insurance coverage through July 15, 2025. The Debtor in Possession is set to employ an accountant, with the hearing on the motion to employ set. The proceeds from the sale of nut oil are being segregated given the liens on it.

The Status Conference is continued 10:30 a.m. on May 1, 2025.

MARCH 13, 2025 STATUS CONFERENCE

On November 30, 2025, an Involuntary Chapter 7 Petition was filed by Creditors Suneel Sharma, JS Johal & Sons, Inc., and Karm Bains, holding a combined total of $167,500 in claims. Dckt. 1. On December 26, 2025, the Debtor filed an Answer to the Involuntary Petition. Dckt. 5. In the Answer the Debtor admits and denies specific allegations, and includes in the Affirmative Defendant a allegation that each of the Petitioning Creditors are ineligible to be such.

On February 7, 2025, an *Ex Parte* Motion to Approve Stipulation for Entry of an Order for Relief Under Chapter 11 was filed. Dckt. 10. The Stipulation between the Debtor and the Petitioning Creditors for the entry of the Order for Relief and Conversion to Chapter 11 is filed at Docket 12.

On February 28, 2025, the Debtor in Possession filed a Status Conference Statement. Dckt. 22. The Debtor in Possession reviews in detail the assets of the Bankruptcy Estate, as well as the claims of the major creditors.

The Debtor in Possession discusses pre-petition efforts to sell property of the Debtor.

The Debtor in Possession also states that due to applicable state law monies from the secured properties can only be used to pay the lien creditors. While that may be the law, if it so be, it would appear to be financially advantageous to the Bankruptcy Estate and lien creditors that if assets are to be sold, that they be properly marketed and the actual fair market value received.

While stating that California Law, Cal Food & Ag. Code §§ 55631 and 55633, bars the Debtor in Possession from using any of the proceeds from the sale of nuts for any purpose other than paying the producer, the Debtor in Possession does not address Federal Law, such as the Bankruptcy Code relating to the use of cash collateral and reorganization of secured claims through Chapter 11.

At the Status Conference, counsel for the Debtor in Possession reported that motions to sell property and a motion to approve a settlement are being prepared. The target date for the hearing on the Motion to Sell, and possibly other motions, is April 17, 2025.

The court and counsel for the respective Parties discussed the needed transparency in the marketing process for the various properties to be sold. The Parties intend to work and communicate with respect to the sale process so that the commercially reasonable value of the assets sold will be achieved.

The Status Conference is continued to 2:00 p.m. on April 17, 2025.

In light of the other Motion(s) to be set for hearing on April 17, 2025, the court authorizes all motions filed to be set for hearing on April 17, 2025, to be set for hearing at 2:00 p.m. (Specially Set Time), to be conduction in conjunction with the Status Conference in this Case.

7. 24-90455-E-7 ADJ-4 | **MYREYA JIMENEZ** / **Mark O'Toole** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT** **7-25-25 [34]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on July 25, 2025. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses between the bankruptcy Estate of debtor Myreya Jimenez ("Debtor") and two defendants in a state court action, Conagra and Juan Pinzon, in the action titled *Myreya Jimenez v. Conagra Brands, Inc., et al.*, Case No. CV-24-005975. The claims and disputes to be resolved by the proposed settlement involve a civil action filed prior to the filing of the petition.

Debtor and the defendants have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as sealed Exhibits in support of the Motion, Dckt. 39):

A. The civil action is settled in full;

B. The civil action is dismissed against all defendants with prejudice; and

C. The primary defendant makes a $125,000 settlement payment to the Chapter 7 Trustee.

Decl. ¶ 5, Docket 37.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met:

Probability of Success

At this early stage of the civil action, the Trustee is uncertain about the probability of success in the litigation. However, the settlement will render the estate solvent; therefore, the bankruptcy estate will derive no benefit from continued litigation. The law favors compromise and not litigation for its own sake. Mem. 3:10-14, Docket 36.

Difficulties in Collection

While the Trustee does not anticipate difficulty in collection from the primary defendant, the bankruptcy estate would incur collection expenses if the civil claims are reduced to a judgment. The settlement avoids such expenses and will render the bankruptcy solvent. Additional litigation would be only for the sake of litigation. *Id.* at 3:17-20.

Expense, Inconvenience, and Delay of Continued Litigation

The bankruptcy estate would bear additional costs to proceed to litigate the Claims, with no upside because the bankruptcy estate will already be rendered solvent by the compromise. Employment-related matters like the instant matter are factually and legally complex and further pursuit of the claims would require extensive litigation. *Id.* at 3:23-26.

Paramount Interest of Creditors

The settlement will render the estate solvent. After payment of legal fees, costs, the estate will receive an amount contained in the Settlement Agreement and Full and Final Release of All Claims. The estate has only one creditor it must pay, the Lobel Financial Corp., in the amount of $17,953.17. The time to file a creditor's claim has expired. This factor weighs heavily in support of the settlement. *Id.* at 4:3-8.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Settlement will render the Estate solvent and put an end to what could be otherwise costly litigation. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between the bankruptcy Estate of debtor Myreya Jimenez ("Debtor") and two defendants in a state court action Conagra and Juan Pinzon, in the action titled *Myreya Jimenez v. Conagra Brands, Inc., et al.*, Case No. CV-24-005975, is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as sealed Exhibits in support of the Motion (Dckt. 39).

8. **24-22967-E-7** **VANESSA FRANKLIN** **AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY, AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
VLF-3 **Pro Se**
7-28-25 [238]

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 Attorney for Prime Legends, LLC on July 28, 2025. By the court's calculation, 24 days' notice was provided. The court set the hearing for August 21, 2025, as a scheduling conference. Order, Docket 242.

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

The Amended Motion for Sanctions for Violations of the Automatic Stay and Violation of the Discharge Injunction is xxxxxxx.

On July 25, 2025, Debtor Vanessa Franklin, in *pro se*, filed this Motion for Sanctions and Damages under 11 U.S.C. §§ 362(k) and 524(a)(2). Dckt. 234. The first page of the Motion states the date of August 21, 2025, and a time of 10:30 a.m. A declaration and exhibits are filed in support of the Motion (Dckts. 235, 236), but no Notice of Hearing was filed. The Certificate of Service states that is was served by email on Reno Fernandez, Esq., the attorney for Prime Legends, LLC. Dckt. 237. No other persons were served. The Motion states that relief is sought against not only the Landlord, but also against "Prime Group, Prime Legends, LLC, Prime Administration, LLC and their representatives Kimball Tirey & St. John LLP and Binder Malter Harris & Rome-Banks."

Given that the Motion was not set and noticed for hearing, the court issued an order setting a Scheduling Conference as to how this contest matter will proceed. Order; Dckt. 242.

REVIEW OF MOTION

Debtor Vanessa Lynn Franklin ("Debtor") moves this court for an order finding Prime Legends, LLC ("Landlord") in contempt for violating the automatic stay pursuant to 11 U.S.C. § 362(k). Debtor also moves the court for an order finding Landlord had violated the discharge injunction under 11 U.S.C. § 524. Debtor states:

1. Landlord—acting through its senior management, including Trina Gross ("hereinafter Ms. Gross") and Daniela Cuen ("Ms. Cuen"), as well as its legal counsel Kimball, Tirey & St. John LLP ("KTS") and Binder, Malter, Harris & Rome-Banks LLP ("Binder et al.")—willfully engaged in unlawful debt collection efforts. Specifically, the Landlord unlawfully rejected valid rental assistance payments, repeatedly demanded payment of prepetition debts without obtaining relief from the automatic stay, and continued direct billing of the Debtor after the discharge injunction took effect on February 12, 2025, explicitly refusing to correct or itemize the move-out billing statement to remove pre-petition charges. Mot. 1-2.

2. After the Debtor received her Chapter 7 discharge on February 12, 2025, the Landlord intensified its unlawful collection activities by issuing a direct billing statement on February 12, 2025, which improperly included pre-petition rent, utilities, and excessive cleaning charges surpassing ordinary wear and tear. Subsequently, on February 24, 2025, Binder et al. submitted the same uncorrected rental ledger to the court, still containing discharged debts, as though the Debtor remained legally obligated for those amounts. Mot. 3.

3. Debtor was coerced into paying rent for July by Ms. Cuen, despite July's rent being a pre-petition debt. *Id.* at 4.

4. On September 5, 2024, the Landlord intensified its unlawful conduct by issuing a 3-Day Notice to Pay or Quit without obtaining relief from the automatic stay, despite clear and established federal protections under 11 U.S.C. § 362. Subsequently, the Debtor promptly secured rental assistance covering half of September's rent, and on September 10, 2024, delivered the checks to the Landlord via the Landlord's leasing consultant, Veronica Steiner, who then called Ms. Cuen to obtain explicit permission to accept the partial checks. During this call, the Landlord's representative, Ms. Cuen, explicitly agreed to accept the checks, despite being fully aware that the Debtor was awaiting assistance from two additional organizations to cover the remainder of the rent (Exhibit 17, docket 147). Shockingly, just one day later, on September 11, 2024, Ms. Cuen abruptly returned the assistance checks without justification or legal authority. *Id.* at 6.

5. On September 13, 2024, after enduring escalating coercion and harassment from the Landlord, the Debtor converted her Chapter 13 bankruptcy to Chapter 7. Upon this conversion, all pre-conversion debts—including rent obligations for July, August, and early September—became general

unsecured claims subject to discharge, legally eliminating the Debtor's personal liability for those debts. Yet, mere hours later, without obtaining prior court authorization, the Landlord filed an unlawful detainer action against the Debtor. In doing so, the Landlord knowingly violated the automatic stay that remained firmly in place. *Id.* at 7.

6. There were various violations of the stay in October and November of 2024 related to the unlawful detainer and collections efforts. *Id.* at 8.

7. On February 12, 2025, the same day the Debtor received her Chapter 7 discharge, the Landlord sent a second, nearly identical billing statement to the Debtor, again including discharged debts and bypassing her attorney. This repeated billing—sent with knowledge of the discharge and in defiance of the Debtor's written directive—constituted a willful violation of the discharge injunction under 11 U.S.C. § 524. *Id.* at 9.

8. Debtor requests:

   a. Actual Damages: $115,366.11

   b. Emotional Distress Damages: $275,000

   c. Statutory Damages: $30,000

   d. Punitive Damages: $780,732.22

   e. Attorney's Fees and Costs: $113,418.30

   f. **Total Relief Requested**: $1,339,516.63

9. Debtor further requests a finding of contempt against the Landlord and its counsel, Kimball, Tirey & St. John LLP. *Id.* at 20.

DISCUSSION

Although these motions are being transferred before their conclusions, the court has set this hearing to spend time with the parties for one final conversation. In a Chapter 7 case, the Chapter 7 Trustee has the sole authority to either reject or assume an unexpired lease for real property. 11 U.S.C. § 365(d)(1) states:

> (d)
>
> (1)In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

This case was originally filed under Chapter 13 on July 8, 2024. This case was then converted to one under Chapter 7 on September 13, 2024. Docket 35. On October 29, 2025, Debtor filed an Amended Statement of Financial Affairs where she reports to attempt to assume the residential real property lease with Landlord. Docket 75 at 10. However, such attempted assumption is not permitted by a debtor in Chapter 7, and only the Trustee may file to assume the lease. In this case, Trustee never assumed the lease, and so the lease was deemed rejected 60 days after converting to Chapter 7.

Importantly, the automatic stay only protects against collection of pre-petition debts. 11 U.S.C. § 362(a) states:

> (a)Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> > (1)the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor **that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title**;
> >
> > (2)the enforcement, against the debtor or against property of the estate, of a judgment obtained **before the commencement of the case under this title**;
> >
> > (3)any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
> >
> > (4)any act to create, perfect, or enforce any lien against property of the estate;
> >
> > (5)any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim **that arose before the commencement of the case under this title**;
> >
> > (6)any act to collect, assess, or recover a claim against the debtor **that arose before the commencement of the case under this title**;
> >
> > (7)the setoff of any debt owing to the debtor **that arose before the commencement of the case under this title** against any claim against the debtor; and
> >
> > (8)the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual **for a taxable period ending before the date of the order for relief under this title**.

(Emphasis added). The stay would only protect pre-petition rents, not post-petition rents. However, importantly, and as Debtor states, claims that arose between the commence of the Chapter 13 case and date of conversion to Chapter 7 are treated as pre-petition debts. 11 U.S.C. § 348(d) states:

> (d)A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

Collier's Treatise on Bankruptcy, in discussing this Section, states:

> In particular, it should be noted that debts incurred after the chapter 13 case was filed but before a conversion to chapter 7 are dischargeable, since they are treated as prepetition claims.

8 COLLIER ON BANKRUPTCY ¶ 1307.08. Therefore, the months in question for which an action may be pursued would be for July, August, and September of 2024, just prior to the conversion.

However, the court notes it also granted retroactive relief from the stay for Landlord to pursue an unlawful detainer, with the retroactive date of relief being September 5, 2024. Order, Docket 245. Any damages related to actions taken in furtherance of the unlawful detainer action were not in violation of the automatic stay, so far as the Order has retroactively annulled the stay through September 5, 2024 to pursue the unlawful detainer.

The court would also note that Debtor has combined two separate Motions: Motion for Sanctions and Damages for Violation of the Automatic Stay and a Motion for Sanctions and Damages for Violation of the Discharge Injunction. Local Bankruptcy Rule 9014-1(d)(5) only permits certain motions to be brought as a combined motion, and the Motions now brought are not explicitly mentioned. The court considers, however, Debtor is proceeding in *pro se*, and it would make sense to hear these Motions together operating under similar essential facts.

Finally, it appears Debtor is naming at least one other party subject to findings of contempt: Kimball, Tirey & St. John LLP. When the court reviews the Certificate of Services that have been filed, Dockets 237, 241, Kimball, Tirey & St. John LLP has not been served.

> At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Amended Motion for Sanctions for Violations of the Automatic Stay and Violation of the Discharge Injunction filed by Debtor Vanessa Lynn Franklin ("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 **XXXXXXX**.

9. 25-90173-E-11 DCJ-4 | **MONTFER PROPERTY INVESTMENTS LLC** **David Johnston** | **MOTION TO DISMISS CASE 7-31-25 [42]**

Items 9 thru 10

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 31, 2025. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case 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 to Dismiss Case is Granted.

The debtor in possession, Montfer Property Investments LLC, ("Debtor in Possession") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and 1112(b)(1).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on March 10, 2025. Mot. 1:22-23.

2. Walter R. Dahl was appointed Subchapter V Trustee and the Debtor is serving as Debtor in Possession. *Id.* at 1:24-25.

3. Debtor in Possession flips houses, and one of his investment properties, the Monterey House, was facing foreclosure, which prompted the petition. *Id.* at 2:6-17.

4. The responsible representative of Debtor in Possession has been facing hardship related to medical issues concerning his eighteen month old daughter. Debtor in Possession is simply unable to reorganize with no funds to remodel the Monterey House and given time the responsible representative must spend with his daughter. Moreover, there is no longer substantial or any equity in the Monterey Property. *Id.* at 3:6-17.

5. Dismissal is the best course of action. Conversion would not be in creditors' or Debtor in Possession's best interest because there is no equity in assets of the Estate. Dismissal will allow the major secured creditor to proceed with foreclosure and pursue assets without being hindered by the stay. *Id.* at 4:4-9.

Debtor in Possession filed the Declaration of Jose Montejano, Debtor in Possession's responsible representative, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 44.

DISCUSSION

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).

Her, Debtor in Possession makes the argument reorganization is no longer feasible, and there is no equity to protect in the Monterey House. Debtor in Possession's assets do not carry any equity and would not likely produce value if liquidated.

Debtor in Possession's arguments are well taken. The requested dismissal allows Debtor in Possession to resolve claims and move on to a "fresh start"outside of bankruptcy. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

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

The Motion To Dismiss filed by Montfer Property Investments LLC, ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is dismissed.

10. 25-90173-E-11 CAE-1 | **MONTFER PROPERTY INVESTMENTS LLC** | **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-10-25 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 5/1/25

Trustee Report at 341 Meeting lodged: 5/6/25; 5/19/25; 5/30/25; 7/7/25; 7/24/25; 7/28/25

[DCJ-2] Debtor's Motion to Extend Deadline for Filing Subchapter V filed 6/9/25 [Dckt 28]; Order granting 7/11/25 [Dckt 40]

[DCJ-3] Debtor's Motion to Extend Deadline for Filing Subchapter V filed 6/30/25 [Dckt 34]; Order granting filed 8/4/25 [Dckt 47]

[DCJ-4] Debtor In Possession's Motion to Dismiss Chapter 11 Case filed 7/31/25 [Dckt 42]; set for hearing 8/31/25 at 10:30 a.m.

The Status Conference is xxxxxxx

AUGUST 21, 2025 STATUS CONFERENCE

The court conducted the hearing on the Motion to Dismiss this Bankruptcy Case, and xxxxxxx

11. 21-90378-E-11 DCJ-2 | **MOBREWZ, LLC David Johnston** | **MOTION FOR COMPENSATION FOR DAVID C. JOHNSTON, DEBTORS ATTORNEY(S) 7-27-25 [134]**

Item 11 thru 13

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 27, 2025. By the court's calculation, 25 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

David C. Johnston, the Attorney ("Applicant") for MoBrewz, LLC, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of August of 2021, through July 27, 2025. The order of the court approving employment of Applicant was entered on September 21, 2021. Dckt. 26. Applicant requests fees in the amount of $9,576.

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 and ultimately having a consensual Plan confirmed on May 19, 2022. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED
Fees

Applicant did not provide a task billing analysis, but Applicant did summarize his hours billed in the case. Applicant's work for Client and the Estate include filing the Chapter 11 petition and all related documents, prosecuting the case at various stages, review proof of claims, and finally obtained consensual confirmation of the Plan of Reorganization. Mot. 4:14-5:5.

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**
David Johnston, Attorney	22.8	$420.00	$9,576.00
Total Fees for Period of Application			$9,576.00

FEES ALLOWED
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $9,576.00 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 under the confirmed Plan.

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

Fees $9,576.00

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 David C. Johnston, the Attorney ("Applicant") for MoBrewz, LLC, the 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 David C. Johnston is allowed the following fees and expenses as a professional of the Estate:

David C. Johnston, Professional employed by Debtor in Possession

Fees in the amount of $9,576.00,

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

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

12. 21-90378-E-11 DCJ-3 | **MOBREWZ, LLC David Johnston** | **MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 8-7-25 [143]**

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 August 7, 2025. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Final Decree was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Entry of Final Decree is granted.

Debtor and Debtor in Possession MoBrewz, LLC ("Debtor in Possession") moves this court for a final decree closing the case. 11 U.S.C. § 350(a) provides for closing a case, stating (emphasis added):

> **(a)After an estate is fully administered and the court has discharged the trustee, the court shall close the case**.
>
> (b)A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

Collier's Treatise states regarding a final decree under 11 U.S.C. § 350(a):

> Congress intended that the Bankruptcy Rules set the procedure for the closing of a case under title 11. Federal Rule of Bankruptcy Procedure 3022, which governs the closing of chapter 11 cases, corresponds with section 350(a) and is very similar in language to section 350(a). Under Rule 3022, an estate may be closed even though the payments required by a chapter 11 plan have not been completed. The 1991

Advisory Committee Note to Rule 3022 lists various factors to be considered in determining whether the estate has been fully administered:

> Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) **whether deposits required by the plan have been distributed**, (3) **whether the property proposed by the plan to be transferred has been transferred**, (4) whether the **debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan**, (5) **whether payments under the plan have commenced,** and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.
>
> **When these listed prerequisites have been met and the plan has been substantially consummated, the case should be closed, even if further reports or an accounting must be filed by liquidating agent with the United States trustee**. Chapter 11 debtors often wish to have their cases closed expeditiously to avoid further payments of the quarterly fees assessed under section 1930(a)(6) or (7) during the pendency of chapter 11 **cases. The fact that distributions remain to be made in a chapter 11 case does not preclude the case from being closed, nor does the fact that an individual debtor has not yet received a discharge**, which is usually entered after completion of plan payments. And a case may be closed even if a debtor has already defaulted on such distributions. If there is a subsequent material default on the plan, a creditor may move to reopen the case and seek conversion or dismissal.

3 COLLIER ON BANKRUPTCY ¶ 350.02[2] (emphasis added). "Fully administered" is not defined in the Code or in the Federal Rule of Bankr. P., so the court must consider various factors as described in the note to Fed. R. Bankr. P. 3022.

In this case, the Plan was confirmed on May 19, 2022. Docket 86. Debtor in Possession commenced making payments on various classes of claims and will continue to do so after the case is closed. Mot. 2:10-11. The Chapter 11 Subchapter V Trustee ("Trustee") was granted compensation on November 10, 2022, and Trustee filed a Non-Opposition to this Motion on August 13, 2025. Docket 148. Debtor in Possession anticipates there will be no more motions in the case after the hearing on this Motion. *Id.* at 2:24-25.

In considering the stage of the case, the court finds the case has been fully administered and orders the entry of a final decree closing the 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 Entry of Final Decree filed by MoBrewz, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the clerk of the court is ordered to enter a final decree closing the case pursuant to 11 U.S.C. § 350(a).

13. 21-90378-E-11 CAE-1 **MOBREWZ, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-18-21 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 7/31/25 to be heard in conjunction with the Motion for Compensation.

The Status Conference is xxxxxxx

14. 24-25180-E-11 RFL-11 | **KAMALJIT KALKAT** **Robert Marticello** | **MOTION TO APPROVE OVERBID PROCEDURES , AND/OR MOTION TO APPROVE BUYER AS GOOD FAITH PURCHASER , MOTION TO SELL FREE AND CLEAR OF LIENS , MOTION FOR COMPENSATION FOR CHICO GINTER & BROWN, BROKER(S)**
7-10-25 [185]

Item 14 thru 19

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 8, 2025. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is ~~granted.~~

The Bankruptcy Code permits Kamaljit Kaur Kalkat, the Chapter 11 Debtor and Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 7071 River Road, Colusa, CA 95932 ("Property").

