

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 22, 2024 at 11:30 a.m.

1. 24-22531 -E-11 RLC -4	R & A ENTERPRISES, LLC Stephen Reynolds	MOTION FOR ORDER AUTHORIZING MAINTENANCE OF PREPETITION ACCOUNTS 7-15-24 [34]
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.

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

Sufficient Notice not Provided. Movant has not filed any proof of service related to this Motion. The court is unable to determine which parties have been served or when. At the hearing, **XXXXXXX**

The Motion for Order Authorizing Maintenance of Prepetition Accounts 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). However, such defaults would only be entered if interested parties were actually served.

The Motion for Order Authorizing Maintenance of Prepetition Accounts is granted.

R & A Enterprises, LLC (“Debtor/Debtor in Possession”) moves for an order approving the use of prepetition bank accounts. Debtor states in the Motion:

1. Prior to filing Debtor maintained a bank account at Banner Bank. This account also allows the deposit of credit card and other transfers. Debtor typically receives daily credit card deposits. Debtor also receives cash payments and deposits cash on a regular basis. Debtor proposes to maintain its existing bank accounts with Banner Bank. Mot. 2:7-10, Docket 34.

2. The bank account ends in 5944 (“Bank Account”). *Id.* at 2:13.
3. The Bank Account is a small business account and is federally insured through the Federal Deposit Insurance Corporation. The Federal Deposit Insurance Corporation (“FDIC”) insures deposits up to \$250,000 per depositor, per insured bank. *Id.* at 2:15-17.
4. The balance of Debtor’s Bank Account is less than \$250,000, and will not exceed that amount. Currently the Bank Account ledger’s average \$100,000 or less. In the event account balances were to exceed \$250,000 Debtor would open an account at another FDIC insured institution. That account would be disclosed on Debtor's Monthly Operating Report. *Id.* at 2:18-21.
5. The Bank Account is used to pay all operating costs including payments for utilities, wage obligations, insurance premiums. Closing the Bank Account would result in significant disruption in its day-to-day operations. *Id.* at 2:22-24.
6. John Richter the Managing Member and Glenn Arensen, manager have attempted to open bank accounts with the two banks listed on the United States Trustee - Region