The proposed purchaser of the Property is Manbirpaul Dhillon and Mandish Dhillon, and the terms of the sale are:

1. Buyer. Manbirpaul Dhillon and Mandish Dhillion

2. Property to be Sold. The Property, i.e., the real property located at 7071 River Road, Colusa, CA 95932.

3. Purchase Price. The purchase price for the Property is $1,625,000 (the "Purchase Price"), payable as follows: (a) a $15,500 deposit (the "Deposit") has been deposited into escrow; and (b) the balance of the Purchase Price shall be paid to escrow within

15 days of the entry of an order by the Court authorizing the sale. The Deposit is non-refundable except as set forth in the Agreement.

4. "As is" Sale. The Buyer is acquiring the Property on an "as is" and "where is" basis without representations, warranties or recourse whatsoever.

5. Free and Clear. The sale of the Property to the Buyer shall be free and clear of any liens pursuant to 11 U.S.C. § 363(f).

6. Closing Date. The closing of escrow is to be 45 days from July 1, 2025 (or August 15, 2025), subject to the Court's approval.

7. Non-Contingent. The Agreement is non-contingent and the Buyer has waived all due diligence requirements other than Court approval.

8. Court Approval. The Agreement is subject to the Court's approval.

9. Overbids. The sale of the Property is subject to overbids pending the hearing on the Motion.

10. Commissions. The Broker is entitled to commissions on the Purchase Price of 4.0%.

Mot. 3:26-4:18, Docket 185.

The Motion is made with a set of proposed Overbid Procedures. *See* Mot. 4:20-8:19, Docket 185. The Overbid Procedures include a bid deadline of 5:00 p.m. on August 19, 2025. Qualified bids are subject to certain requirements. If no Qualified Bid is received by the Debtor by the Bid Deadline, then the Debtor will request that the Court approve the sale of the Property to the Buyer and there will be no Auction. If a Qualified Bid is timely received by the Debtor, then the Debtor will hold the Auction. The Auction of the Property will take place both in person and telephonically at 10:30 a.m. (PST) on August 21, 2025. The court finds the Overbid Procedures to be reasonable and adopts them for purposes of this Motion.

ATG'S Limited Opposition

ATG Capital 401(k) Plan and Austin Tarzana Group, LLC ("ATG") filed a Limited Opposition on August 7, 2025. Docket 239. ATG states:

> ATG does not object to this sale, and therefore this sale is consented to [free and clear of its lien], however, it is not correct to say that it will be paid in full. Missing from the Debtor's analysis is any statement as to the cost of sale other than the 4%broker's commission, as well as the liens against the property. For example, there are back property taxes owed and there is a claim of lien by Rabo. There is also no analysis of what capital gains taxes will be owed by the estate, however the sale is still consented to.

Opp'n 2:4-9, Docket 239.

RAF's Limited Opposition

Secured creditor Rabo AgriFinance, LLC successor in interest to Rabobank, N.A. ("RAF") filed its Limited Opposition on August 7, 2025. Docket 237. RAF states:

> 1. The Colusa Property consists of 127.4 acres of farmland and is cultivated with various tree crops, including almonds, prunes, and walnuts. RAF has a valid crop lien on these crops grown and to be grown. The Motion is silent as to RAF's crop lien. Opp'n 4:5-20, Docket 237.
>
> 2. RAF's pre-petition security interest in the crops growing on the Colusa Property and Kalkat's other properties – and their proceeds – continues notwithstanding the occurrence of the Petition Date. RAF does not consent to the sale free and clear of its liens without appropriate compensation. *Id.* at 5:19-6:1.

Debtor in Possession's Reply

Debtor in Possession filed its Reply on August 14, 2025. Docket 250. Debtor in Possession states:

> 1. Debtor in Possession believes that both limited oppositions can be resolved consensually. Reply 2:19, Docket 250.
>
> 2. Debtor proposes to resolve both limited oppositions with the following language to be included in any order granting the Motion:
>
> > The sale of the Property is free and clear of all liens, claims, encumbrances, and interests pursuant to 11 U.S.C. § 363(f) with the liens of RAF and Tarzana attaching to the net proceeds of the sale in the same extent, validity, and priority as of the Petition Date and such proceeds shall be deposited in a separate Debtor-in-Possession account for the Debtor-in-Possession and no such proceeds shall be disbursed absent further order of the Court.

Reply 3:1-7.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of ATG. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established grounds exist pursuant to 11 U.S.C. § 363(f)(2) to sell free and clear of ATG, ATG giving consent to the sale taking place free and clear.

However, the Motion fails to give any supporting reasons as to why the Property should be sold free and clear of RAF's lien. It may be that Debtor in Possession forgot RAF had a lien on the crops, RAF not being mentioned in the Motion. RAF's lien will persist even after a sale, unless RAF agrees to a sale free and clear pursuant to 11 U.S.C. § 363(f)(2). *See* Cal. Com. Code § 9315(a)(1) ("A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien").

RAF suggests it would potentially consent to a sale free and clear of its lien, if it is sufficiently compensated. At the hearing, **xxxxxxx**

Good Faith Buyer

Debtor in Possession requests the court find Buyer to be a deemed a good faith buyer pursuant to 11 U.S.C. § 363(m). The Ninth Circuit Court of Appeals has held in relation to this Section:

> Though the Bankruptcy Code and Rules do not provide a definition of good faith, courts generally have followed traditional equitable principles in holding that a good faith purchaser is one who buys "in good faith" and "for value." *See, e.g.*, *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3rd Cir.1986). Typically, lack of good faith is shown by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Suchy*, 786 F.2d 900, 902 (9th Cir.1985).

The Bankruptcy appellate Panel has also addressed this Section, stating:

> Good faith" is a factual determination to be reviewed for clear error and can be defeated by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Id.*; *Southwest*

Prods., Inc. v. Durkin (*In re Southwest Prods., Inc.*), 144 B.R. 100, 102–03 (9th Cir. BAP 1992).

> The difficulty with the factual determination is that evidence genuinely probative of "good faith" is not commonly introduced, or even reasonably available, at the time a bankruptcy court approves a sale. To the contrary, the fact-intensive evidence regarding the buyer and relations with parties in interest that may indicate fraud, collusion, or unfair advantage—i.e. evidence suggesting lack of "good faith"—tends to emerge after the sale.
>
> Recognizing this difficulty, a bankruptcy court may, in the absence of a well-developed factual record, prefer to take the cautious approach of either refusing to make "good faith" findings or limiting remarks about "good faith" to the nonspecific observation that the court has no reason to doubt that the parties are proceeding in "good faith."
>
> A bankruptcy court that does have a proper evidentiary basis for a finding of "good faith" is, of course, entitled to do so as part of the sale process.
>
> The choice of whether to make a finding of "good faith" as part of the initial sale process belongs, in this circuit, to the bankruptcy court. Because findings of "good faith" made at the time of the sale may be premature because they are made before the really interesting facts emerge, the Ninth Circuit does not require that a finding of "good faith" be made at the time of sale and has rejected the Third Circuit's contrary rule. *Onouli–Kona Land Co.*, 846 F.2d at 1174, rejecting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149–50 (3rd Cir.1986).
>
> If an issue regarding "good faith" arises after the § 363(b) sale order is entered, regardless of whether the court initially made a "good faith" finding, the appropriate procedure for addressing the issue is provided by Federal Rules of Civil Procedure 59 and 60, which apply in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9023 and 9024. Fed.R.Civ.P. 59, incorporated by Fed. R. Bankr.P. 9023; Fed.R.Civ.P. 60, incorporated by, Fed. R. Bankr.P. 9024. The actual dynamics of the litigation of such a motion will depend in part on the state of the previous record regarding "good faith" and whether there was a prior finding.

In re Thomas, 287 B.R. 782, 785-86 (B.A.P. 9th Cir. 2002).

Here, the evidence before the court supporting the idea that the Buyer should be deemed a good faith buyer is that the sale is a product of an arms-length negotiation and is conducted in a commercially reasonable manner. Mot. 11:3-10. *See* Decl. ¶¶ 5-6, Docket 188. Such evidence is helpful in this court making a determination, the evidence showing that Buyer has not engaged in fraud or collusion in the process of buying the Property.

However, as Judge Klein persuasively states in *Thomas*, many of the essential facts destroying good faith status will not be available until after the sale is concluded. But there are remedies in the event evidence of fraud emerges later. Fed.R.Civ.P. 59, incorporated by Fed. R. Bankr.P. 9023; Fed.R.Civ.P. 60, incorporated by, Fed. R. Bankr.P. 9024.

Therefore, the court finds this evidence is sufficient to support a finding that the Buyer has purchased the property in good faith pursuant to 11 U.S.C. § 363(m).

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Movant has estimated that a four percent broker's commission will be awarded from the sale of the Property to Chico Ginter & Brown. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than four percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court but provides no grounds in support.

However, the court understanding that delay is financial death in bankruptcy, the court waives the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

~~The Motion to Sell Property filed by Kamaljit Kaur Kalkat, the Chapter 11 Debtor and Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Kamaljit Kaur Kalkat, the Chapter 11 Debtor and Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Manbirpaul Dhillon and Mandish Dhillon or nominee ("Buyer"), the Property commonly known as 7071 River Road, Colusa, CA 95932 ("Property"), on the following terms:~~

~~A. The Property shall be sold to Buyer for $1,625,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 197, and as further provided in this Order.~~

~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.~~

C. The Property is sold free and clear of the liens of creditors Rabo AgriFinance, LLC successor in interest to Rabobank, N.A. ("RAF") and ATG Capital 401(k) Plan and Austin Tarzana Group, LLC ("ATG"), creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds, after payment of the closing costs, other secured claims, and amount provided in this order, pending further order of the court.

D. The Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Debtor in Possession is authorized to pay a real estate broker's commission in an amount not more than four percent of the actual purchase price upon consummation of the sale. The four percent commission shall be paid to Chico Ginter & Brown.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

15. 24-25180-E-11 RFL-10

KAMALJIT KALKAT
Robert Marticello

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on July 8, 2025. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Bid Procedures and Appointment of an Independent Sales Agent for the Bankruptcy Estate is xxxxxxx.

August 21, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the related Motions in this case. Under Docket Control No. RFL-11, Debtor in Possession filed a Supplemental Document in support of this Motion and in support of the Debtor in Possession's Opposition to the Motion to Dismiss, Convert, or Appoint a Chapter 11 Trustee. Docket 252. The court would note that Debtor in Possession marked the box indicating this Supplement only affects the Diamond K case, but the court assumes that is a clerical error and the Supplement affects both cases.

In the Supplement, Debtor in Possession states:

1. Debtors continued to work with Rabo Agrifinance ("RAF") and AgWest Farm Credit ("AgWest") to revise the Bid Procedures proposed in the Motion for the marketing and sale of the Debtors' Orchards. Bee Legend, the largest holder of a unsecured claim, has also agreed to these Revised Bid Procedures. *Id.* at 2:15-26.

2. First, under the Revised Bid Procedures, the proposed Independent Sales Officer (the "ISO") shall have "final decision making authority with respect to all matters set forth in the Bid Procedures and the sale of the real property contemplated thereby." *Id.* at 3:1-3.

3. Second, in order to address the Court's tentative ruling on the Motion, the hearing(s) to approve the sales secured through the Revised Bid Procedures will be by separately noticed motion in accordance with the Court's Local Bankruptcy Rules. *Id.* at 3:11-13.

4. Third, the Revised Bid Procedures contemplate a tight, but reasonable timeline. Bids will be due within 75 days of the Court's approval of the Revised Bid Procedures. *Id.* at 3:14-15.

5. Fourth, under the Revised Bid Procedures, RAF and AgWest are consultation parties with respect to their collateral. RAF and AgWest may credit bid for their respective collateral. Any extension of any deadline or date in the Revised Bid Procedures with respect to the collateral of RAF or AgWest requires their consent. However, the Revised Bid Procedures allow for some flexibility, to be exercised solely by the ISO, as needed to maximize value. Thus, while the Revised Bid Procedures provide for the sale of all of the Orchards on the timeline proposed, such is not required if a more staggered process would maximize value as determined by the ISO. *Id.* at 3:23-4:3.

6. Debtors in Possession request the court enter an order only approving these bid procedures and nothing more. The Revised Bid Procedures are included as Exhibit 1 to the Supplement, Docket 253.

7. Debtors in Possession then provide an outline of their Plans of Reorganization, which has potential to pay all claims in full.

It appears Debtors in Possession have diligently worked with parties in the case and have come forward with a reasonable set of Bid Procedures that can be confirmed under this Motion. Therefore, the Motion is granted only as to approval of the Revised Bid Procedures, Ex. 1, Docket 253, and the Revised Bid Procedures are approved and adopted herein.

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.

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.

This continued hearing was conducted with the continued hearing on the Motion to Dismiss, Convert, or Appoint a Chapter 11 Trustee. The court covers the status of the Chapter 11 Case and possible prosecution of the case using an independent sales representative for the Bankruptcy Estate and bid and sales procedures. The court does not repeat those here.

The hearing is continued to afford the Debtor in Possession and Creditors the opportunity to further negotiate terms for marketing and sale of properties of the Bankruptcy Estate (it being represented by several creditors that they believe they are 95% of the way there), whereby the Debtors in Possession, using the independent sales agent for at least some of the properties, can prosecute this Chapter 11 Case.

The hearing on the Motion to Approve Bid Procedures and Appointment of an Independent Sales Agent for the Bankruptcy Estate is continued to 10:30 a.m. on August 21, 2025, to be conducted in conjunction with the hearing on the Motion to Sell Property of the 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 to Approve Bid Procedures is granted only as to approval of the Revised Bid Procedures, Ex. 1, Docket 253, and the Revised Bid Procedures are approved and adopted herein.

16. 24-25180-E-11 AP-1 **KAMALJIT KALKAT** **Robert Marticello** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 6-6-25 [135]**

ILLINOIS GENERAL INVESTMENT TRUST VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession and other parties in interest on June 8, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxx.

August 21, 2025 Hearing

The court continued the hearing on the Motion for Relief to be heard in conjunction with the Motion to Sell. At the hearing on the Motion to sell, the court **xxxxxxx**

At the August 21, 2025 hearing on this Motion for Relief From the Stay, **xxxxxxx**

REVIEW OF MOTION

Illinois General Investment Trust ("Movant") seeks relief from the automatic stay with respect to Kamaljit Kaur Kalkat's ("Debtor in Possession") real property commonly known as 2377 Clark Road, Live Oak, CA 95953 ("Property"). Movant has provided the Declaration of Janet Leyva-Maceira to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 137.

Movant argues Debtor has not made seven post-petition payments, with a total of $146,315.19 in post-petition payments past due. Declaration ¶ 11, Docket 137. Movant also provides evidence that there are14 pre-petition payments in default, with a pre-petition arrearage of $262,208.38. *Id.* Movant is requesting relief only pursuant to 11 U.S.C. § 362(d)(2), arguing there is insufficient equity in the Property and there is no reasonable likelihood of reorganization in the case, Debtor in Possession not having a Plan on file eight months into the case.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 26, 2025. Docket 163. Debtor in Possession asserts:

1. Debtor has equity in the Property and the Movant has failed to carry its burden of proof demonstrating to the contrary. The Debtor believes the Property is worth $8,000,000, leaving equity of approximately $3.8 million. Opp'n 2:8-10.

2. Moreover, the Property, the Debtor's residence for her and her two children, is necessary for the Debtor's reorganization. The Debtor is initiating a concurrent refinancing and sale process that makes all of her real property, other than the Property, available for sale. The Debtor expects that any refinancing will include the Movant's debt. *Id.* at 2:10-14.

3. Movant has failed to demonstrate that the Debtor has no equity in the Property, which is the Movant's burden to do. See 11 U.S.C. § 362(g). The Movant offers two points of reference regarding the value of the Property, a "zestimate" from Zillow and the "Net Taxable Value" of the Treasurer/Tax Collector. However, neither is admissible evidence of the Property's fair market value. *Id.* at 4:8-12.

4. The total debt is well short of the Property's value. There is equity in the Property of $3,816,355.26 ($8,000,000 - $4,183,644.73 in liens). Movant is protected by an equity cushion of approximately 48%. *Id.* at 5:9-11.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $4,183,644.73, while the value of the Property is determined to be $8,000,000, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 13, Docket 32.

Movant argues in its Memorandum in support that based on the County Assessor's Information Related to the Property that the value of the Property, as of May 21, 2025, is approximately $2,364,935.00. Mem. 4:2-3, Docket 138. Values based on tax assessments are not are generally unreliable "for establishing the fair market value of property." *City of Seattle v. Monsanto Company*, Case No. C16-107-RAJ-MLP, 2023 WL 4623752 at *6 (W.D. Wash. July 19, 2023); *See, e.g.*, *United States v. 0.59 Acres of Land More or Less in the Cnty. of Pima Ariz.*, 109 F.3d 1493, 1496 (9th Cir. 1997) (observing "the district court itself stated that tax assessments are wrong in 98 percent of cases"); *Suntrust Mortg. Inc.*, 469 F. App'x at 207 (finding "the district court did not err in determining that tax valuations do not, by themselves, provide competent evidence sufficient to establish market value"). Movant has not offered any testimony of a broker or other expert estimating value. Movant has not met its burden in establishing a value of the Property for purposes of this Motion.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

July 10, 2025 Hearing

At the hearing, Movant requested a continuance so that it may obtain an appraisal, including an inspection of the Property.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on August 21, 2025 (Specially Set Time), to be conducted in conjunction with the Motion to Sell and Status Conference in this Bankruptcy 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 Relief from the Automatic Stay filed by Illinois General Investment Trust ("Movant") having been presented to the court, Movant requesting a continuance so that it may conduct discovery (obtain an appraisal of the Property) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is **XXXXXXX**.

17. 24-25180-E-11 CAE-1 **KAMALJIT KALKAT** **STATUS CONFERENCE RE: VOLUNTARY PETITION 11-14-24 [1]**

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

Notes:
Continued from 6/26/25

Operating Reports filed: 7/21/25 [Apr, May]; 7/23/25 [Jun]

[LNJ-1] Order conditionally granting motion of APC CS Trust, DST for relief from stay [5762 Bellevue Ave., La Jolla, CA] filed 7/8/25 [Dckt 172]

[LNJ-2] Order conditionally granting motion of APC CS Trust, DST for relief from stay [7546 Caminito Avola, San Diego, CA] filed 7/8/25 [Dckt 173]

[RFL-12] Application to Employ Force Ten Partners LLC and Provide Nicholas Rubin as Independent Sales Officer for The Debtors filed 8/13/25 [Dckt 245]; set for hearing 9/10/25 at 11:00 a.m. in Dept. C

The Status Conference is continued to 11:00 a.m. on October 28, 2025, to be conducted by the Hon. Christopher M. Klein, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 35 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

JUNE 26, 2025 STATUS CONFERENCE

At the Status Conference counsel for the Debtor in Possession reported that they were still pursuing the dual track of attempting to obtain a refinance a well as the marketing of all of the Estate Property for sale, with the except of the Kamaljit Kalkat's residence. Counsel is preparing the bid procedures and working out the time line for the marketing and sale if a refinance cannot be quickly put together.

Counsel also expressly noted that the Debtor in Possession recognizes and is proceeding to marketing the properties in a commercially reasonable manner in order to achieve the fair market value for the properties, and to the extent it was stated in the Oppositions to the Motions for Relief From the Stay that

she was seeking the "highest value" so as to obtain the largest surplus recovery for the two estates, such was an inaccurate statement in the pleadings.

The counsel for the various parties discussed the need for information concerning the properties, the tax consequences of sale, and the need to move forward in a commercially reasonable matter for the sale of the properties.

The Parties also noted that monthly operating reports are in arrears. This also brought up a discussion concerning the Debtors in Possession filing tax returns and the need for a accountant/tax person to be employed to pull together the required financial information.

The Chapter 11 Status Conference is continued to 2:00 p.m. on August 20, 2025.

JUNE 10, 2025 STATUS CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAY 8, 2025 STATUS CONFERENCE

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

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

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

A motion to employ a broker will be filed

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

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

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

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

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

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

MARCH 5, 2025 STATUS CONFERENCE

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

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

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

Counsel for AgWest, whose claims are secured by the orchards, expressed concerns about the Debtors in Possession not having their financial records straightened out yet. This is an issue which they have been discussing for a year. AgWest also expressed concerns that the orchards are not being properly maintained. They will oppose a request to extend the disclosure statement and plan exclusively deadlines.

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

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

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

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

January 15, 2025 Status Conference

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

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

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

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

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

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

18. 24-25180-E-11 RJR-1 | **KAMALJIT KALKAT** / **Robert Marticello** | **CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO APPOINT TRUSTEE 7-10-25 [180]**

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 denied without prejudice.~~

August 21, 2025 Hearing

The court continued the hearing on this Motion to be heard in conjunction with the related Motions in the case. It appearing Debtors in Possession now actively prosecuting this case in a constructive way, adequately addressing the ~~court's various concerns, this Motion is denied without prejudice.~~

REVIEW OF MOTION

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 ("Kamaljit 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 Kamaljit 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 Kamaljit Kalkat and are the subject of secured claims by RAABCO. Kamaljit 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 Kamaljit 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. Kamaljit 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. Kamaljit 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 the two Bankruptcy Estates anything for use and farming of the Properties despite generating income. This circumstance is questionable as Kamaljit 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 Kamaljit 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.

Kamaljit Kalkat testifies generally as to the facts alleged in the Motion. Decl., Docket 220. In the Declaration Kamaljit 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 Kamaljit Kalkat's partnership interests. *Id.*; ¶¶ 4, 5.

Kamaljit 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 Kamaljit 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 Kamaljit 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.

Kamaljit 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 Kamaljit 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.

Kamaljit 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 Kamaljit 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 Debtor Kamaljit Kalkat's son and father-in-law.

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 Kamaljit 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 there being no compensation paid to Debtor Kamaljit Kalkat's son.

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 Kamaljit Kalkat

It appears Kamaljit 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, Kamaljit 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.

August 7, 2025 Hearing

At the hearing, various creditors, the Chapter 12 Trustee, the U.S. Trustee, and the Debtor in Possession addressed these issues. The moving party Creditors spoke in favor of appointment of a Chapter 11 Trustee. Other creditors believed that an agreement for the marketing and sale of the properties, using an independent sales agent was possible, and the costs and expenses of a Chapter 11 Trustee could be avoided.

With respect of the Debtor being serve as the debtor in possession and responsible representative for the LLC as debtor in possession, one creditor expressed concern that the Debtor in Possession was not hiring a tax professional so that the tax consequences of possible sales could be determined.

The U.S. Trustee discussed whether a Chapter 11 Trustee, and the related expense were necessary, rather than just having a Chapter 7 Trustee sell (liquidate) the properties.

Counsel for the Debtors in Possession advised the court that the Debtor Kamaljit Kalkat's son was gifting her the substantial monies each month for her living expenses. With respect to the Debtor's son's source of such funds, the Debtor stated that the son does some investing and sells collectibles on-line. Nothing specific concerning the son's income was stated.

For the general partnerships' monthly expenses, counsel for the Debtors in Possession stated that Debtor Kamaljit Kalkat's father-in-law was gifting the money expense amount to the partnerships. Counsel for the Debtors in Possession stated that he never thought of the issue of gift tax liability for making such substantial gifts.

Counsel for the Debtors in Possession stated that the other partners of the two General Partnerships are Debtor Kamaljit Kalkat's two children. It was explained that this was part of the estate planning that had been done and then the unfortunate passing of Debtor Kamaljit Kalkat's husband and father of the two children.

At the court put it, for the ten months of this Bankruptcy Case the Bankruptcy Estate has been dirt rich and cash poor. Rabo AgriFinance is collecting all of the General Partnership's 2024 crop proceeds to pay for the now closed credit line that the two Debtors and the two General Partnerships are obligated on. Counsel for the Debtors in Possession states that there is a disagreement as to whether the Rabo AgriFinance lien encumbers the 2025 crop proceeds that are being developed using the "gift monies" from Debtor Kamaljit Kalkat's father-in-law. Rabo AgriFinance says they are, and the Debtors in Possession state no they are not.

At this point, it appears that the appointment of a Chapter 11 Trustee may be necessary. There are multiple properties to be sold, which will require a marketing strategy that will extend over time. The court concludes that "dumping the properties" on a Chapter 7 Trustee to be liquidate under Chapter 7 is not the best financial court for creditors, both secured and unsecured, and the Debtors.

From the discussion in open court, it appears that Debtor Kamaljit Kalkat and the counsel for the Debtors in Possession have come to the conclusion that seeking to delay while a refinance for the two Bankruptcy Estates and Debtors who have no income, and Debtor Kamaljit Kalkat is forced to live off of

gifts from family to pay her reasonable and normal living expenses, which includes $3,000 a month payment for her Mercedes Benz, is no longer credible, reasonable, or possible.

The court has made it clear that the independent sales agent must be just that, independent and not subject to the control and veto of Debtor Kamaljit Kalkat. The court can well envision a Plan in which the sales agent has a plan for marketing properties over a commercially reasonable extended time so as to maximize the surplus for the Bankruptcy Estate and Debtors, while getting properties sold, property taxes paid, and creditors paid.

From the discussion, it appears that counsel for the Debtors in Possession and various counsel for creditors may have a similar vision.

The court continues the hearing to allow these Parties and the "genius of counsel" see if they are put such a short-term plan in place and proposed a longer term Chapter 11 Plan for confirmation. While at least some of the properties must be sold for creditors to be paid, the number and nature of the properties require that it be done in a more sophisticated, commercially reasonable manner then the sale of one or two normal residences or commercial properties.

The hearing on the Motion to Dismiss or Convert, or Appoint a Chapter 11 Trustee is continued to 10:30 a.m. on August 21, 2025, to be conducted in conjunction with the hearing on the Motion to Sell Property of the Estate.

At the court made clear at the hearing, if the Debtors in Possession and creditors cannot come up with a reasonable short-term plan and longer term Chapter 11 Plan concept, then such may manifest dysfunction and inability to prosecute this Bankruptcy Case that would need to be remedied by the appointment of a Chapter 11 Trustee.

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 to Dismiss or Convert, or Appoint a Chapter 11 ~~Trustee is denied without prejudice.~~

19. 24-25181-E-11 DIAMOND K LLC

CAE-1

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-14-24 [1]

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

Notes:
Continued from 6/26/25. The counsel for the various parties discussed the need for information concerning the properties, the tax consequences of sale, and the need to move forward in a commercially reasonable matter for the sale of the properties.

Operating Reports filed: 7/21/25 [4/30/25, 5/31/25]; 7/23/25

The Status Conference is xxxxxxx

AUGUST 21, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

JUNE 26, 2025 STATUS CONFERENCE

At the Status Conference counsel for the Debtor in Possession reported that they were still pursuing the dual track of attempting to obtain a refinance a well as the marketing of all of the Estate Property for sale, with the except of the Kamaljit Kalkat's residence. Counsel is preparing the bid procedures and working out the time line for the marketing and sale if a refinance cannot be quickly put together.

Counsel also expressly noted that the Debtor in Possession recognizes and is proceeding to marketing the properties in a commercially reasonable manner in order to achieve the fair market value for the properties, and to the extent it was stated in the Oppositions to the Motions for Relief From the Stay that she was seeking the "highest value" so as to obtain the largest surplus recovery for the two estates, such was an inaccurate statement in the pleadings.

The counsel for the various parties discussed the need for information concerning the properties, the tax consequences of sale, and the need to move forward in a commercially reasonable matter for the sale of the properties.

The Parties also noted that monthly operating reports are in arrears. This also brought up a discussion concerning the Debtors in Possession filing tax returns and the need for a accountant/tax person to be employed to pull together the required financial information.

The Chapter 11 Status Conference is continued to 2:00 p.m. on August 20, 2025.

JUNE 10, 2025 STATUS CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAY 8, 2025 STATUS CONFERENCE

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

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

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

A motion to employ a broker will be filed

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

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

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

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

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

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

MARCH 5, 2025 STATUS CONFERENCE

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

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

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

Counsel for AgWest, whose claims are secured by the orchards, expressed concerns about the Debtors in Possession not having their financial records straightened out yet. This is an issue which they have been discussing for a year. AgWest also expressed concerns that the orchards are not being properly maintained. They will oppose a request to extend the disclosure statement and plan exclusively deadlines.

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

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

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

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

January 15, 2025 Status Conference

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

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

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

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

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

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

20. 23-90111-E-11 DB-2 | **MICHAEL HOFMANN** **Brian Haddix** | **CONTINUED MOTION FOR ORDER DISTRIBUTING FUNDS FROM SALE OF RESIDENCE** **6-11-25 [480]**

Items 20 thru 22

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 on June 12, 2025. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Order Distributing Funds from Sale of Residence 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). Here, the Parties have filed cross-motions for summary judgment / disbursement of the funds, effectively opposing the other's Motion.

The Motion for Order Distributing Funds from Sale of Residence Property is granted. The Partition Sale Proceeds shall be disbursed:

1. **$39,645.14 to Debtor Michael Hofmann,**
2. **$183,279.93 to Sharon Hofmann, and**
3. **$183,279.93 to Gary Hofmann.**

The parties in the Adversary Proceedings, 23-09006, and this Bankruptcy Case, 23-90111, have requested that this court determine the distribution of the net proceeds of $406,241.01 (the "Partition Sales Proceeds") from the sale of the real property commonly known as 13330 Valley Home Road, Valley Home, California (the "Residence Property") in which Michael Hofmann, the Debtor, has an 8.333% interest, and

Gary Hofmann and Sharon Hofmann (the "Petitioners"),[1] who are the Debtor's siblings, each asserting a 45.8333% ownership interest.

Normally, the distribution of the net sales proceeds from a partition sale would be a simple mathematical calculation based on the respective ownership interests. However, as been demonstrated by the years of State Court litigation and the litigation in this Bankruptcy Case, the Debtor and his siblings have not been able to reasonably, financially advantageously, address their interests.

State Court Partition Action and Pre-Petition
Second Amended Partition Judgment

The Petitioners have presented the court with the Second Amended State Court Judgment ("Second Amended Partition Judgment") determining their respective interests, as well surcharges and credits to be made with respect to their interests, and a further award of attorney's fees and costs for Petitioners against the Debtor. Second Amended Partition Judgment; Exhibit 2; Dckt. 485.

The Statement of Decision was entered on July 19, 2019, and the original State Court partition judgement was entered thereon. Exhibit B; Dckt. 485. The final Appellate Decision, which is seventy-five (75) pages in length, affirming the Second Amended Partition Judgment as to Petitioners, but reducing the credit to the Brichettos (other parties to the State Court Partition Action not involving the Residence Property) was entered on July 15, 2021. Exhibit 1; Dckt. 485. The Second Amended Partition Judgment, to correct the amount of credit for the Brichettos, was then entered on January 25, 2022.

Following the Second Amended Partition Judgment, the Debtor, who resided in and controlled the Residence Property, was "unable" to sell the Residence Property and have the Partition Sales Proceeds disbursed as ordered by the State Court. Then, on the eve of the "judicial axe" falling in the State Court Partition Action, Debtor filed this Bankruptcy Case.

The Second Amended Partition Judgment

The Second Amended Partition Judgment was entered on January 21, 2022. This Second Amended Partition Judgment was entered in the State Court Judicial Foreclosure Proceeding that was commenced by Petitioners in 2016. *Hofmann v. Hofmann*, 2021 Cal. App. Unpub. LEXIS 4583, (2021); Exhibit 1 at p. 10, Dckt. 485.

In the Second Amended Partition Judgment, the State Court determines that the Residence Property cannot be partitioned in kind, but must be sold and the proceeds thereof be "partitioned" between the owners.

The Second Amended Partition Judgment first determines the percentage ownership interests of the Debtor and Petitioners in the Residence Property itself, stating:

a. Debtor owns an 8 and 1/3% interest in the Residence Property.

[1] The court collectively refers to Sharon Hofmann and Gary Hofmann as the "Petitioners," to be consistent with the shorthand identification term used in the Second Amended Partition Judgment and Rulings.

b. Creditors Sharon Hofmann and Gary Hofmann each own a 45 and 5/6% interest in the Residence Property.

Second Amended Judgment, p. 3:3-7; Exhibit 2, Dckt. 485.

The Second Amended Judgment then continues, determining specific credits and surcharges that the Debtor and Petitioners have as part of the Second Amended Judgment in determining the partition of the proceeds from the sale of the Residence Property, stating:

c. " The Parties [which include Debtor and Petitioners] are entitled to a credit in the amount of that party's percentage ownership interest in the parcels, as set forth above." *Id*.; p. 5:9-10.

Thus, the first credits that Debtor and Petitioners have for division of the proceeds from the sale of the Residence Property are for their percentage ownership in the Residence Property.

The Second Amended Partition Judgment then continues to determine additional credits for and surcharges against the Debtor and Petitioners in determining the partition of the proceeds from the sale of the Residence Property, stating:

d. Credits and Surcharges for Debtor:

i. "[Debtor] is surcharged for his occupancy of the Residence for the period of September 1, 2015, through March 31, 2019, in the amount of $84,300, plus prejudgment interest of $6,276.81, for a total of $90,576.81. Interest at the annual rate often percent (10%) shall run from the date of entry of this Interlocutory Judgment."

ii. "[Debtor] shall receive a total credit of $142,122 if he leaves the grain tanks on the Residence Property, and in the alternative, he shall receive a total credit of $62,269 if he removes the grain tanks. *Id.* at 5:14-17.

e. "[Creditor Sharon Hofmann], as Trustee of the Lois Hofmann Trust, shall receive a total credit of $12,059.88. *Id.* at 5:18-19.

The Second Amended Judgment goes further beyond the partition of the sales proceeds and awards Petitioners attorney's fees and costs of $122,395.71 and $10,485.00, respectively. *Id.* at 6:4:4-7, 4:9-14. These are not designated as a credit or surcharge.

The Second Amended Judgment then totals the surcharge, attorney's fees, and costs to compute the total monetary judgment of what Debtor owes Petitioners to be $223,457.62. *Id*.; p. 6:18-19. When the Second Amended Judgment was entered on January 21, 2022, the Residence Property had not yet been sold, and the application of the credits (the Parties respective ownership percentage and other credits) and

surcharges could not be computed to determine whether what, if any, monetary obligation exceeds the proceeds from the sale of the Residence Property.

> f. The total monetary judgment for Creditors Sharon Hofmann and Gary Hofmann against Debtor in Possession is $223,457.62. This calculation is $132,880.81 in fees and costs plus $90,576.81 in rent surcharge.

In their Motion, Petitioners assert that Debtor is not entitled to any credit for the grain tanks (also referred to as the "Rice Bins") because they were removed from the Residence Property and not sold as a part thereof. The Second Amended Partition Judgment provides for the credit as follows:

> viii. The Parties are also entitled to credits or allowances as follows:
>
> 1. Michael shall receive a total credit of $142,122 if he leaves the grain tanks on the Real Property, and in the alternative, he shall receive a total credit of $62,269 if he removes the grain tanks.

Id.; p. 5:13-17.

By the plain language of the Second Amended Partition Judgment, Debtor will be allowed a credit of $142,122, so long as "he," the Debtor, does not remove them. In this Bankruptcy Case the Debtor did not remove the grain tanks from the Residence Property. Rather, it was the Subchapter V Trustee who was granted possession and sole control over the Residence Property as part of the Bankruptcy Estate, removed the grain tanks. While the Petitioners could spend tens of thousands of further dollars arguing whether the Subchapter V Trustee, whose duties run to the Bankruptcy Estate, is a "successor" who comes under the Second Amended Partition Judgment paragraph above, as shown in the computation of the distribution amounts to the Petitioners, after application of credits and surcharge, such is of insignificant economic consequence (especially in light of the hundreds of thousands of dollars in legal fees and years of time spent in litigation to date).

Again, reading the plain language of the Second Amended Partition Judgment, it is the Debtor whose credit would be reduced if he, **the Debtor**, removes the grain tanks. No reference is made to a successor in interest or a Subchapter V Trustee under operation of Federal Law taking control of property of a bankruptcy estate and making decisions concerning the property without regard to the desires of the Debtor in Possession.

There are no "setoffs" against the interests of Sharon Hofmann or Gary Hofmann provided in the Second Amended Partition Judgment. However, Sharon Hofmann is provided a credit of $12,059.88. *Id.*; p. 5:18-19.

The Second Amended Partition Judgment, in addition to determining the respective interests of the Petitioners in the Residence Property, and any surcharges against or credits to such interest, also makes a separate award of attorneys' fees and costs of ($132,880.81) that is owed by Debtor to Petitioners. *Id.*; p. 6:4-9-14.

Relief Sought by Petitioners

In their Motion, Petitioners assert the right to 100% of the Partition Sale Proceeds. Dckt. 480. They argue that their credits and the surcharges against the Debtor exhaust any value in the Partition Sale Proceeds that the Debtor may claim. The court expressly addresses the surcharges and credits, and applications thereof.

Relief Sought by Debtor

Debtor's request for Disbursement of the Partition Sale Proceeds (which was filed as a motion for summary judgment in the Adversary Proceeding; 23-9006; Dckt. 52) is based on an analysis that the credits are first disbursed, and that any surcharge amount has been reduced to a monetary judgment, which obligation is asserted to have been discharged. Debtor lays out the grounds for this in the Points and Authorities he has filed. 23-9006; Dckt. 56. He asserts that there cannot be a setoff or recoupment for the surcharge amount since it was made part of the Second Amended Partition Judgment.

CALIFORNIA PARTITION LAW,
CREDITS AND SURCHARGES

What this court has been presented with is a State Court judgment for the partition of real property. The State Court determined that the real property could not be partitioned in kind, with each of the owners taking their percentage interest in "dirt," but that the Residence Property had to be sold and the Partition Sale Proceeds then be partitioned between the owners.

Attached to and incorporated in the Second Amended Partition Judgment are two Rulings issued by the State Court. Exhibits A and B attached to the Second Amended Partition Judgment, Ex. 2; Dckt. 485. In the State Court's July 19, 2019 Ruling, the State Court cites to California Probate Code §§ 16007, 16420, 16440, 16441 with respect to the surcharge being imposed. Exhibit B, pp. 13:3-10, 15:7-13.

California Probate Code § 16420 provides that if a trustee of a trust commits a breach of trust, a beneficiary or co-trustee may commence a proceeding to obtain specified relief, which includes "To compel the trustee to redress a breach of trust by payment of money or otherwise." Cal. Probate § 16420(a)(3).

In the various pleadings filed by the Petitioners, none addresses the issue of what is a "surcharge" and how it applies in a partition action where the property is sold and the proceeds are to be distributed to the owners. The Second Amended Partition Judgment and the two Rulings attached thereto expressly state that Debtor is surcharged the amount for his occupancy of the Residential Property.

With respect to the award of attorney's fees and costs, it separately states that Petitioners will "recover" from Debtor $132,880.81 in attorney's fees and costs, not that Debtor is surcharged that amount.

Interestingly, the court could not find within the Probate Code a statutory definition or procedure for a "surcharge" with respect to the misconduct of a trustee. Black's Law Dictionary provides the following definition:

surcharge vb. (15c)

1. To impose an additional (usu. excessive) tax, charge, or cost.

2. To impose an additional load or burden.

3. (Of a court) to impose a fine on a fiduciary for breach of duty.

4. To overstock (an area) with animals.

- second surcharge (18c) To overstock (a common) a second time for which a writ of second surcharge was issued.

- surcharge and falsify (18c) To scrutinize particular items in an account to show items that were not credited as required (to surcharge) and to prove that certain items were wrongly inserted (to falsify). • The courts of chancery usu. granted plaintiffs the opportunity to surcharge and falsify accounts that the defendant alleged to be settled.

Black's Law Dictionary (12th ed. 2024).

Here, the State Court expressly "taxed" or "charged" Debtor in Possession for his for his use and control of the Residence Property as part of the Second Amended Partition Judgment. This surcharge accounts for the value of the trust asset obtained by Debtor in advance of the partition and sale from his use of it through the exclusion of the other co-tenants. This then is applied to adjust Debtor's interest in the trust asset, the Residence Property, that was liquidated through the State Court Partition Action and the Debtor's Bankruptcy Case.

Application of Surcharges and Credits for Division of Partition Sales Proceeds

Petitioners assert the right to all of the Partition Sales Proceeds from the sale, stating that there are mutual debts to be offset. What they assert is that the surcharges against Debtor's interests are personal obligations owed to each of them. However, that does not obviate the need to follow the Second Amended Partition Judgment and apply the credits (which includes the portion of the proceeds based on the ownership interest in the Residence Property itself) and surcharges to compute the distribution of the Partition Sales Proceeds. As noted above, the State Court expressly identified credits and surcharges, and then separately, not using the words surcharge or credit, awarded attorney's fees and costs.

Here, the court begins with determining the value of Debtor's and Petitioners' interests in the Partition Sales Proceeds from the sale of the Residence Property, which Debtor controlled as the trustee of the Eric Hofmann Trust. As Petitioners assert, Debtor failed and refused to execute deeds or to distribute the trust assets to them.

Petitioners assert that pursuant to 11 U.S.C. § 553 they can exercise the right of offset on the mutual debts between the Debtor and Petitioners. They argue that since there are surcharges and credits that must be applied, there are mutual obligations owed between the Petitioners. Additionally, they assert that these include the attorney's fees and costs awarded them against the Debtor.

Petitioners cite to 11 U.S.C. § 553 in asserting the right that any interests of Debtor in the Partition Sales Proceeds from the sale of the Residence Property may be offset against any obligations owed by the Debtor to Petitioners. 11 U.S.C. § 553 provides:

§ 553. Setoff

> (a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—
> [the exceptions do not apply to the obligations that are the subject of the setoff]
> . . . .

As noted in 5 Collier on Bankruptcy ¶ 553.04, 11 U.S.C. § 553 does not create a right of setoff, but preserves a right of setoff that may exist under state law.

Petitioners cite to several Ninth Circuit Decisions that provide a good analysis of both the right of setoff and the right of recoupment. The court provides the following extensive quotations from and analysis of two of the Decision.

The first is *Newbery Corp v. Fireman's Fund Insx. Co*, 95 F.3d 1392 (9th Cir. 2000), which includes the following:

> "The right of setoff (also called 'offset') **allows entities that owe each other money to apply their mutual debts against each other**, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank of Maryland v. Strumpf*, 133 L. Ed. 2d 258, 116 S. Ct. 286, 289 (1995) (citation omitted). The **defining characteristic of setoff is that "the mutual debt and claim . . . are generally those arising from different transactions**." 4 Collier on Bankruptcy Par. 553.03, at 553-14 (15th ed. 1995) ("Collier").
>
> Setoff in bankruptcy cases is governed by 11 U.S.C. § 553.[8] It **has been used by creditors "as a defense in an action by the trustee for the recovery of money from the creditor**." Collier Par. 553.01[4], at 553-7. **Section 553 "is not an independent source of law governing setoff; it is generally understood as a legislative attempt to preserve the common-law right of setoff arising out of non-bankruptcy law.**" *United States v. Arkison (In re Cascade Roads, Inc.)*, 34 F.3d 756, 763 (9th Cir. 1994) (quoting United States v. Norton, 717 F.2d 767, 772 (3d Cir. 1983)). Under section 553(a), each debt or claim sought to be offset must have arisen prior to filing of the bankruptcy petition. In addition, "a claim may . . . be set off without regard to whether it is contingent or unliquidated, as long as the claim qualifies as 'mutual' under applicable nonbankruptcy law . . . ." Collier Par. 553.01[4], at 553-6 (citation omitted). [9] **In order for countervailing debts to be "mutual," they must be "in the same right and between the same parties, standing in the same capacity**." Collier Par. 553.04[2], at 553-22 (citing *England v. Industrial Comm. of Utah (In re Visiting Home Services, Inc.)*, 643 F.2d 1356, 1360 (9th Cir. 1981)). The **mutuality requirement stems from section 553(a)'s reference to "a mutual debt" owed by a creditor to the debtor against the creditor's claim against the debtor**,[10] and **it is strictly construed**. Collier Par. 553.04[1], at 553-20. The rationale for strict construction of the requirement has been explained as follows:

> The mutuality requirement in bankruptcy should be strictly construed because **setoffs run contrary to fundamental bankruptcy policies such as the equal treatment of creditors and the preservation of a reorganizing debtor's assets**: As Congress recognized, setoffs work against both the goal of orderly reorganization and the fairness principle because they preserve serendipitous advantages accruing to creditors who happen to hold mutual obligations, thus disfavoring other equally-deserving creditors and interrupting the debtor's cash flow.

Federal National Mortgage Assoc. v. County of Orange (In re County of Orange), 183 Bankr. 609, 615 (Bankr. C.D. Cal. 1995) (internal quotation marks and citation omitted).

The **right of setoff is permissive, not mandatory; its application "rests in the discretion of [the] court,** which exercises such discretion under the general principles of [equity]." *In re Cascade Roads*, 34 F.3d at 763 (internal quotation marks and citation omitted); Collier Par. 553.02, at 533-13 (citation omitted). "The **burden of proving an enforceable right of setoff rests with the party asserting the right**." *In re County of Orange*, 183 Bankr. at 615. Finally, the right of setoff is subject to the automatic stay provisions of Chapter 11. See 11 U.S.C. § 362(a)(7) (staying "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor").

In contrast to setoff, **recoupment "is the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action**, strictly for the **purpose of abatement or reduction of such claim**." Collier Par. 553.03, at 553-15 (emphasis in original). Under recoupment, a **defendant is able to meet a plaintiff's claim "with a countervailing claim that arose 'out of the same transaction**.'" *Ashland Petroleum Co. v. Appel (In re B & L Oil Co.)*, 782 F.2d 155, 157 (10th Cir. 1986) (citations omitted). For this reason, recoupment has been analogized to both compulsory counterclaims and affirmative defenses. *See, e.g., In re California Canners and Growers*, 62 Bankr. 18, 22 (9th Cir. BAP 1986) (Elliott, Bankruptcy J., concurring) (citation omitted).

Recoupment, like setoff, has been applied in bankruptcy proceedings. *See, e.g., In re B & L Oil Co.*, 782 F.2d at 157. However, there are distinctions between the two that are particularly important in bankruptcy. *Id*. Collier explains that **the primary difference is that the limits placed on setoff under section 553 generally do not apply to recoupment claims**. Collier states, for example, that "the chief importance of the recoupment doctrine in bankruptcy is that, unlike setoff, recoupment is often thought not to be subject to the automatic stay." Collier Par. 553.03, at 553-15 - 553-16 n.5 (citations omitted). In addition, **"invocation of recoupment also relaxes the requirement of mutuality for setoff of debts as it relates to the pre or postpetition character of those debts**." *Id*. Collier offers the following rationale for this general rule:

> In any suit or action between the estate and another, the defendant should be entitled to show that because of matters arising out of the transaction sued on, he or she is not liable in full for the plaintiff's claim. There is no element of preference here or of an independent claim to be set off, but merely an arrival at a just and proper liability on the main issue, and this would seem permissible without any reference to . . . section 553(a).

Collier Par. 553.03, at 553-17 (citing *Quittne*r, 202 F.2d at 816 n.3). The Tenth Circuit has offered a similar rationale for treating setoff and recoupment differently in bankruptcy cases:

> In bankruptcy, both recoupment and setoff are sometimes invoked as exceptions to the rule that all unsecured creditors of a bankrupt stand on equal footing for satisfaction. Recoupment or setoff sometimes allows particular creditors preference over others. Setoff is allowed in only very narrow circumstances in bankruptcy. But a creditor properly invoking the recoupment doctrine can receive preferred treatment even though setoff would not be permitted. **A stated justification for this is that when the creditor's claim arises from the same transaction as the debtor's claim, it is essentially a defense to the debtor's claim against the creditor rather than a mutual obligation**, and application of the limitations on setoff in bankruptcy would be inequitable.

In re B & L Oil Co., 782 F.2d at 157 (internal quotation marks and citations omitted) (cited in Collier Par. 553.03, at 553-15 - 553-16 n.5); *see also Lee v. Schweiker*, 739 F.2d 870, 875 (3rd Cir. 1984); *In re Harmon*, 188 Bankr. 421, 425 (9th Cir. BAP 1995) ("The invocation of the recoupment doctrine promotes no preference problem. It is applied when there are countervailing claims arising from the same transaction 'strictly for the purpose of abatement or reduction . . . .'") (internal quotation marks and citation omitted); *Photo Mechanical Services, Inc. v. E.I. DuPont de Nemours & Co., Inc. (In re Photo Mechanical Services, Inc.)*, 179 Bankr. 604, 612 (Bankr. D. Minn. 1995).

FN. 8. " Except as otherwise provided . . . this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case . . . against a claim of such creditor against the debtor that arose before the commencement of the case . . . . " 11 U.S.C. § 553(a).

FN. 9. Because the contracts in this case were executed in Arizona, the "applicable nonbankruptcy law" in this case is Arizona law. Arizona's definition of recoupment and setoff appears to parallel Collier's:

> Although related concepts, set offs and counterclaims are distinguishable from recoupment. A set off or counterclaim is a

> demand which the defendant has against the plaintiff arising out of a transaction extrinsic to the plaintiff's cause of action, whereas a recoupment is a reduction by the defendant of part of the plaintiff's claim because of a right in the defendant arising out of the same transaction.
>
> *Morris v. Achen Constr. Co., Inc.*, 155 Ariz. 507, 747 P.2d 1206, 1209 (Ariz. App. 1986) (citation omitted), rev'd in part on other grounds, 155 Ariz. 512, 747 P.2d 1211 (1987).
>
> FN. 10. A "claim" includes a "right to payment," and a "debt" is a "liability on a claim." 11 U.S.C. § 101. "In the setoff context . . . 'claim' and 'debt' are . . . correlative terms." Collier Par. 553.04[1], at 553-19 n.1 (citation omitted).
> ----------

Newbery Corp. v. Fireman's Fund Ins. Co., 95 F.3d at 1398-1400 (emphasis added).

In reviewing the above, for both setoff and recoupment, there must be mutual debts owed between the parties. For setoff, these are generally obligations arising from different transactions, in which the debts are "netted out," with there remaining only a balance owing from the larger debt of debtor 1 after the smaller debt owed by debtor 2 reduces the larger debt of debtor 1.

Recoupment is slightly different, where the obligations arise out of the same transaction and, as stated in *Newbery*, Recoupment:

> "is the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim." Collier Par. 553.03, at 553-15 (emphasis in original). Under recoupment, a defendant is able to meet a plaintiff's claim "with a countervailing claim that arose 'out of the same transaction.'

The concept of recoupment was more recently addressed by the Ninth Circuit Court of Appeals in *Gardens Reg'l Hosp. & Med. Ctr. Liquidating Trust v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.)*, 975 F.3d 926 (9th Cir. 2020). In addressing the application of recoupment, as compared to setoff, the Ninth Circuit states:

> By contrast, the conceptual foundation of **equitable recoupment is not the adjustment of separate mutual debts but the process of defining the amount owed under a single claim**. *See Reiter*, 507 U.S. at 265 n.2 ("Recoupment permits a determination of the 'just and proper liability on the main issue[.]'") (citation omitted); *Chicago Title Ins. Co. v. Seko Inv., Inc. (In re Seko Inv., Inc.)*, 156 F.3d 1005, 1008-09 (9th Cir. 1988) ("**If recoupment applies, the creditor's claim arises from the same transaction as the debtor's claim, and it is essentially a defense to the debtor's claim against the creditor rather than a mutual obligation.**" (simplified)). Because "recoupment is in the nature of a right to reduce the amount of a claim, and does not involve establishing the existence of independent obligations," 5 Collier on Bankruptcy ¶ 553.10 (Richard Levin & Henry J. Sommer, eds., 16th ed. 2019) (emphasis added), the caselaw has recognized that recoupment

is not subject to all of the same strictures in bankruptcy as setoff. For example, because "**the limits placed on setoff under section 553 generally do not apply to recoupment claims**," *Newbery*, 95 F.3d at 1399, "[u]nlike setoff, recoupment is not limited to pre-petition claims and thus may be employed to recover across the petition date," Sims, 224 F.3d at 1011. And as noted earlier, "'unlike setoff, recoupment is often thought not to be subject to the automatic stay.'" *Newbery*, 95 F.3d at 1399 (citation omitted).

We have emphasized that the "limitation of recoupment that balances [these] advantage[s]" under bankruptcy law "is that the **claims or rights giving rise to recoupment must arise from the same transaction or occurrence that gave rise to the liability sought to be enforced by the bankruptcy estate**." *Sims*, 224 F.3d at 1011. Accordingly, we have defined recoupment in the bankruptcy context as "'**the setting up of a demand arising from the same transaction as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim**.'" *Newbery*, 95 F.3d at 1399 (second emphasis added) (citation omitted). In addressing whether the countervailing claims or rights asserted by the creditor arise from the same transaction or occurrence—and therefore qualify as a permissible recoupment for federal bankruptcy purposes—we "have held that the crucial factor . . . is **the 'logical relationship' between the two.**" *Sims*, 224 F.3d at 1012 (quoting *Newbery*, 95 F.3d at 1403).

In *Newbery*, we derived this "logical relationship" test from the Supreme Court's analysis of pleading standards governing compulsory counterclaims in the era prior to the Federal Rules of Civil Procedure. 95 F.3d at 1402 (citing *Moore v. N.Y. Cotton Exch*., 270 U.S. 593, 610, 46 S. Ct. 367, 70 L. Ed. 750 (1926)). That makes sense, given the common-law-pleading origins of the doctrine, *Lee*, 739 F.2d at 875, and indeed, **recoupment has been described as "the ancestor of the compulsory counterclaim and setoff of the permissive counterclaim,***" Coplay Cement Co. v. Willis & Paul Grp*., 983 F.2d 1435, 1440 (7th Cir. 1993) (citations omitted); see generally 6 Charles Alan Wright, Arthur R. Miller, & Mary K. Kane, Federal Practice & Procedure § 1401 (3d ed. 2010). In both *Newbery and Sims*, we noted that the Supreme Court in *Moore* had held that whether claims or rights arise from the same transaction "'depend[s] not so much upon the immediateness of their connection as **upon their logical relationship**.'" *Sims*, 224 F.3d at 1012 (quoting Moore, 270 U.S. at 610); *see also Newbery*, 95 F.3d at 1402 (same). In *Sims*, we therefore expressly rejected "the Third Circuit's narrow definition of 'transaction,'" which in our view improperly gave dispositive weight to the temporal immediacy of the countervailing claims rather than to their logical relationship. 224 F.3d at 1014 (citing *University Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1081 (3d Cir. 1992)).

While **we have thus noted the "flexible meaning" of the same-transaction requirement,** *see Newbery*, 95 F.3d at 1402, we have also **cautioned that "the 'logical relationship' concept is not to be applied so loosely that multiple occurrences in any continuous commercial relationship would constitute one transaction**," *Sims*, 224 F.3d at 1012. The test remains whether the relevant rights being asserted against the debtor are sufficiently logically **connected**

> **to the debtor's countervailing obligations such that they may be fairly said to constitute part of the same transaction**. *Sims*, 224 F.3d at 1012; Newbery, 95 F.3d at 1401-02. Moreover, while we have rejected the Third Circuit's narrow focus on temporal proximity, we have stated our express agreement with that court's separate "observation that **courts should apply the recoupment doctrine in bankruptcy cases only when 'it would . . . be inequitable for the debtor to enjoy the benefits of that transaction without meeting its obligations**.'" *Newbery,* 95 F.3d at 1403 (alteration in original) (quoting University Med. Ctr., 973 F.2d at 1081); *see also Sims*, 224 F.3d at 1014. Furthermore, as Collier explains, "**care should be taken" in applying the doctrine of recoupment in the bankruptcy context, given that "improper application of the doctrine, coupled with its ostensibly exempt status under sections 553(a) and 362, could undermine the fundamental purposes of these statutory provisions**." 5 Collier on Bankruptcy, supra, ¶ 553.10[3]. "[A]pplication of the doctrine in any particular case" is therefore "sometimes scrutinized from the perspective of its effect on the fundamental policies of these provisions." *Id.*; *see also Malinowski v. N.Y. State Dep't of Labor (In re Malinowski)*, 156 F.3d 131, 134 (2d Cir. 1998) **(recoupment should not be broadened "in contravention of the federal bankruptcy policies of debtor protection and equal distribution to creditors").**

Gardens Reg'l Hosp. & Med. Ctr. Liquidating Trust v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.), 975 F.3d at 933-935.

Whether it be setoff or recoupment, there must be obligations owed by each of the parties to the other. In reading the Second Amended Partition Judgment, the State Court Judge determined that there are obligations and credits arising out of Debtor's and Petitioners' actions concerning the Residence Property in determining the distribution of the Partition Sale Proceeds to the owners (here Debtor and Petitioners) of the Residence Property.

The Second Amended Partition Judgment creates a second set of obligations that Debtor owes Petitioners, that for attorney's fees and costs, which are neither credits nor surcharges in determining their respective interests in the Partition Sales Proceeds from the Partition Sale of the Residence Property.

Here, the plain language used by the wise State Court Judge imposed the surcharge on the Debtor and granted credits to the Debtor and Sharon Hofmann in determining the respective interests of the Petitioners in the Partition Sales Proceeds to functionally serve as the recoupment for that transaction. The State Court Judge did not order that any attorney's fees and expenses obligation of the Debtor was to be surcharged against his interest in the Residential Property.

Discussion of Partition
Law in California

A body of law neither of the Parties appear to present to the court, but the court has found to be instructive and helpful, is the partition law for the State of California. Indeed, partition was discussed through the appellate court's opinion found at Exhibit 1, Docket 485. *See* Ex. 1, ps 44-45. Miller and Starr discuss partition in the treatise of California Real Estate 4th Edition. The Treatise states:

Recovery in partition action. The cotenant who paid the costs for improvement of the property receives an increase in his or her equity in the property by the amount advanced. On a sale of the property pursuant to an order for sale in an action for partition, whether or not the other cotenant has consented to the improvements, the cotenant who advanced the costs for improvements is entitled to be reimbursed for the entire amount advanced or the amount by which the improvements have enhanced the value of the property before the balance of the sales proceeds are divided among the cotenants.

MILLER AND STARR, 4 CAL. REAL EST. § 11:8 (4th ed.).

The decree can resolve claims between the cotenants. All conflicting claims existing between the parties and arising out of their relationship as cotenants can be adjudicated in the partition action. Thus, for example, the court can determine whether a deed under which a party claims is an absolute conveyance or merely a mortgage. It also can determine whether a judgment obtained by one cotenant against the other is a lien on the latter's interest in the common property.

Accounting; reimbursement of costs, expenses, and improvements by one cotenant. An action for partition may include an accounting so that the respective rights of the parties can be adjusted and settled. A cotenant who has advanced funds to pay common expenses is entitled to reimbursement from the sale proceeds before the balance is divided and distributed to the cotenants. A cotenant out of possession can require the cotenant in possession to account for rents and profits or other compensatory adjustment in the division of the sale proceeds.

Even though a cotenant who is not in possession cannot collect the rental value from the tenant in possession, on partition, the court can offset the rental value against the claim by the cotenant in possession for amounts advanced for interest, taxes, and insurance premiums before distribution of the sale proceeds. The court can also credit the cotenant in possession for the amounts advanced for loan payments and improvements for the cotenancy property.

A cotenant who has received an advance on part of his or her estate must account for the property received and may receive only the proportion of the remainder to which he or she is equitably entitled. A cotenant who has paid more than his or her portion of the purchase price for the property is entitled to an accounting and an adjustment of the excess.

A cotenant who has paid an obligation for the benefit of the common property, discharged a lien or assessment, expended money in redeeming the property from sale, or incurred necessary expenses in caring for the property, is entitled to recover a proportionate share from a cotenant who has received the benefit of the payment. The partition decree can provide that the share of the latter be charged with a lien for the sums advanced.

> Finally, the court has the authority to make compensatory adjustments between the parties according to the ordinary principles of equity in all cases where equal partition of the property cannot be made.
>
> **Costs of partition**. The costs reimbursed before any distribution to the parties include the fees of any attorney engaged for the common benefit of the parties, the fees and expenses of the referee and third persons hired by the referee, the cost of title reports, and interest on these expenditures. . .
>
> **The balance of the proceeds is distributed among the parties, subject to any offsets or credits that may be due one cotenant against the other, and the court can impose a lien on the property or proceeds of any cotenant as security for payment of his or her share of the costs**.

MILLER AND STARR, 4 CAL. REAL EST. § 11:18 (4th ed.) (emphasis added).

> **Reimbursement for improvements**. A cotenant who has in good faith made improvements to the property necessary for its preservation is entitled to reimbursement in the partition action even though the improvements were made without the knowledge or consent of the other cotenants. That is, the other cotenants who share in the benefits of the improvements are chargeable with their proportionate share of the cost even though they were made without their express or implied consent. . .
>
> Whether the partition is by a division of the property or the distribution of the sales proceeds, the cotenant who has made the improvement is entitled to the resulting enhancement in value.

MILLER AND STARR, 4 CAL. REAL EST. § 11:19 (4th ed.).

California Courts of Appeals have handled the issue of partition by sale, applying charges and credits in the distribution of proceeds, stating:

> An action for partition is governed by the broad principles of equity jurisprudence, and the courts have adhered, in adjusting the rights of co-tenants and defining their interests in the common property**, to the classic formulas encapsulated in the maxims that equity is equality and he who seeks equity must do equity**, and have dispensed equitable relief only upon condition that the equitable rights of a co-tenant are respected and safeguarded. . .
>
> Every partition action includes a final accounting according to the principles of equity for both charges and credits upon each co-tenant's interest. Credits include expenditures in excess of the co-tenant's fractional share for necessary repairs, improvements that enhance the value of the property, taxes, payments of principal and interest on mortgages, and other liens, insurance for the common benefit, and protection and preservation of title.

Wallace v. Daley, 270 Cal. Rptr. 85, 89 (Cal. Ct. App. 1990) (internal quotations omitted) (emphasis added).

Importantly, Miller and Starr provides further insight into how the cotenants out of possession may recover rent and profits from the cotenant in possession. The Treatise states:

> **Recovery of rental value on an ouster**. A cotenant who is not in possession may only recover the rents and profits, or the value of possession, from the cotenant in possession when there has been an ouster excluding the cotenant from possession,[8] or when the other cotenant's occupancy was pursuant to an agreement to share the rents and profits from their property. Absent an agreement or an ouster, a cotenant out of possession has no right to recover the rental value of the property from a cotenant in possession.
>
> **Lien for share of rents and profits**. The non-occupying tenant may have an equitable lien on the interest of the cotenant in possession for a share of the rents and profits, but this lien is not enforceable against a bona fide purchaser of the interest of the tenant in possession.
>
> **Right of cotenant not in possession to offset against claims by the cotenant in possession**. When one cotenant has exclusive possession of the cotenancy property, the rental value of the premises may be offset by the cotenant out of possession against the claims of the cotenant in possession for contribution for interest, taxes, insurance, and loan obligations paid.

MILLER AND STARR, 4 CAL. REAL EST. § 11:4 (4th ed.). This Section of Miller and Starr is especially helpful in this case because the trial court and appellate court found that Debtor engaged in actions consistent with ouster, permitting Petitioners to recover, or offset, rents and profits against the property improvement contributions made by Debtor. *See* Opinion, Ex. 1 at 38, Docket 485. Debtor did not sufficiently rebut the ouster argument, according to the appellate court. *Id.*

Cal. Code Civ. P. § 873.820 gives some directive as to how a court distributes the proceeds in partition, stating:

> The proceeds of sale for any property sold shall be applied in the following order:
>
> (a) Payment of the expenses of sale.
>
> (b) Payment of the other costs of partition in whole or in part or to secure any cost of partition later allowed.
>
> (c) Payment of any liens on the property in their order of priority except liens which under the terms of sale are to remain on the property.
>
> (d) Distribution of the residue among the parties in proportion to their shares as determined by the court.

As discussed in the Miller and Starr Treatise and by the California Courts of Appeal, partition gives parties in interest a right to offset charges and credits. The Second Amended Partition Judgment in this case involved a partition by sale, allocating credits and offsetting those credits against surcharges. *See* Opinion, Ex. 1 at ps 43-45 (discussing partition by sale in the context of this case). Therefore, this court

interprets and applies the credits and surcharges to the Partition Sales Proceeds. The court computes the surcharges and credits below.

Computation of the Interests of the Petitioners in the Partition Sales Proceeds

In correctly computing the respective distribution amounts from the Partition Sales Proceeds from the sale of the Residence Property, the court applies the credits and surcharges to the respective interests of the Petitioners. For ease of computation, the court has combined the interests of Petitioners, given that each are asserting their respective 45.8333% interests against the Debtor's interest. A possible "tweaking" of Petitioners's amount is that in the Second Amended Partition Judgment Sharon Hofmann is awarded a credit of $12,059.90. Second Amended Partition Judgment, p. 5:18-19; Exhibit 2, Dckt. 485. However, in their Motion for distribution of the Partition Sales Proceeds, they assert that both Petitioners have the $12,059.88 credit. Motion, p. 8:10-11; Dckt. 480.

Request for Post-Judgment Credits

Post-Judgment Property Tax Credit

As part of the Motion, Petitioners request a credit for the post-judgment property taxes for the years 2020 through 2025. This credit was not awarded in the Second Amended Partition Judgment because the property taxes were paid post-judgment while Debtor continued to reside in the Residence. It is clear that the court is to award this credit because "[a] cotenant who has advanced funds to pay common expenses is entitled to reimbursement from the sale proceeds before the balance is divided and distributed to the cotenants." MILLER AND STARR, 4 CAL. REAL EST. § 11:18 (4th ed.).

Exhibit 10 is a copy of the property tax payments for the years 2023-2024. Dckt. 485. Petitioner Gary Hofmann provides his Declaration, in which he testifies to having pay payments totaling $13,238.40 for the 2019-2020 through the 2024-2025 tax years. Dckt. 484. He states that these are the property taxes for the Residence Property. *Id.* , ¶ 2.

He also testifies that John Brichetto paid the property taxes between 2019 and 2024, and that Gary Hofmann reimbursed Mr. Brichetto. *Id.*; ¶ 3. Petitioner Gary Hofmann directs the court to review Exhibit 9, copies of the tax bills, and Exhibit 10, copies of the checks and credit card receipts for payment of the property taxes.

The Second Amended Partition Judgment was entered on July 19, 2019. The check provided as documentation of the payment of the 2019 property tax year was issued on July 23, 2023. Exhibit 10; Dckt. 458 at 179. This payment was not made until well after the Second Amended Judgment was entered, and was not an expense for which Petitioners could have requested a credit in July 2019.

The court allows as an additional credit the sum of $13,238.40 for Petitioners for payment of the Residence Property Taxes for the 2019-2020 through 2024-2025 tax years.

Post-Judgment Underground Tank Remediation

Gary Hofmann testifies that he paid "$11,145.96 to remove and remediate the underground storage tank on the Residence so that it could be sold." Decl. ¶ 4, Docket 484. Petitioner Gary Hofmann directs the court to Exhibits 11 and 12 as evidence of the work that was done and amounts paid. *Id.*; ¶ 4.

The record shows that the underground storage tanks were an impediment to the sales process. On March 13, 2024, the court granted the initial Motion to Sell to the Residence to Debtor. Order, Docket 265. However, that sale fell through because Debtor never obtained funding. The back up buyers, the Cleghorns, also backed out. The Subchapter V Trustee ultimately brought another Motion to Sell on October 16, 2024. Docket 372. In those pleadings it became clear that the Cleghorns backed out of the sale as the back up buyers due to the risk of the underground tanks and their immediate need to be removed. See Decl. ¶ 13, Docket 365.

Therefore, the court finds that the expense of $11,145.96 for the remediation was a necessary expense that was paid by Petitioners, and led to the Residence Property being sold by the Subchapter V Trustee.

The court awards a credit in the amount of $11,145.96 to Petitioners for improving the Residence Property and removing the underground tanks.[2]

Request for Additional Surcharge by Petitioners Sharon Hofmann and Gary Hofmann

In their Motion for the Distribution of the Partition Sales Proceeds, Petitioners request that this court allow them additional credits as part of the distribution computation. The additional amounts that seek to "recover" are $59,000 for rent (which would actually be in the nature of a surcharge under the Second Amended Partition Judgment) post-judgment, and $27,684.36 for insurance, taxes, and improvements paid post-judgment. The property taxes and grain tank removal credits were awarded and discussed above. The remaining requests are discussed in turn.

Post-Judgment Rent Value

First, Petitioners assert that the Debtor owes at least $59,000 for rent during the period from May 2019 through April 2024. The court first notes that Debtor commenced his Bankruptcy Case on March 20, 2023. Thus, as of March 2023, the Residence Property was property of the Bankruptcy Estate, which was then under the control of the Debtor, serving in his fiduciary capacity as the Debtor in Possession.

The Second Amended Partition Judgment addresses the rights of co-owners of real property to occupy it without owing "rent," and situations where one tenant in common who occupies the property to the exclusion of other tenants in common may be liable for "rent." The exceptions to the rule that one tenant

[2] In awarding these credits, the court notes that 91.666% of it is being paid by Petitioners back to themselves. If the court did not award the credit, then, for example, the $11,145.96 relating to the underground tank remediation would have remained in the Partition Sale Proceeds pot, to be divided 8.33% to Debtor and 91.666% to Petitioners. Debtor's share of this credit works out to be $928.79. One wonders whether the cost and expense of requesting such credit exceeds the actual benefit to Petitioners in seeking this credit.

in common may occupy the property without paying rent to the other co- tenants in common is stated in the Judgment as:

> However, there are several exceptions to this rule. A cotenant out of possession may recover rent when there has been an ouster excluding that cotenant from possession. (*Estate of Hughes* (1992) 5 Ca1.App.4th 1607.) Also, a trustee in exclusive possession of property who wrongfully withholds from his or her cotenants their equitable interests is liable to the latter for rent. (*See Teixeira v. Verissimo* (1966) 239 Cal.App.2d 147.) Moreover, in a partition action, a cotenant out of possession may recover rent when recovery of the imputed rental value would be "just and consonant with equitable principles." (*Hunter v. Schultz* (1966) 240 Cal.App.2d 24, 32.)

Statement of Decision, p. 13:15-22; Exhibit B to Second Amended Partition Judgment Exhibit 2; Dckt. 485.

With the Residence Property becoming property of the Bankruptcy Estate March 20, 2023, the court concludes that the exceptions to the normal cotenant rule are not applicable. Once it becomes property of the Bankruptcy Estate, the fiduciary thereof had to take control of and protect such property. True, the Debtor was residing there, but he was also providing "on the ground protection." On June 15, 2023, "just" three months after this case was filed, the Subchapter V Trustee filed a Motion to Remove the Debtor in Possession from control of both the Residence Property and the Farm Property. At that point, the Debtor clearly was not controlling the Residence Property.[3] This facilitated the goal of Petitioners to get the property sold and have it done by a third-party.

For the period of May 2019 through February 2023, the court concludes that while it may have been unsettling to Petitioners that Debtor, as the Trustee of the Eric Hofmann Trust, was continuing to reside in and occupy the Residence Property, the court does not award a further surcharge for this time spent occupying the Residence. Though the Debtor continued to use the State Court to litigate his dispute and delay the ultimate sale of the Residence Property and the Farm Property, it was as part of that post-Second Amended Partition Judgment Litigation.

As a financially practical matter, given the huge legal expenses incurred though the State Court Litigation and Petitioners recovering 90.24% of the Sales Proceeds after application of the credits and surcharges in the Second Amended Partition Judgment as computed by the court, any further surcharge is of little economic significance compared to further litigation.

Of great significance, the court also considers the condition of the Residence Property, which Petitioners describe in their Motion as (emphasis added):

> Michael allowed the Residence to significantly deteriorate, a fact confirmed by an appraisal obtained in October 2022. (Exhibit 4.) The report noted the Residence suffers from:

---

[3] This removal of control and transfer to the Subchapter V Trustee was agreed to by the Petitioners and other parties in interest to allow for the effective marketing and commercially reasonable sale of the Residence Property and the Farm Property.

> **extensive deferred maintenance**. The bathroom **floor has dry rot and evidence of mold**. The **roof** of the house **needs to be replaced**. The **interior needs paint and flooring**, the **exterior has extensive dry rot on the wood siding, deck and roof eaves.** The exterior needs repairs & paint. The kitchen and bathrooms need updating of full remodels. The shop and barn are in average condition, there is mold present in the barn ceiling. NOTE: The appraiser is not a licensed contractor and recommends a full pest & home inspection to determine the extent of the repairs needed and the **presence of any mold contamination**.

(*Id*. at 144.) Photographs taken by the appraiser confirm these facts (examples below):

[Photographs Omitted]

> The condition was such **that Sharon could no longer obtain insurance for the Residence**, which was last insured in 2021. (Sharon Hofmann Decl. at 2, ¶ 4; Exhibit 13.)

Motion, p. 4:10-5:2; Dckt. 480. Though the Appraisal Report was filed as Exhibit 4, Dckt. 485, the text of the Report is illegible.

There has been no sufficient showing by Petitioners that the Debtor was maintaining possession of the Residence Property to the exclusion of Petitioners which resulted from any loss of use value for either of them. Rather, they show that the Debtor was choosing to live in a health-risky residence among the mold and dryrot in the Residence, and that there was no rental value for such Residence Property.[4]

Taking the statement made above in the Motion, which is subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, it is asserted by Petitioners that the Residence Property was uninhabitable by any tenant. There was no lost rental value. While as a co-owner the Debtor chose to live in mold and dry rot, that does not create a rental value.

Attorney's Fees and Costs

Petitioners have also asserted that $122,395.81 award of attorney's fees and costs be surcharged the Debtor. As the court addresses above, the Second Amended Partition Judgment does not provide for the attorney's fees and expenses to be a credit for or a surcharge against any interests in the Residence Property or Sales Proceeds thereof. The State Court was very careful in identifying credits and surcharges to be addressed with the Partition Sale Proceeds. Attorney's fees and costs were not obligation of the Debtor that constituted a credit for Petitioners or a surcharge against Debtor for benefit of Petitioners.

---

[4] Given that it is commonly known of the health risk of mold in homes and that rental of such homes is not property and can subject the lessor to significant liability, the court has not provided citations to such authorities. If Sharon Hofmann or Gary Hofmann believe that their assertion of mold and dryrot in the Residence Property is improper or that the rental of such property is legally proper and financially sound, their counsel may address that with the court.

The court does not award this amount as a credit or surcharge in computing the disbursement of the Partition Sale Proceeds.

Property Insurance

Plaintiffs also request reimbursement for property improvements and insurance costs. Sharon Hofmann testifies that she paid $3,300 in insurance for the Residence. Decl. ¶ 2, Docket 483. The years requested are from 2018 through 2021. Exhibits have been submitted that show the declaration pages for the policies; however, there are no Exhibits showing receipt of payment or otherwise who paid for the policies. Ex. 13, Docket 485.

The court also considers that two of the years requested, 2018 through 2019 and 2019 through 2020, implicate the dates before or just leading up to the Second Amended Partition Judgment, and so the court does not include those amounts as a credit in this ruling.

Therefore, the court finds the only eligible year insurance may be reimbursed, 2020 through 2021, has not been adequately shown to the court Sharon Hofmann paid the expense.

Whether the Surcharge was Discharged

Debtor made the argument at the initial hearing on this Motion and in his Motion for Summary Judgment that the surcharge was assumed into the total award of the Judgment, and therefore the surcharge is discharged along with attorneys' fees and costs awarded in the Judgment. *See* Adv. Proc. No. 23-09006, Mot. for Summ. J., Docket 52. The applicable provision of the Judgment that is in controversy reads:

> The total monetary judgment for Petitioners against Michael Hofmann is $223,457.62 (which includes an award of attorneys' fees, costs, and the rent surcharge with then-applicable interest).

Second Amended Partition Judgment, Ex. 2 at 6:18-21 Docket 485.

The court disagrees that the surcharge, as mentioned in the final paragraph as a total award, is discharged along with the remainder of the Judgment. To accept this interpretation of the Second Amended Partition Judgment would be not only inconsistent with the Second Amended Partition Judgment itself, but also California partition law and partition of sales proceeds when the real property cannot be partitioned in kind.

The Second Amended Partition Judgment specifically expressly identifies and provides for credits and surcharges to be made in computing the disbursement of the Partition Sales Proceeds. This includes the surcharge against Debtor and in favor of Petitioners for Debtor's occupancy of the residence to the exclusion of Petitioners.

Debtor would have the court completely ignore that section of the Second Amended Partition Judgment and instead find that operative language is the final paragraph of the Judgment. The court is not inclined to ignore the allocation of charges and credits based on the equitable distribution of proceeds from the partition sale.

While Debtor argues that "obviously" the court deleted the surcharge from computing the partition of the Partition Sales Proceeds, the court sees there being a much more proper, legally consistent, reason for the State Court Judge specifically identifying surcharges and credits, rather than just "lumping them out" in some net monetary judgment amount.

At the time the Second Amended Partition Judgment was entered, the Residence Property has not been sold. The State Court Judge had no way to provide for the credits (which includes the percentage ownership interest in the Residence Property being partitioned through court ordered sale) and surcharges at the time the Second Amended Partition Judgment was entered. The court had no way to know if there were going to be surcharge amounts that did not get addressed through the partition of the Partition Sales Proceeds, and thus the amount of any potential monetary judgment.

The State Court Judge expressly identified the surcharge and credit amounts, included the surcharge amounts as part of the monetary judgment, and then when the Residence Property was sold, application of the surcharge to Debtor's interest in the Partition Sale Proceeds could occur and thereby reduce the amount of the Second Amended Partition Judgment for such surcharge amounts.

The application of credits and surcharges to compute the partition of the Partition Sales Proceeds is consistent with California Law and correctly computes the respective amounts of the Partition Sales Proceeds to be distributed to the three owners of the Residence Property.

COMPUTATION OF DEBTORS' AND PETITIONERS RESPECTIVE DISBURSEMENTS OF THE PARTITION SALE PROCEEDS

The court has constructed the following table to compute the distribution of the Partition Sale Proceeds between Debtor and Petitioners.

	Partition Sale Proceeds	**$406,241.01**	
	Computation of Credits and Surcharges		
Credits For and Surcharges Against Debtor			
Credits Awarded Debtor	For Grain Tanks and Other Property Improvements	$142,122.00	
Surcharges Imposed in Favor of Petitioners Against Debtor	For Rent or Occupancy of Residence	($84,300.00)	
	Interest on Rent Surcharge to January 2022 Judgment	($6,276.81)	

	Interest on Rent Surcharge at 10% Interest from February 2022 - August 2025 ($8,420) per year [3 years and 8 months]	($30,873.33) =========	
	Total Surcharge Awarded As Part of Judgment	($121,450.14)	
		Net Credit Disbursed to Debtor	**$20,671.86**
Credits and Surcharges for Petitioners			
	For Property Taxes paid through 2019	$12,059.88	
	For Property Taxes paid from 2019-2025	$13,238.40	
	For Necessary Property Improvements made by Gary Hofmann in Remediation of the Underground Storage Tank Issue	$11,145.96	
	Application of Surcharge for Debtor's Occupancy of the Residence Property	$121,450.14	
		==========	
	Total	$157,894.38	
		Net Credit and Recoupment of Surcharge Disbursed to:	
		Sharon Hofmann	**$78,947.19**
		Gary Hofmann	**$78,947.19**

For the surcharge, the $121,450.14 is deducted from Debtor's side of the balance sheet and added to Petitioners'. The court awarded the surcharge to Petitioners in this manner because the State Court and California Appellate Court found:

> Finally, Michael contends he is owed a portion of the rent since he is an 8.33 percent owner of the Property; therefore, "[t]he trial court erred by not including his interest in the amount of rent awarded and makes any assessment of rent overly inflated." As Sharon and Gary point out, while Michael objected to aspects of the trial court's proposed statement of decision concerning the calculation of rent, he never objected on the grounds he raises for the first time on appeal. Since Michael failed to bring this omission to the trial court's attention, we will "infer the trial court made implied factual findings favorable to" Sharon and Gary on this issue and will review the implied factual findings under the substantial evidence standard. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 15U Ca1.App.4th 42, 59-60.) At trial, Smith testified his rental values were very conservative in nature. Based on this testimony, we infer the trial court assessed rental rates considering Michael's small, fractional ownership interest.
>
> In sum, Michael has not shown the trial court erred in surcharging him for the rental value of the Residence or in determining the amount of that surcharge.

Opinion, Ex. 1 at 43, Docket 485. Therefore, the entire surcharge for rent and applicable interest is assessed against Debtor's credit and awarded in favor of Petitioners.

Therefore, credits and surcharges total $178,566.24, which is first distributed from Partition Sale Proceeds. That leaves $227,674.77 of the Partition Sale Proceeds for this court to partition between the Debtor and Petitioners.

Net Partition Sale Proceeds After Disbursement of Credits and Surcharges		**$227,674.77**	
	Computation of Final Partition Disbursements to Debtor and Petitioners		
Computation of Debtor's Final Distribution of Partitioned Sale Proceeds			
Debtor's 8.3335% Interest in the Net Proceeds		$18,973.28	
Debtor's Credits/Surcharge		$20,671.86	
	Total Disbursement to Debtor		**$39,645.11**
Computation of Petitioners' Final Distribution of Partition Sale Proceeds			
Sharon Hofmann's 45.8333% Interest in the Net Proceeds		$104,350.86	
Sharon Hofmann's Credits/Surcharge 50%		$78,947.19	

	Total Disbursement to Sharon Hofmann		**$183,297.95**
Gary Hofmann's 45.8333 Interest in the Net Proceeds		$104,350.86	
Gary Hofmann's Credits/Surcharge 50%		$78,947.19	
	Total Disbursement to Gary Hofmann		**$183,297.95**
			==========
		Partial Sale Proceeds Total Disbursement	**$406,241.01**

Double checking the disbursement of the Partition Sale Proceeds to the owners of the Residence Property in the amounts of:

1. $39,645.11 to Debtor Michael Hofmann,

2. $183,297.95 to Sharon Hofmann, and

3. $183,297.95 to Gary Hofmann,

these distributions total $406,241.01, thereby accounting for all of the Partition Sale Proceeds.

At the hearing, **xxxxxxx**

21. 23-90111-E-11 MICHAEL HOFMANN
23-9006 Brian Haddix
BSH-1
HOFMANN V. HOFMANN ET AL

CONTINUED MOTION FOR SUMMARY JUDGMENT
6-12-25 [52]

This Motion filed in the Adversary Proceeding (the removed partition State Court Action) is effectively a counter Motion filed by Plaintiffs in the Bankruptcy Case for the Bankruptcy for disbursement of the sales proceeds from the Residential Property.

The court has stated its tentative ruling on the two Motions in the Tentative Decision for the Motion filed by Plaintiff.

The court will incorporate that into the Civil Minutes for Debtor's Motion filed in the Adversary Proceeding.

AUGUST 21, 2025 HEARING

At the hearing, **XXXXXXX**

JULY 31, 2025 HEARING

At the hearing, counsel for the Debtor raised issues concerning how the court reviewed the pleadings and whether all factors had been considered. In considering the proceedings at the hearing on this and the related Cross Motion, the court concludes that further oral argument from both counsel may be assistance after the review a final tentative ruling.

Additionally, the court has considered the Debtor's counsel's request concerning a stay pending appeal if the court were to rule contrary to the positions asserted by Debtor. In reflecting on this, the court has considered how in light of the judge to whom this case is now retiring and the Decision on this matter being issued weeks before his retirement, it is likely that the judge to whom it is transferred could well be "hit" with a motion for stay pending appeal.

This matter presents the court with a dispute over how monies in the bank are to be divided pursuant to the Final Interlocutory Judgment of the State Court Judge in the Partition Action. This provides for some "creative" options that could protect the rights of all Parties. The court will benefit from the insight of the respective counsel as to the "creative" option that may be chosen by the court.

The court continues the hearing to 10:30 a.m. on August 21, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Summary Judgment filed by Defendant-Debtor Michael Hofmann for the Distribution of the proceeds from the sale of the Residence Property pursuant to the Final Interlocutory Judgment of the State Court 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**.

22. 23-90111-E-11 MICHAEL HOFMANN
23-9006
CAE-1
HOFMANN V. HOFMANN ET AL

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
5-14-23 [1]

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: unknown

Adv. Filed: 5/14/23
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 7/31/25, further oral argument from both counsel may be of assistance after review of a final tentative ruling.

The Status Conference is xxxxxxx

AUGUST 21, 2025 STATUS CONFERENCE

The court conducted the hearings on the Cross Motions for Distribution of the Partition Sales Proceeds from the sale of the Residence Property by the Subchapter V Trustee.

At the Status Conference, **xxxxxxx**

JULY 31, 2025 STATUS CONFERENCE

At the hearing, counsel for the Debtor raised issues concerning how the court reviewed the pleadings and whether all factors had been considered. In considering the proceedings at the hearing on this and the related Cross Motion, the court concludes that further oral argument from both counsel may be assistance after the review a final tentative ruling.

Additionally, the court has considered the Debtor's counsel's request concerning a stay pending appeal if the court were to rule contrary to the positions asserted by Debtor. In reflecting on this, the court has considered how in light of the judge to whom this case is now retiring and the Decision on this matter being issued weeks before his retirement, it is likely that the judge to whom it is transferred could well be "hit" with a motion for stay pending appeal.

This matter presents the court with a dispute over how monies in the bank are to be divided pursuant to the Final Interlocutory Judgment of the State Court Judge in the Partition Action. This provides for some "creative" options that could protect the rights of all Parties.

The court will benefit from the insight of the respective counsel as to the "creative" option that may be chosen by the court.

The court continues the hearing to 10:30 a.m. on August 21, 2025.

JUNE 12, 2025 STATUS CONFERENCE

On June 6, 2025, Plaintiff-Debtor Michael Hofmann filed an updated Status Report. Dckt. 41. Plaintiff-Debtor reports that the settlement discussions had failed and the Parties are no longer exchanging proposes.

Plaintiff-Debtor believes that the remaining issues can be resolved through cross summary judgment motions. Plaintiff-Debtor requests that the court continue the Status Conference to June 26, 2025, which will then be conducted in conjunction with the Motion for entry of Discharge. It is suggested that at that date and time Plaintiff-Debtor will propose a schedule for the filing of the Summary Judgment Motions.

No updated Status Reports have been filed by the Defendants.

The State Court Action which was pending when Plaintiff-Debtor's Bankruptcy Case was filed on March 20, 2023. Plaintiff-Debtor confirmed his Subchapter V Plan two years later, with the confirmation order being entered on March 12, 2025.

Though this court has been ready to address the dispute between Plaintiff-Debtor and the Defendants (family member who have been "warring" with the Plaintiff-Debtor well before the bankruptcy Case was filed) that was removed over from State Court, neither parties appears to have much interest in taking advantage of the wide related to jurisdiction for bankruptcy matters in federal court.

At this juncture, one of two things will happen. If the Parties actually intend to prosecute the claims in this Adversary Proceeding in federal court, then this Adversary Proceeding and the underlying Bankruptcy Case will be assigned to a new judge. In light of the judge to whom it is now assigned retiring the end of August 2025, the delay in prosecution has come to the point where cross summary judgment motions or other proceedings cannot be reasonably set to this court's calendar.

Alternatively, given that the Plan has been confirmed in the Bankruptcy Case, then remand to State Court may be appropriate.

Though Plaintiff-Debtor requests that the court not address how this Adversary Proceeding will proceed until the end of June 2025, the court does not concur that such a continuance is reasonable. Those the Plaintiff-Debtor and the Defendants have been presented with a special federal forum which could promptly get the dispute resolved, none of them has availed themselves of it. It is time for the Parties, that is All Of The Parties, to either "fish or cut bait."

At the Status Conference the respective counsel agreed that they thought this may well be resolved by cross motions. Counsel noted that the Judgment has already been entered in the State Court Action that was removed, and all that remains to do is enforce that Judgment. The Parties have previously agreed to have this bankruptcy court enforce that State Court Judgment.

The Status Conference is continued to 11:00 a.m. on July 31, 2025, to be conducted in conjunction with cross motions for enforcement of the judgment in this Adversary Proceeding.

23. 19-90003-E-7 NATHAN DAMIGO **CONTINUED MOTION FOR SUMMARY JUDGMENT**
19-9006 Pro Se **5-8-25 [93]**
RLE-1
SINES ET AL V. DAMIGO

Items 23 thru 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.

Local Rule 7056-1 Motion—Hearing Required.

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

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 7056-1. Failure of the respondent and other parties in interest to file written opposition at least 21 days prior to the hearing as required by Local Bankruptcy Rule 7056-1(b) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

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

Plaintiffs in this Adversary Proceeding, Elizabeth Sines, Seth Wispelwey, Soronya Hudson (as successor to Marissa Blair), April Muñiz, Marcus Martin, Natalie Romero, Devin Willis, Chelsea Alvarado, and Thomas Baker ("Plaintiffs") move this court for an order granting summary judgment / adjudication pursuant to Fed. R. Bank. P. 7056 on its Count I alleged in the Complaint against Defendant-Debtor Nathan Benjamin Damigo ("Defendant-Debtor"). Defendant-Debtor filed his own cross Motion for Summary Judgment on May 8, 2025. Docket 89.

Plaintiffs seek through this Adversary Proceeding to have the debt owed by Defendant-Debtor pursuant to the Amended Judgment ("Amended Charlottesville Judgment") obtained by Plaintiffs in

Elizabeth Sines et al. V. Jason Kessler, et al., Civil Action No. 3:17-cv-00072-NKM ("Charlottesville Action") determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

At the initial hearing on this Motion, the court determined that a continued hearing was proper to allow for the court to prepare a more detailed tentative ruling clearing addressing the grounds and counter-arguments asserted by all parties. Therefore, the court continued the hearing on this Motion to provide a more detailed tentative ruling clearly stating the points addressed and conclusions made by the court.

REVIEW OF MOTIONS, RESPONSES, AND RELATED PLEADINGS

Plaintiffs' Motion

In Plaintiffs' Motion for Summary Judgment, Plaintiffs state with particularity as to the relief sought:

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

Plaintiffs' Pleadings in Support

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

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

The court in the Charlottesville Action found the following:

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

    a. Count III is titled "Civil Conspiracy" alleging Defendant-Debtor conspired with his Charlottesville Action Co-Defendants to accomplish unlawful and tortious acts, including maliciously causing Plaintiffs bodily injury. Second Am. Compl., Ex. 5 at 104-05, Docket 98.

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

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

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

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

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

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

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

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

Defendant-Debtor's Opposition

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendant-Debtor's Cross Summary Judgment Motion

On May 8, 2025, Defendant-Debtor moved the court for summary judgment against Plaintiffs. Docket 82. No factual or legal grounds are set forth in the Motion. Notwithstanding pleading shortcomings, the court considers the key facts listed in the Memorandum filed in support to fully address Defendant-Debtor's arguments:

1. To support their invocation of § 523(a)(6), plaintiffs avail themselves of every possible opportunity to portray Mr. Damigo in a harsh light, including inflammatory labels, guilt by association, and stating as facts allegations that were never validated by the *Sines v. Kessler* jury verdict. Mot. 2:12-15, Docket 91.

2. Plaintiffs' civil conspiracy claim – the only claim on which they prevailed against Mr. Damigo in the *Sines v. Kessler* case– cannot support plaintiffs' request for the exception because such a claim impermissibly imputes conduct of others to the debtor, Mr. Damigo. *Id.* at 2:22-25.

3. Such vicarious liability conflicts with the Fresh Start values in the Code, which require that exceptions to dischargeability be narrowly construed; the plain meaning of § 523(a)(6), particularly the "by the debtor" language in the exception; and the strict principles of collateral estoppel that apply. Mot. 3:1-2, Docket 91.

4. The plaintiffs' claim for punitive damages against Mr. Damigo fails § 523(a)(6)'s stringent requirements for similar reasons. Under Supreme Court authority, the exception cannot be successfully invoked where punitive damages were or might have been awarded based on a recklessness standard. The jury instructions in *Sines v. Kessler*, however, permitted this, fatally undermining plaintiffs' reliance on § 523(a)(6). Mot. 3:3-8, Docket 91.

5. The Reimbursable Expenses component cannot be included in this nondischargeability action because the Reimbursable Expenses were a "contingent" and "unliquidated" claim pre-petition and must be discharged. *Id.* at 3:9-14.

6. Mr. Damigo was never found to have committed any illegal act by the Sines v. Kessler jury; he was found liable only on a single count of civil conspiracy, a tort. The only arguably illegal act he committed with regard to the UTR Rally was not leaving the area when asked, but that was such a minor matter he was merely fined $600. *Id.* at 13:14-18.

7. In Virginia as elsewhere, collateral estoppel applies only in narrowly circumscribed circumstances. *Id.* at 15:2-4. Defendant-Debtor proceeds to list the elements of collateral estoppel in Virginia. *Id.* at 15:4-18.

8. *Kalmanson v. Adams* (*In re Nofziger*), 361 B.R. 236 (Bankr. M.D. Fla. 2006) stands for the idea that mere liability under a civil conspiracy claim is not an adequate predicate for a § 523(a)(6) exception. Mot. 17:2-5, Docket 91.

9. *In re Chien*, 2008 WL 84444802 (B.A.P. 9th Cir., Feb. 7, 2008) also stands for the idea that mere liability under a civil conspiracy claim is not an adequate predicate for a § 523(a)(6) exception. Mot. 18:11-15, Docket 91.

10. Many of the inflammatory allegations made by Plaintiffs were never actually litigated and decided, so collateral estoppel principles cannot apply. *Id.* at 20:14-21:2.

11. Under no reasonable interpretation, Mr. Damigo submits, can the jury be deemed to have actually and necessarily addressed the exact question that arises in this adversary proceeding, i.e., whether Mr. Damigo caused "willful and malicious injury" to the plaintiffs. *Id.* at 21:5-8.

Plaintiff's Reply to
Defendant-Debtor's Opposition

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

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

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

3. As explained in Plaintiffs' Motion for Summary Judgment, as well as Plaintiffs' Opposition to Defendant-Debtor's Motion for Summary Judgment, the jury in the Charlottesville Action actually and necessarily

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

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

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

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

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

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

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

Defendant-Debtor's Reply
to Plaintiffs' Opposition

On June 18, 2025, Defendant-Debtor filed a Reply to Plaintiffs' Opposition to Defendant-Debtor's Cross-Motion for Summary Judgment. Docket 112. Defendant-Debtor states:

1. There should be no further evidentiary hearing if Plaintiffs' Motion for Summary Judgment is denied, otherwise such a hearing would implicate *res judicata* principles. Reply, 3:6-24, Docket 112.

2. Plaintiffs' collateral estoppel argument fails because "the Magistrate Judge in the Sines case explicitly found that '[N]o Plaintiff plausibly alleged—let alone proved—that Damigo, Heimbach, Parrott, Hill, Tubbs, Schoep, Vanguard America, Identity Evropa, TWP, LOS, or NSM subjected him or her to racially, religiously, or ethnically motivated harassment, intimidation, or violence in violation of § 8.01-42.1(A).'" Reply 4:14-21, Docket 112.

3. Mr. Damigo would urge the Court to adopt the *Nofziger / Eggers* line of cases for the following reasons: 1) they are the most consistent with the pro-debtor policies of the Bankruptcy Code; (2) they are the most consistent with the text and legislative history § 523(a)(6), as shown, e,g., in the *Eggers* opinion; and (3) *In re Chien*, although not binding, is persuasive authority for the *Nofziger / Eggers* line of cases that has never been questioned in the Ninth Circuit. Reply 5:24-6:2.

4. With respect to punitive damages, plaintiffs contend that the "extreme and outrageous" language in the punitive damages jury instruction renders the jury's punitive damages award nondischargeable. *Id.* at 6:23-26.

5. Again, the Reimbursable Expenses were a contingent claim pre-petition and were properly discharged. *Id.* at 7:14-8:6.

6. In analyzing each required element of 11 U.S.C. § 523(a)(6), there is simply not enough in the jury verdict that would allow this court to find the debt as nondischargeabe. *Id.* at 8:21-10:14.

APPLICABLE LAW

Summary Judgment

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

law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

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

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

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

For the two Motions for Summary Judgment, the issue presented to the court is even more focused. Plaintiffs assert that based upon issue preclusion, arising under Collateral Estoppel as a sub-principle of *Res Judicata*. Defendant-Debtor's asserts that the required elements for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(6) were not necessarily determined and summary judgment based upon the Amended Charlottesville Judgment is improper, and therefore Defendant-Debtor should be granted summary judgment.[5]

Willful and Malicious Injury

11 U.S.C. § 523(a)(6) states:

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

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

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

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

> The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a **deliberate or intentional *injury***, not merely a deliberate or intentional *act* that leads to injury. Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury." Or, Congress might have selected an additional word or words, *i.e.*, "reckless" or "negligent," to modify "injury." Moreover, as the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend "the *consequences* of an act," not simply "the act itself." *Restatement (Second) of Torts § 8A, comment a,* p. 15 (1964) (emphasis added).
>
> . . .
>
> We hold that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6). For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is Affirmed.

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

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

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

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

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

> The question presented on appeal is whether a finding of "willful and malicious injury" must be based on the debtor's subjective knowledge or intent or whether such a finding can be predicated upon an objective evaluation of the debtor's conduct. We

> hold that *§ 523(a)(6)*'s willful injury requirement is met **only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct.**

Id. at 1173.

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

> 6. **To be clear, when we speak of "actual knowledge" we are not suggesting that a court must simply take the debtor's word for his state of mind**. In addition to what a debtor may admit to knowing, **the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.** *See, e.g., Spokane Ry. Credit Union v. Endicott (In re Endicott)*, 254 B.R. 471, 477 n. 9 (Bankr. D. Idaho, 2000) ("The use of the term 'objective' is not talismanic nor at odds with *Geiger* if it is viewed as **simply recognizing that a debtor will have to deal with any direct or circumstantial evidence which would indicate that he must have had a substantially certain belief that his act would injure, notwithstanding any subjective denial of such knowledge."**). This approach, however, remains fundamentally subjective in that it retains its focus on what was actually going through the mind of the debtor at the time he acted. This subjective approach explains how courts have typically resolved the applicability of § 523(a)(6) in the context of motor vehicle accidents. When car accidents occur and there is **no evidence, beyond evidence of (at times) extreme recklessness, that the driver expressly sought to crash into another, § 523(a)(6)'s nondischargeability provision typically has been found inapplicable.** *See Madden v. Fate (In re Fate)*, 100 B.R. 141 (Bankr. D. Mass. 1989); *Mugge v. Roemer (In re Roemer)*, 76 B.R. 126 (Bankr. S.D. Ill. 1987); *Cooper v. Noller (In re Noller)*, 56 B.R. 36 (Bankr. E.D. Wis. 1985); *In re Donnelly*, 6 B.R. at 23. When, however, the evidence demonstrates that the driver purposefully crashed his car into another's, § 523(a)(6) applies and the driver's debt stemming from that "accident" is nondischargeable. *See Stubbs v. Mode (In re Mode)*, 231 B.R. 295 (Bankr. E.D. Ark. 1999); *Grange Mut. Cas. Co. v. Chapman (In re Chapman)*, 228 B.R. 899 (Bankr. N.D. Ohio 1998).

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

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

Civil Conspiracy

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

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

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

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

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

> 756 (S.D.2010) ("[C]ivil conspiracy is merely a method of establishing joint liability for the underlying tort.").

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

When an individual is found liable of conspiracy, either criminal conspiracy or civil conspiracy, the object of the conspiracy directly correlates to the degree of culpability. *See, e.g.*, Cal. Penal Code § 182 ("When [a defendant] conspire[s] to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony."); Va. Code Ann. § 18.2-22 (stating that the culpability is tied to the object of the conspiracy, limiting punishment for committing the conspiracy to punishment for commission of the offense itself). Building off this principle, it is surely the case that, for example, conspiring to vandalize carries a lesser degree of culpability than conspiring to commit arson or conspiring to commit aggravated bodily injury.

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

Committing Racially, Ethnically, and Religiously
Motivated Harassment And Violence

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

> A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment, (ii) violence directed against his person, or (iii) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, gender, disability, gender identity, sexual orientation, or ethnic animosity.
>
> B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorney fees in an amount to be fixed by the court.
>
> C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.
>
> D. As used in this section:
>
> > "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

Assault and Battery

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

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

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

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

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

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

Ex. 12 at 75, Docket 100.

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

> Under Virginia law, the jury's finding of liability on the civil conspiracy claim "meant that [Charlottesville Action Defendants] were held jointly and severally liable for the damages award." *See Tire Eng'g & Dist., LLC v. Shandong* Linglong Rubber

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

Ex. 12 at 76-77, Docket 100.

Issue Preclusion

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

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

> Our prior cases have suggested, but have not formally held, that the principles of collateral estoppel apply in bankruptcy proceedings under the current Bankruptcy Act. *See, e.g., Kelly v. Robinson*, 479 U.S. 36, 48, n.8, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986); *Brown v. Felsen*, 442 U.S. at 139, n.10. *Cf. Heiser v. Woodruff*, 327 U.S. 726, 736, 90 L. Ed. 970, 66 S. Ct. 853 (1946) (applying collateral estoppel under an earlier version of the bankruptcy laws). Virtually every Court of Appeals has concluded that collateral estoppel is applicable in discharge exception proceedings. *See In re Braen*, 900 F.2d at 630; *Combs v. Richardson*, 838 F.2d at 115; *Klingman v. Levinson*, 831 F.2d 1292, 1295 (CA7 1987); *In re Shuler*, 722 F.2d 1253, 1256 (CA5), *cert. denied sub nom. Harold V. Simpson & Co. v. Shuler*, 469 U.S. 817, 83 L. Ed. 2d 32, 105 S. Ct. 85 (1984); *Goss v. Goss*, 722 F.2d 599, 604 (CA10 1983); *Lovell v. Mixon*, 719 F.2d 1373, 1376 (CA8 1983); *Spilman v. Harley*, 656 F.2d 224, 228 (CA6 1981). *Cf. In re Rahm*, 641 F.2d 755, 757 (CA9) (prior judgment establishes only a *prima facie* case of nondischargeability), *cert. denied sub nom. Gregg v. Rahm*, 454 U.S. 860, 70 L. Ed. 2d 157, 102 S. Ct. 313 (1981). **We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).**

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

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

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

> Issue preclusion, also known as collateral estoppel, precludes "parties to the first action and their privies" from relitigating "any issue of fact actually litigated and essential to a valid and final personal judgment in the first action." *Funny Guy, LLC*, 293 Va. at 142, 795 S.E.2d 887 (emphasis added) (citation and internal quotation marks omitted). The party seeking to assert issue preclusion must establish the following:
>
> > (1) the parties [or their privies] to the two proceedings must be the same, (2) the issue of fact sought to be litigated must have been actually litigated in the prior proceeding, (3) the issue of fact must have been essential to the prior judgment, and (4) the prior proceeding must have resulted in a valid, final judgment against the party against whom the doctrine is sought to be applied.
>
> *Glasco v. Ballard*, 249 Va. 61, 64, 452 S.E.2d 854 (1995).

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

FN. 1. 28 U.S.C. § 1738.

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

Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

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

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

DISCUSSION

Civil Conspiracy

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

This decision is necessarily prompted by a guiding principle of conspiracy law: the object of the conspiracy determines degree of culpability. Often the conspiracy itself is punished the same as the completed object, but conspiracy is never given a greater punishment than the completed object. Turning to this case, the court must analyze the object of conspiracy for which Defendant-Debtor was found liable. The final jury instructions state as the objects of the conspiracy:

1. Subjecting persons to actions of intimidation or harassment, motivated by racial, religious, or ethnic animosity in violation of Virginia Code § 8.01-42.l (often referred to as Virginia's hate crimes statute);

2. Directing violence at another person, motivated by racial, religious, or ethnic animosity m violation of Virginia Code§ 8.01-42.1;

3. Committing an unwanted touching that was neither consented to, excused, or justified (battery);

4. Engaging in an overt act intended to inflict bodily harm, or intended to place the victim in fear or apprehension of bodily harm (assault); and

5. Causing a reasonable apprehension that force will be used unless a person willingly submits and causing him to submit to the extent that he is denied freedom of action (false imprisonment).

Jury Instructions, Joint Exhibit 8 at 20-21, Docket 100.

When reading the completed jury verdict form, Joint Exhibit 9 at 3, Docket 100, it is clear that Defendant-Debtor was found liable for one or all of these objects. However, it is not clear in particular which of these objects Defendant-Debtor was found liable based on just the completed jury verdict form. Some of these objects of the conspiracy may rise to the level of willful and malicious injury, such as subjecting persons to actions of intimidation or harassment, motivated by racial, religious, or ethnic animosity in violation of Virginia Code § 8.01-42.l. Some of these objects of the conspiracy may not rise to the level of willful and malicious injury, such as simple assault and battery. Therefore, it is incumbent upon the court to determine for which objects of the conspiracy Defendant-Debtor in particular was found liable.

District Court Judge Moon's written Memorandum Opinion provides essential insight into which objects Defendant-Debtor was found liable in the conspiracy. These objects were necessarily litigated and determined by Judge Moon as it was stated, "Defendant Nathan Damigo argues that Plaintiffs have failed to prove his participation in an unlawful conspiracy, and so he is entitled to a directed verdict as to all the conspiracy claims." Mem. Opinion, Joint Exhibit 12 at 6, Docket 100. In denying Defendant-Debtor's Motion for a Directed Verdict, Judge Moon specifically found:

> Damigo overlooks other substantial evidence in the record from which the jury could find both his participation in an unlawful conspiracy and foreseeability of the acts that injured Plaintiffs. . . Damigo testified that he considered himself to be a white supremacist and that in 2017 he was advocating for a white ethnostate. In fact, Damigo founded Identity Evropa to promote a white ethnostate. . . Damigo communicated regularly with the lead figures in the "Alt-Right" and white supremacist groups involved in planning Unite the Right. . . Damigo personally approved equipment for Identity Evropa members to wear at Unite the Right—including shields, helmets, and gloves. . . Finally, Damigo argues that there was no evidence that any act of violence committed by the co-conspirators would be foreseeable by him. The Court disagrees. Such violence was certainly foreseeable. Indeed, the communications between the Unite the Right organizers were replete **with candid statements by Damigo** and others in Identity Evropa, as well as the other Unite the Right organizers, demonstrating **that they shared expectations of, hoped for, planned for, and purposefully sought to instigate violence at Unite the Right—including discussing whether someone could drive a car through a crowd of demonstrators that might be blocking the street.**

Mem. Opinion, Joint Exhibit 12 at 6-10, Docket 100 (internal quotations omitted) (emphasis added).

Virginia conspiracy law is clear: conspirators are held liable for the actions of the co-conspirators. Mr. Damigo has been held liable of civil conspiracy, and the actions of the co-conspirators, the objects of the conspiracy, involved willful and malicious injury, including driving a car through a crowd of demonstrators.

Therefore, damages in the amount of $1,303,284, which includes nominal and compensatory damages for violation of Counts III, IV, and V of the Second Amended Complaint, are found to be excepted from discharge pursuant to 11 U.S.C. § 536(a)(6).

Addressing Defendant-Debtor's Argument that the Injury Was Not Committed by the Debtor

Defendant-Debtor argues finding these damages to be nondischargeable amounts to holding Defendant-Debtor vicariously liable for the acts of others, which is not permitted under 11 U.S.C. § 523(a)(6). The court agrees that vicarious liability is not sufficient to hold Defendant-Debtor's liability excepted from discharge. *See In re Del Rosario*, 668 B.R. 618, 630 (B.A.P. 9th Cir. 2025) ("*Bartenwerfer* compels us to conclude that the presence of the phrase 'by the debtor' in § 523(a)(6) necessarily means that vicarious liability for willful and malicious injuries caused by someone else does not render such liability of the debtor nondischargeable under § 523(a)(6).").

In *In re Del Rosario*, the Bankruptcy Appellate Panel was not addressing a conspiracy liability situation based on the acts of the bankruptcy debtor, but one in which the wrongdoer's parents were vicariously liable for their minor child's misconduct. The Bankruptcy Appellate Panel expressly cited to the bankruptcy decision that the parents, who did not commit any wrong acts, therefore had not committed a willful and malicious injury on the creditors. *In re Del Rosario*, 668 B.R. at 621.

Defendant-Debtor also cites to *Nofziger* and *Chien* to support this argument. *Nofziger* stands for the proposition that "simply stated, a co-conspirator's acts can not suffice to establish the elements of Bankruptcy Code Section 523(a)(6), unless the acts were taken directly by the debtor against the objecting creditor. Participation in a conspiracy is not enough to establish the intentional wrong needed to make a debt nondischargeable." *Nofziger*, 361 B.R. at 243.

The key point raised by the Debtor is that 11 U.S.C. § 523(a)(6) states the debt is nondischargeable due to the "willful and Malicious injury by the debtor." Here, Defendant-Debtor argues that for the acts upon which the Amended Charlottesville Judgment is based, he did not commit the acts, but others did, and his liability is only due to him being in a conspiracy for such acts to occur. The court begins with the plain language of the statute:

> § 523. Exceptions to discharge
>
> (a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
> . . .
>
> > (6) for willful and malicious injury by the debtor to another entity or to the property of another entity; . . . .

11 U.S.C. § 523(a)(6).

The statute first requires the debtor to be an individual. Defendant-Debtor is an individual.

Next, there must be a willful and malicious injury by the debtor to another. Here, the "another" is the Plaintiffs and the they suffered willful and malicious injuries (as the court addresses above).

Defendant-Debtor argues that he did not commit the actual physical act that cause the willful and malicious injuries, but was found to have conspired with others for the acts that caused the willful and

malicious injuries to occur. Thus, Defendant-Debtor concludes that the willful and malicious injury was not done "by the debtor," and that Plaintiffs are merely attempting to make him vicariously liable for the conduct of others.

Reviewing Virginia Law concerning vicarious liability, the Personal Injury Law in Virginia Treatise provides the following commentary:

> § 9.1 The Concept of Vicarious Liability.
>
> If X injures P, X may be held liable if X was at fault. In some instances, Y may also be held liable for the injury caused by X, even though Y was not at fault. This is called "vicarious liability," and it is imposed, for policy reasons, upon those who have themselves committed no wrong.[1]
>
> There are various reasons for holding a person liable who is personally innocent of any wrongdoing. In large part, however, vicarious liability is simply a manifestation of the law's desire to make certain that an injured victim will be compensated by increasing the number of individuals or entities from whom the plaintiff may collect damages.
>
> The following principles about vicarious liability should be noted.
>
> 1.By definition, when Y is held vicariously liable, it means that Y is being **held liable despite the fact that he is not himself guilty of any wrongdoing**. He is being held liable for what someone else did.
>
> 2.If Y has himself committed a wrong against the plaintiff, Y may be held directly liable for that wrongdoing. That liability is not vicarious. Because that basis for liability often arises in circumstances where Y is also vicariously liable for X's wrongdoing, confusion sometimes follows. **The term "vicarious liability" means that the defendant is being held liable for another person's actions, not for the defendant's own actions.**
>
> 3.A **finding of vicarious liability depends upon the existence of some relationship between X and Y that makes it acceptable to impose liability for X's act on Y, who has personally committed no wrong**. Where X and Y are, in some form, agent and principal, the term "respondeat superior" is often used to describe the rule of vicarious liability that makes the principal liable for the act of the agent.[2] However, "respondeat superior"—which may be loosely translated as "get the boss"—is not the only form of vicarious liability.
>
> 4.Vicarious liability is not limited to negligence actions. Although many vicarious liability situations involve liability for another's negligent conduct, one may be held liable for another's intentional wrongdoing as well.

> In this chapter we will examine the various relationships that do, or do not, give rise to vicarious liability.
>
> 1
> *See* Prosser & Keeton on Torts § 69. See also Dan B. Dobbs, The Law of Torts § 425. See generally, Our Lady of Peace, Inc. v. Morgan, 297 Va. 832 (2019) ("[A]n employer is liable for the tortious act of his employee if the employee was performing his employer's business and acting within the scope of his employment.").
>
> 2
> The rule applies only where there exists the relation of superior to subordinate—e.g., principal and agent, master and servant. Where the relation of superior and subordinate does not exist, there can be no application of the rule of "respondeat superior." *Bibb v. Norfolk & W. Ry.*, 87 Va. 711, 14 S.E. 163 (1891).

1 Personal Injury Law In Virginia § 9.1 (2025) (emphasis added).

As explained above, vicarious liability arises notwithstanding the fact that the person who is vicariously liable committed no wrong. It is just because of the relationship (such as the parent and minor child in *In re Del Rosario*) between the person who committed the wrongful act and the person vicariously liable. Here, as discussed above, the Defendant-Debtor affirmatively engaged in the conspiracy for the acts that caused the willful and malicious to occur.

The Personal Injury Law in Virginia Treatise also discusses the awarding of punitive damages and how if a person is only vicariously liable then a punitive damage award is not proper.

> **E. Vicarious Liability.**
>
> Punitive damages normally may be awarded only against one who has actually participated in the offense.[41] **For this reason, they should not usually be assessed against one who is only vicariously liable**, e.g., employers,[42] partners,[43] for the acts of their agents. **But if the employer or other principal authorized or ratified the tort, such entity or person may be liable for punitive damages**. As the Supreme Court summarized the doctrine in a landmark modern decision:
>
> > A principal, … though of course liable to make compensation for the injury done by his agent, within the scope of his employment, **cannot be held for … punitive damages**, **merely** by reason of wanton, oppressive[,] or malicious intent **on the part of the agent**. Consequently, punitive damages cannot be awarded against a master or principal for the wrongful act of his servant or agent in which he did not participate, and which he did not authorize or ratify. Alternatively stated, **punitive damages may be awarded against a corporate employer** only if either (1) that employer **participated in the wrongful acts** giving rise to the punitive damages, or (2) that **employer authorized** or ratified **the wrongful acts** giving rise to the punitive damages.[44]

43
Broudy-Kantor Co. v. Levin, 135 Va. 283, 116 S.E. 677 (1923).

44
Egan v. Butler, 290 Va. 62, 772 S.E.2d 765 (2015). *See Freeman v. Sproles*, 204 Va. 353, 131 S.E.2d 410 (1963); *Tri-State Coach Corp. v. Walsh*, 188 Va. 299, 49 S.E.2d 363 (1948); *Broudy-Kantor Co. v. Levin*, 135 Va. 283, 116 S.E. 677 (1923).

1 Personal Injury Law In Virginia § 5.5 (2025)

Even for vicarious liability, punitive damages may be awarded against the person who is only vicariously liable if that person either (1) participated in the act or(2) authorized the wrongful act. Here, Defendant-Debtor engaged in the wrongful act of conspiring to have the wrongful acts causing the willful and malicious injuries to occur. Defendant-Debtor is not merely liable for some unknown actions taken by another person, but for the acts that he conspired to occur.

The court declines to follow the rule in *Nofziger* advanced by Defendant-Debtor. Under such a rule, *Nofziger* would support a finding that participation in any conspiracy never meets the requirements of nondischargeability under 11 U.S.C. § 523(a)(6). The court disagrees for two reasons: first, there is an act committed by the Defendant-Debtor, which is conspiring to commit an unlawful act, and the degree of culpability of this act of conspiring is dependent upon the object of the conspiracy.

Second, Defendant-Debtor's contention that so long as the Debtor did not commit the act himself, his planning, organizing, and efforts to make the act occur can never rise to willful and malicious conduct as required under 11 U.S.C. § 362(a)(6). The court disagrees. For example, imagine a situation where a debtor hired a third-party to inflict bodily injury on another individual (say, the debtor's wife's ex-boyfriend). The third-party, as paid and directed by the debtor, physically beats up the individual, which results in a willful and malicious injury that would be nondischargeable under 11 U.S.C. § 523(a)(6) for the third-party. Under Defendant-Debtor's contention, the debtor who developed, organized, and hired the third-party to commit the willful and malicious injury would be insulated from nondischargeablilty of that debt.

Such contention is inconsistent with the plain language of 11 U.S.C. § 523(a)(6) which makes a debt arising from " willful and malicious injury by the debtor" nondischargeable. The injuries were caused by the debtor who planned, organized, and put into effect the willful and malicious injury. This is very different from vicarious liability for the acts of a third-party for which the debtor was unaware of, did not participate in, and did not organize the willful and malicious injury to occur or substantially certain to occur.

Moreover, the Amended Charlottesville Judgment awards punitive damages to Plaintiffs, which cannot be awarded only under a vicarious liability standard. Therefore, this is not a situation where the Defendant-Debtor was an innocent third-party and has been found liable based purely on another's conduct. As the trial court stated in its Memorandum Opinion:

> Such violence was certainly foreseeable. Indeed, the communications between the Unite the Right organizers were replete with **candid statements by Damigo** and others in Identity Evropa, as well as the other Unite the Right organizers, demonstrating **that they shared expectations of, hoped for, planned for, and purposefully sought to instigate violence at Unite the Right—including**

discussing whether someone could drive a car through a crowd of demonstrators that might be blocking the street.

Joint Exhibit 12 at 6-10, Docket 100 (emphasis added).

The court finds Defendant-Debtor's liability in the Amended Charlottesville Judgment to be nondischargeable pursuant to 11 U.S.C. § 523(a)(6), not under any vicarious liability standard, but based on Defendant-Debtor's direct actions in engaging in civil conspiracy where the object of that conspiracy involved willfully and maliciously harming others. There is case law to support this conclusion. *See In re Shaw*, 252 B.R. 211, 214 (Bankr. M.D. Fla. 2000) ("Debtor's solicitation of arson resulted in extensive financial injury to MBIC and clearly constitutes a deliberate and malicious intentional injury toward MBIC.").

The court finds Defendant-Debtor's reliance on *In re Chien* is misplaced as *Chien* supports this court's finding. *Chien* stands for the rule that, "[i]n sum, both *Geiger* and *Su* demonstrate that the standard for meeting the willful prong of the two-part test under § 523(a)(6) is high. That is, the creditor must prove that the debtor had the subjective intent to cause harm or the subjective knowledge that harm was substantially certain to occur." *Chien*, 2008 WL 8240422 at *4. Defendant-Debtor's subjective intent has been necessarily litigated and decided as stated by Judge Moon in his Memorandum Opinion, discussed above. Indeed, the court finds Defendant-Debtor's acts of engaging in civil conspiracy led to willful and malicious injury contained the required subjective knowledge that the harm was substantially certain to occur. *See* Mem. Opinion, Joint Exhibit 12 at 10 (quoting conversations between Defendant-Debtor and other co-conspirators discussing whether things would get violent and whether it would be legal to run over protestors blocking roadways).

Punitive Damages

The court now considers the award of punitive damages against Defendant-Debtor in favor of Plaintiffs from the Amended Charlottesville Judgment. The punitive damages award is in the amount of $58,333.33. The relevant portion of the final jury instructions form reads:

> Punitive damages are awarded, in the discretion of the jury, to punish a defendant for extreme or outrageous conduct, and to deter or prevent a defendant and others like him from committing such conduct in the future.
>
> You may award Plaintiffs punitive damages if you find that the acts or omissions of a Defendant were done maliciously or wantonly. An act or failure to act is maliciously done if it is prompted by ill will or spite towards the injured person. An act or failure to act is wanton if done with a reckless or callous disregard for the rights of the injured person. Plaintiffs have the burden of proving, by a preponderance of the evidence, that a Defendant acted maliciously or wantonly with regard to the Plaintiffs' rights.
>
> If you find by a preponderance of the evidence that a Defendant acted with malicious intent to violate the Plaintiffs' federal rights or unlawfully injure him, or if you find that a Defendant acted with a callous or reckless disregard of the Plaintiffs' rights, then you may award punitive damages. An award of punitive damages, however, is discretionary; that is, if you find that the legal requirements for punitive damages are

> satisfied, then you may decide to award punitive damages, or you may decide not to award them.

Final Jury Instructions, Joint Exhibit 8 at 45, Docket 100. The law in the Ninth Circuit is clear:

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

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

Punitive damages that could have been awarded on a reckless or negligent standard cannot be found to be nondischargeable under 11 U.S.C. § 523(a)(6). *Geiger*, 523 U.S. at 64.

The Final Jury Instructions provide that punitive damages may be awarded if a defendant acted maliciously or wantonly. Reckless is mentioned only for purposes of defining wanton in the Final Jury Instructions, used to enhance "wanton" along with "callous disregard"; importantly, reckless is not used as a synonym for negligence in this context, but rather used to color the definition of wanton.

In *Geiger*, the Supreme Court considered that a reckless or negligent standard is not enough to merit an exception from discharge under 11 U.S.C. § 523(a)(6). *Id.* Notably, reckless as discussed in *Geiger* colors the negligence standard, separating the facts of *Geiger* from this case. *Id.* at 61. The Supreme Court stated:

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

Geiger, 532 U.S. at 61-62.

The important question is, therefore, not whether the punitive damages were awarded on a reckless standard, but whether "wanton" is synonymous with "willful and malicious." The court turns to established Virginia law for definitions of wanton. In *Thomas v. Snow*, the Supreme Curt of Virginia stated:

> [W]illfulness and wantonness convey the idea of purpose or design, actual or constructive.... [T]hey are used to signify a higher degree of neglect than gross negligence. "In order that one may be held guilty of willful or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.

Thomas v. Snow, 174 S.E. 837, 839 (Va. 1934). Therefore, wanton conduct is something more than mere negligence, it is even something more than gross negligence, and it is certainly something more than recklessness. In differentiating wantonness and recklessness, the Supreme Court of Virginia has stated:

> Wanton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not. Wanton conduct has properly been characterized as 'vicious' and rates extreme in the degree of culpability. The two are not mutually exclusive. Wanton conduct is reckless plus, so to speak.
>
> Black's Law Dictionary 1576 (7th ed.1999) (quoting Rollin M. Perkins & Ronald N. Boyce, Criminal Law 879–80 (3d ed.1982)).

Bazemore v. Commonwealth, 590 S.E. 2d 602, 611 (Va. 2004). Wantonness is therefore more severe than recklessness and exists in the realm of willful and malicious.

In this case, Defendant-Debtor committed an intentional tort, civil conspiracy, intending the consequences of the act. The act was either wanton or malicious, not malicious or reckless, according to the Final Jury Instructions. Therefore, the court finds that the punitive damages are subject to the malicious standard, and could not have been subject to the reckless or negligent standard, and must also be excepted from discharge. The punitive damages award in the amount of $58,333.33 is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

Costs and Reimbursable Expenses

Plaintiffs have been awarded costs and Reimbursable Expenses as part of the Amended Charlottesville Judgment.

Costs

The Amended Charlottesville Judgment awards $468,216.15 in "costs" to all Plaintiffs. These costs are also excepted from discharge because the costs awarded are related to the underlying willful and malicious conduct.

Reimbursable Expenses

The second costs are identified as "Reimbursable Expenses" in the amount of $1,266,420.84. Plaintiffs argue these are not costs associated with the Amended Charlottesville Judgment, but rather are post-petition debts not subject to discharge. *See* Plaintiffs' Mem. In Support of Mot. For Summ. J. at 37, Docket 97. In support of this argument, Plaintiffs state:

> The Reimbursable Expenses all arose and were incurred beginning in March 2019, approximately two months after Damigo's January 2019 bankruptcy filing, with all invoices for the Reimbursable Expenses issued after the Petition Date, beginning in March 2019. Further, had the Plaintiffs not advanced those expenses, Damigo and his co-defendants would have incurred and had to pay those expenses directly, all after the Petition Date.

Id. at 37:20-24.

Defendant-Debtor argues the Reimbursable Expenses are a pre-petition claim and are subject to discharge. Defendant-Debtor states:

> Undisputed facts and relevant chronology in *Sines v. Kessler* show that plaintiffs' Reimbursable Expenses claim, like the attorney's fees claim at issue in *Castellino Villa*, was a contingent and unliquidated claim that was filed pre-petition and therefore was discharged by Mr. Damigo's January 2, 2019 bankruptcy petition. The Magistrate Judge summarized these basic facts and chronology in his March 7, 2024, discussed and quoted from earlier in this memorandum. In this March 7, 2024 Order, the Magistrate Judge affirmed several times that the plaintiff's claim for Reimbursable Expenses arose "under the terms of the ESI Stipulation & Order" that he had "signed and entered on November 19, 2018," approximately six weeks before Mr. Damigo filed his bankruptcy petition on January 2, 2019. The November 2018 Stipulation and Order thus created the contingent and unliquidated liability that the invoice later submitted by the third-party vendor in March of 2019 rendered noncontingent and liquidated, circumstances directly analogous to the attorney's fees agreement in *Castellino Villa* that created a contingent and unliquidated liability made noncontingent and liquidated when attorney's fees were later incurred. Plaintiffs' claim for Reimbursable Expenses, accordingly, arose pre-petition and was discharged by Mr. Damigo's bankruptcy filing in January 2019.

Defendant-Debtor's Mem. In Support of Cross Mot. For Summ. J. 27:24-28:13, Docket 91. Defendant-Debtor relies on the broad definition of claim as defined in 11 U.S.C. § 101(5) and the Ninth Circuit's test for pre-petition claim as explained in *In re Castellino Villa A.K.F. LLC*, 836 F.3d 1028 (9th Cir. 2016).

The Reimbursable Expenses are the result of costs associated with hiring a third-party discovery vendor to collect and produce electronically stored information ("ESI") from Electronic Devices and Social Media Accounts belonging to certain Defendants or their agents. Order, Joint Exhibit 14 at 1, Docket 100. The Reimbursable Expenses award was requested specifically under the parties' Stipulation & Order for the Imaging, Preservation, and Production of Documents ("ESI Stip. & Order"). *Id.*; Joint Exhibit 6, Docket 100. The critical language of the ESI Stip & Order states:

> Within 21 days of the entry of this Stipulation and Order, the Parties shall engage, at Plaintiffs' expense, a Third Party Discovery Vendor to conduct the collection and production of ESI from Defendants' Electronic Devices and Social Media Accounts required by this Stipulation and Order. Pursuant to the Court's November 13, 2018 Order, ECF No. 379, such engagement shall be without prejudice to Plaintiffs' ability to seek to recover from Defendants expenses arising from this engagement at a later date. This Stipulation and Order does not obligate Defendants to pay any fees or costs incurred by the Third Party Discovery Vendor at this time, and does not prejudice Defendants' rights to oppose any request made by Plaintiffs to recover those expenses, any such obligation to be determined at a later date.

ESI Stip. & Order, Joint Exhibit 6 at 7-8, Docket 100. The ESI Stip. & Order was entered on November 19, 2018. Defendant-Debtor filed his case on January 2, 2019. Importantly, the ESI Stip. & Order did not obligate Defendant-Debtor to pay any fees or costs, and it did not prejudice Defendant-Debtor from opposing any request made by Plaintiffs to recover those expenses. All invoices related to the ESI Stip. & Order are for tasks performed entirely poet-petition, from March 1, 2019, through October 31, 2021. Order, Joint Exhibit 14 at 3, Docket 100.

Whether the Reimbursable Expenses
are a Pre-Petition Claim

> The Code states:
>
> (5) The term "claim" means—
>
> > (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> >
> > (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). The Ninth Circuit has defined claim, stating:

> A claim is "contingent" when "the debtor will be called upon to pay [it] only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor." *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987) (internal quotation marks omitted). A claim is "unliquidated" when it is not "subject to ready determination and precision in computation of the amount due." *Id.* (internal quotation marks omitted). "This broadest possible definition of 'claim' is designed to ensure that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." *In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993) (internal quotation marks omitted). "The breadth of the definition of 'claim' is critical in effectuating the bankruptcy code's policy of giving the debtor a 'fresh start.' " *Id.*

In *In re Castellino Villas, A. K. F. LLC*, 836 F.3d 1028, 1033 (9th Cir. 2016). In *Castellino Villas*, the Ninth Circuit considered whether a creditor may have a claim against a debtor for attorneys' fees, even though the creditor has not yet incurred those fees. *Id.* at 1034. The Ninth Circuit stated:

> "[F]ederal law determines when a claim arises under the Bankruptcy Code." *In re SNTL Corp.*, 571 F.3d 826, 839 (9th Cir. 2009). We have recognized that under some circumstances, a creditor may have a claim against a debtor for attorneys' fees, even though the creditor has not yet incurred those fees. For instance, where the debtor and creditor have entered into a contract that includes an attorneys' fees agreement, the creditor may be deemed to have a contingent claim for payment of attorneys' fees even before any fees are incurred. *See id.* at 843 & n.18 ("[W]hen a creditor's right to payment for fees exists prepetition [in a Chapter 7 case], the right to payment constitutes a 'claim,' within the meaning of § 101(5)(A), albeit an unliquidated, unmatured claim." (quoting *In re New Power Co.*, 313 B.R. 496, 508 (N.D. Ga. 2004))). Such a contingent claim would then include attorneys' fees incurred during and after the bankruptcy case. "In general, if the creditor incurs the attorneys' fees postpetition [in a Chapter 7 case] in connection with exercising or protecting a prepetition claim that included a right to recover attorneys' fees, the fees will be prepetition in nature, constituting a contingent prepetition obligation that became fixed postpetition when the fees were incurred." *Id.* at 844 (quoting 5 Collier on Bankruptcy § 553.03[1][i] (15th ed. Updated 2007)). Said otherwise, when the creditor had a prepetition contingent claim for attorneys' fees, even attorneys' fees incurred after that date may be discharged in bankruptcy.

Castellino Villas, 863 F.3d at 1034. The Ninth Circuit employs the "fair contemplation" test in determining whether a creditor's claim arose prepetition. *Id.* Under this test, "a claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law. . . Accordingly, if a creditor and debtor are engaged in prepetition litigation pursuant to a contract that includes an attorneys' fees provision, and the creditor 'can fairly or reasonably contemplate' that it will have a claim for attorneys' fees if an 'extrinsic event' occurs (that is, if it prevails in the litigation), then the creditor's claim for attorneys' fees will be discharged in the debtor's bankruptcy even if the creditor incurs attorneys' fees after the debtor was discharged." *Id.* (internal citations omitted).

The ESI Stip & Order was entered into to address the ongoing expenses of discovery in the Charlottesville Action. These expenses as part of the Charlottesville Action were incurred as potentially recoverable expenses by Plaintiffs if they prevailed. As with any party to an action, they are not responsible for paying discovery expenses of an opposing party until judgment is entered and costs allowed.

The ESI Stip & Order stated the basic grounds for establishing a central, independently maintained electronic storage data base for discovery. Joint Exhibit 6; Dckt. 100. This is not a contract creating an obligation of the Defendant-Debtor, but a Stipulation and Order whereby an agreed storage service is to be used, with Plaintiffs have the right to seek recovery as otherwise permitted in a action before the District Court.

Indeed, the definition of claim in the Ninth Circuit is broad under the fair contemplation test. The critical language in the ESI Stip. & Order did not create an obligation at the time it as entered; however, the ESI Stip. & Order can surely be fairly contemplated to lead to a claim eventually, contingent upon Plaintiffs incurring the expenses and prevailing under applicable law. The language of the ESI Stip. & Order

specifically provided defendants were not obligated to pay fees and costs "at th[at] time," which necessarily predicates there may be a time when defendants were obligated to pay fees and costs. Such an interpretation is required by the fair contemplation test. It is fair to contemplate that the ESI Stip. & Order would lead to a liquidated claim, regardless of when the obligation was actually incurred, contingent upon certain events occurring post-petition.

The Amended Charlottesville Judgment expressly provides for the award of $1,266,420.84 as Reimbursable Expenses in the Charlottesville Action. Amd Judgment, p. 3,Joint Exhibit 17; Dckt. 100 at 307. The Amended Charlottesville Judgment awards the Reimbursable Expenses to Plaintiffs as part of the Amended Charlottesville Judgment , citing to the ESI Stipulation & Order and Federal Rule of Civil Procedure 58(a)(3). *Id*. Federal Rule of Civil Procedure 58(a)(3), which provides that a request for attorney's fees pursuant to Federal Rule of Civil Procedure 54 may be requested by and allowed as part of the judgment through a separate order. Federal Rule of Civil Procedure 54(d)(1) states that costs (*see* 28 U.S.C. § 1920, specifying what costs may be allowed) should be allowed for the prevailing party in the litigation and attorney's fees Federal Rule of Civil Procedure 54(d)(2) states that attorney's fees and related nontaxable expenses may also be requested to be included in the judgment.

As would be attorney's fees, these related nontaxable Reimbursable Expenses are part of Plaintiffs' contingent claim under the principles in *In re Castellino Villas, A. K. F. LLC*.

Nondischargeability of the Costs
ans Reimbursable Expenses

The Ninth Circuit has held "attorneys fees and costs awarded to a judgment creditor in relation to a debtor's underlying willful and malicious contemptuous conduct, even when no compensatory judgment debt exists, constitute a nondischargeable debt under section 523(a)(6)." *In re Suarez*, 400 B.R. 732, 740 (B.A.P. 9th Cir. 2009). *See also Cohen v. de la Cruz*, 523 U.S. 218-19 (1998) (holding costs related to a judgment obtained by fraud are also excepted from discharge under 11 U.S.C. § 523(a)(2), in part relying on the phrase "any debt" that begins the 11 U.S.C. § 523(a) exceptions).

Therefore, Defendant-Debtor's liability of $468,216.15 in costs and $1,266,420.84 are also excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

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

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

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

Alvarado, and Thomas Baker ("Plaintiffs") having been presented to the court, Findings of Fact and Conclusions of Law stated in the Civil Minutes for the hearing; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

The court shall enter a separate order denying the Motion for Summary Judgment filed by Defendant-Debtor Nathan Damigo.

The court shall enter a judgment in this Adversary Proceeding.

24. 19-90003-E-7 NATHAN DAMIGO
19-9006 Pro Se
SINES ET AL V. DAMIGO

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

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

AUGUST 21, 2025 HEARING

The court has prepared a comprehensive ruling on the Defendant-Debtor's Motion for Summary Judgment and the Cross-Motion for Summary Judgment filed by Plaintiff's. That tentative ruling has been posted under Item 1 on this Calendar.

The court shall enter the joint final ruling in the civil minutes for both Motions.

25. 19-90003-E-7 NATHAN DAMIGO
19-9006
CAE-1
SINES ET AL V. DAMIGO

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
4-3-25 [82]

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

Adv. Filed: 1/30/19
Answer: 3/13/25
Amd Cmplt Filed: 4/3/25
Answer: 4/22/25

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued from 7/31/25 to be heard in conjunction with the hearings on the Cross Motions for Summary Judgment.

The Status Conference is continued to xxxxxxx on xxxxxxx 2025, to be conducted by the Hon. Christopher M. Klein, the bankruptcy judge to whom this Adversary Proceeding and the related Bankruptcy Case are being transferred, to be conducted in Courtroom 35 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

FINAL RULINGS

26. 24-23905-E-12 LGT-1 | **DEAVER RANCH, INC., A CALIFORNIA CORPORATION** | **MOTION TO DISMISS CASE 7-24-25 [533]**
David Goodrich

Final Ruling: No appearance at the August 21, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession on July 24, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Chapter 12 Trustee, Lilian G. Tsang ("Trustee"), moves the court for an order dismissing the case pursuant to 11 U.S.C. § 1208(c)(1). Trustee seeks dismissal on the sole basis that Deaver Ranch, Inc., a California corporation (" Debtor in Possession") has failed to file a Motion to Confirm or a Chapter 12 Plan.

On August 6, 2025, Debtor in Possession filed a Non-Opposition to the Motion. Docket 537. Debtor in Possession requests the court retain jurisdiction after dismissal so that employed professionals of the Debtor can seek approval of fees. Debtor in Possession further requests dismissal is not made with a bar to refiling.

DISCUSSION

11 U.S.C. § 1208(c)(1) states:

> (c)On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1)unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors. . .

The court finds failing to file a Chapter 12 Plan and Motion to Confirm results in unreasonable delay that is prejudicial to creditors, the case being 11 months old without a clear direction going forward. Debtor in Possession and other parties in interest do not oppose the requested relief.

The court does not dismiss the case with any bar to refiling.

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 the Chapter 13 case filed by The Chapter 12 Trustee, Lilian G. Tsang ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

27. 22-90415-E-7 JOHN MENDOZA
23-9011
WVJP 2021-4, LP V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE RE: NON-DISCHARGEABILITY COMPLAINT
6-16-23 [1]

Final Ruling: No appearance at the August 21, 2025 Status Conference is required.

Plaintiff's Atty: Brian C. Aton, Jamie P. Dreher
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 6/16/23
Answer: 7/9/23

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 7/9/25, the Trustee may be filing motions to sell properties in the near future.

The Status Conference has been continued by prior Order of the Court to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

The court continued the Status Conference in this Adversary Proceeding and related Adversary Proceedings to August 21, 2025, specially setting the Status Conferences so that they could be conducted in conjunction with potential motions by the Chapter 7 Trustee in the John Mendoza Bankruptcy Case pursuant to the terms of the Stipulation that has been approved by the court, through which the Adversary Proceedings should be fully resolved.

On August 18, 2025, a Joint *Ex Parte* Motion was filed by the Parties requesting the court to continue the Status Conferences ninety (90) day. Jt Mtn; 23-9011, 23-9020, 24-9004, Dckts. 64, 50, 54, The Parties advise the court that the Chapter 7 Trustee is continuing to work at the marketing and sale of the properties pursuant to the Stipulation

The Parties request the continuance given that the Trustee may be able to provide for payment of all claims in full, which would result in there being no need to proceed further in the Adversary Proceedings.

There are pending Motions to Sell Property that has been filed by the Chapter 7 Trustee that are set for hearing on August 26, 2025, in this court. 22-90415; Dckts. 639, 643, 647.

The joint request for a continuance of the Status Conferences is appropriate, and will save the Bankruptcy Estate, the Parties, and the Counsel both time and money.

The Status Conference is continued to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

28. 22-90415-E-7 JOHN MENDOZA
23-9020
FARRAR V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT FOR DENIAL OF DEBTOR'S DISCHARGE
10-16-23 [1]

Final Ruling: No appearance at the August 21, 2025 Status Conference is required.

Plaintiff's Atty: Jeffrey I. Golden, Beth E. Gaschen
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 10/16/23
Answer: 10/24/23

Nature of Action:
Objection / revocation of discharge

Notes:
Continued from 7/9/25, the Trustee may be filing motions to sell properties in the near future.

The Status Conference has been continued by prior Order of the Court to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

The court continued the Status Conference in this Adversary Proceeding and related Adversary Proceedings to August 21, 2025, specially setting the Status Conferences so that they could be conducted in conjunction with potential motions by the Chapter 7 Trustee in the John Mendoza Bankruptcy Case pursuant to the terms of the Stipulation that has been approved by the court, through which the Adversary Proceedings should be fully resolved.

On August 18, 2025, a Joint *Ex Parte* Motion was filed by the Parties requesting the court to continue the Status Conferences ninety (90) day. Jt Mtn; 23-9011, 23-9020, 24-9004, Dckts. 64, 50, 54, respectively. The Parties advise the court that the Chapter 7 Trustee is continuing to work at the marketing and sale of the properties pursuant to the Stipulation

The Parties request the continuance given that the Trustee may be able to provide for payment of all claims in full, which would result in there being no need to proceed further in the Adversary Proceedings.

There are pending Motions to Sell Property that has been filed by the Chapter 7 Trustee that are set for hearing on August 26, 2025, in this court. 22-90415; Dckts. 639, 643, 647.

The joint request for a continuance of the Status Conferences is appropriate, and will save the Bankruptcy Estate, the Parties, and the Counsel both time and money.

The Status Conference is continued to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

29. 22-90415-E-7 JOHN MENDOZA
24-9004
FARRAR V. MENDOZA ET AL

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT FOR FRAUDULENT TRANSFER, CONSTRUCTIVE TRUST, RESULTING TRUST, UNJUST ENRICHMENT, ACCOUNTING AND DECLARATORY RELIEF
3-28-24 [1]

Final Ruling: No appearance at the August 21, 2025 Status Conference is required.

Plaintiff's Atty: Jeffrey I. Golden
Defendant's Atty:
Peter G. Macaluso [John Pierre Mendoza]
Calvin John Massey [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]
David C. Johnston [Lupe Martin]

Adv. Filed: 3/28/24
Answer:
4/25/24 [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]
4/30/24 [John Pierre Mendoza]
7/10/24 [Lupe Martin]

Nature of Action:
Recovery of money/property - turnover of property

Notes:
Continued from 7/9/25, the Trustee may be filing motions to sell properties in the near future.

The Status Conference has been continued by prior Order of the Court to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

AUGUST 21, 2025 STATUS CONFERENCE

The court continued the Status Conference in this Adversary Proceeding and related Adversary Proceedings to August 21, 2025, specially setting the Status Conferences so that they could be conducted in conjunction with potential motions by the Chapter 7 Trustee in the John Mendoza Bankruptcy Case pursuant to the terms of the Stipulation that has been approved by the court, through which the Adversary Proceedings should be fully resolved.

On August 18, 2025, a Joint *Ex Parte* Motion was filed by the Parties requesting the court to continue the Status Conferences ninety (90) day. Jt Mtn; 23-9011, 23-9020, 24-9004, Dckts. 64, 50, 54, respectively. The Parties advise the court that the Chapter 7 Trustee is continuing to work at the marketing and sale of the properties pursuant to the Stipulation

The Parties request the continuance given that the Trustee may be able to provide for payment of all claims in full, which would result in there being no need to proceed further in the Adversary Proceedings.

There are pending Motions to Sell Property that has been filed by the Chapter 7 Trustee that are set for hearing on August 26, 2025, in this court. 22-90415; Dckts. 639, 643, 647.

The joint request for a continuance of the Status Conferences is appropriate, and will save the Bankruptcy Estate, the Parties, and the Counsel both time and money.

The Status Conference is continued to 1:30 p.m. on October 21, 2025, to be conducted by the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 28 of this Court, 501 I Street, Seventh Floor, Sacramento, California.

30. 24-22528-E-7 ICE-1 | **GEORGE BENNY** **Gabriel Liberman** | **MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S) 7-16-25 [38]**

Item 30 thru 31

Final Ruling: No appearance at the August 21, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 16, 2025. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Irma Edmonds, Chapter 7 Trustee ("Trustee") seeks to employ Baird Auction & Appraisal as Auctioneer pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to market and sell seventeen firearms that are property of the Estate.

Jeffrey Baird, owner of Baird Auction & Appraisal, testifies that he will diligently market and sell the various firearms. Decl. ¶ 3, Docket 40. Mr. Baird testifies that he and the firm do not 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. *Id.* at ¶ 2.

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.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Baird Auction & Appraisal as Auctioneer for the Chapter 7 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Irma Edmonds, Chapter 7 Trustee ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective August 21, 2025, and Trustee is authorized to employ Baird Auction & Appraisal as Auctioneer for Trustee and the Chapter 7 Estate.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

31. 24-22528-E-7 ICE-2 | **GEORGE BENNY** Gabriel Liberman | **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BAIRD AUCTION & APPRAISAL, AUCTIONEER(S)** **7-16-25 [42]**

Final Ruling: No appearance at the August 21, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 16, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Authorization to Sell and for Approval of Auctioneer's Fees and Expenses 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 for Authorization to Sell and for Approval of Auctioneer's Fees and Expenses is granted.

The Chapter 7 Trustee, Irma Edmonds ("Trustee"), seeks authorization for Baird Auction & Appraisal ("Auctioneer") to sell property of the Estate, and for approval of Auctioneer's fees and expenses. Trustee seeks authority to sell the following items of personal property from the Estate of George Ignac Benny ("Debtor"):

> (1) Browning 2000 Shotgun, Serial No.36791 - C47; (2) Mossberg 500 Pump Shotgun, Serial No. P777802; (3) Ruger Gunsight Scout, Serial No. 680-33481; (4) Mossberg MVP Long Gun, Serial No. MVP057269; (5) Ambush Arms Long Gun, Serial No. AFB000518B; (6) Ruger Model 10/22 Long Gun, Serial No. 249-10712; (7) Smith and Wesson 327 Magnum Handgun, Serial No. ASR1467; (8) Smith and Wesson Model 500 Handgun, Serial No. CHW8725; (9) Colt 45 Semi-automatic Pistol, Serial No. 294952-C; (10) Colt 45 Semi-automatic Pistol, Serial No. 70N45258; (11) Springfield 45 Semi-automatic Pistol, Serial No. NM 608329; (12) Kimber Ultra Covert 45 Semi-automatic Pistol, Serial No. KU334611; (13) Detonics

Combat Master 45 Semi-automatic Pistol, Serial No. PR2005150; (14) GLOCK 45 Semi-automatic Pistol, Serial No. NRT504; (15) H&K P2000 SK Semi-automatic Pistol, Serial No. 122-008332; (16) KAHR Arms
PM9 Semi-automatic Pistol, Serial No. IC6786; and (17) Sig Sauer Airgun/Pellet Gun, Serial No. N/A.

("Personal Property"). Mot. 1:25-2:10, Docket 42.

DISCUSSION

Auctioneer is authorized to sell the items of Personal Property. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Motion for Authorization of Fees and Expenses

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

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)).

Here, Trustee has estimated that a fifteen percent broker's commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed $500 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a fifteen percent commission fee. The court further approves the requested expenses, not to exceed $500, in connection with the auction.

The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

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 Authorization to Sell and for Approval of Auctioneer's Fees and Expenses filed by the Chapter 7 Trustee, Irma Edmonds ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Authorization to Sell Property at Auction is granted, effective August 21, 2025.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the following items of Personal Property:
>
> > (1) Browning 2000 Shotgun, Serial No.36791 - C47; (2) Mossberg 500 Pump Shotgun, Serial No. P777802; (3) Ruger Gunsight Scout, Serial No. 680-33481; (4) Mossberg MVP Long Gun, Serial No. MVP057269; (5) Ambush Arms Long Gun, Serial No. AFB000518B; (6) Ruger Model 10/22 Long Gun, Serial No. 249-10712; (7) Smith and Wesson 327 Magnum Handgun, Serial No. ASR1467; (8) Smith and Wesson Model 500 Handgun, Serial No. CHW8725; (9) Colt 45 Semi-automatic Pistol, Serial No. 294952-C; (10) Colt 45 Semi-automatic Pistol, Serial No. 70N45258; (11) Springfield 45 Semi-automatic Pistol, Serial No. NM 608329; (12) Kimber Ultra Covert 45 Semi-automatic Pistol, Serial No. KU334611; (13) Detonics Combat Master 45 Semi-automatic Pistol, Serial No. PR2005150; (14) GLOCK 45 Semi-automatic Pistol, Serial No. NRT504; (15) H&K P2000 SK Semi-automatic Pistol, Serial No. 122-008332; (16) KAHR Arms PM9 Semi-automatic Pistol, Serial No. IC6786; and (17) Sig Sauer Airgun/Pellet Gun, Serial No. N/A.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of fifteen percent (20%) of the gross sales proceeds and expenses not to exceed $500 and that the Trustee is authorized to pay such fees and expenses from

the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

32. 22-90379-E-7 RLL-5 | **JAMES MAHONEY** / **David Johnston** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF REYNOLDS LAW, LLP FOR ANTHONY ASEBEDO, TRUSTEES ATTORNEY(S)** **7-18-25 [171]**

Final Ruling: No appearance at the August 21, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on July 18, 2025. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is one day late of the required notice period. The court sua sponte shortens the notice period to the 34 days given based on the facts and circumstances of this Chapter 7 Case.

The Motion for Allowance of Professional Fees is granted.

Reynolds Law, LLP, the Attorney ("Applicant") for the Chapter 7 Trustee, Geoffrey M. Richards ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 25, 2024 through July 2, 2025. The order of the court approving employment of Applicant was entered on April 8, 2024. Dckt. 122. Applicant requests fees in the amount of $16,480.00 and costs in the amount of $29.66.

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 assisting Trustee in analyzing assets of the Estate that resulted in administering assets and paying all allowed claims in the case. 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.

Asset Analysis and Recovery (8.5 hours for $3,400.00): Communicated extensively with the Trustee, the Trustee's broker, with the estate's co-owner of real property, and with counsel for the Debtor regarding the value, encumbrances, and exemption of the real property of the estate; communicated extensively with the Trustee's broker to determine whether liens against the Debtor's residential real property extended to a certain parcel of adjacent vacant property that the Debtor had scheduled and marketed for sale before the Petition Date (the "Property"). Mot. 3:14-20.

Case Administration (9.4 hours for $3,520.00): Assisted the Trustee by handling case-status and other questions from creditors, including counsel; communicated extensively with the Debtor's estranged non-filing spouse regarding administration of the bankruptcy estate's 50% fee title interest in the Property, where the Trustee determined that the spouse held the remaining 50% fee title interest; also communicated with buyers of the real property concerning the payment of ongoing installments on the carryback note taken by the estate and the estate's co-owner. *Id.* at 3:21-27.

Employment and Fee Applications (5.1 hours for $2,040.00): Prepared, filed, and served the application for approval of RLL's employment as general counsel (Docket Control No. RLL-1); prepared, filed, and served the application for employment of the Trustee's real estate broker (Docket Control No. RLL-2); prepared this motion for approval of compensation to RLL (Docket Control No. RLL-5). *Id.* at 4:1-5.

Asset Disposition (16.6 hours for $6,640.00): Communicated with the Debtor's counsel and with the Trustee's broker in regard to sale of the estate's interest in the Property and the negotiation of terms for such sale, subject to overbidding; assisted the Trustee in review of public records and other documentation regarding title to the Property; filed motion and obtained court order authorizing the sale of the estate's 50% interest in the Property with the cooperation of the Debtor's spouse, and assisted the Trustee in negotiating terms for carryback financing that would permit close of escrow yielding funds sufficient to pay all allowed claims in the case in full (Docket Control No. RLL-3); filed motion and obtained court order for abandonment of carryback note and deed of trust obtained from buyer of the Property and the amount of payments received under the note (Docket Control No. RLL-4). *Id.* at 4:6-15.

Claims Issues (1.9 hours for $760.00): Reviewed claims register and communicated with the Debtor's estranged spouse regarding the withdrawal of her Proof of Claim No. 9, so as to avoid need to object to same, and confirmed the withdrawal. *Id.* at 4:16-18.

Exemptions (0.3 hours for $1,200.00): Reviewed exemption schedules and communicated with Trustee to confirm that no objections to exemption were necessary. *Id.* at 4:19-21.

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 Asabedo, Attorney	41.8	$400.00	$16,720.00
Total Fees for Period of Application			$16,720.00

However, some time was not charged, and so the requested amount of fees in the Application is $16,480.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $29.66 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
A certified copy of the order approving sale of estate property, for recording		$13.50
Postage for notices to creditors		$16.16
Total Costs Requested in Application		$29.66

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $16,480 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $29.66 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$16,480
Costs and Expenses	$29.66

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 Attorney ("Applicant") for the Chapter 7 Trustee, Geoffrey M. Richards ("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 Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Reynolds Law, LLP, Professional employed by the Chapter 7 Trustee
>
> | | |
> |---|---|
> | Fees | $16,480 |
> | Costs and Expenses | $29.66, |
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.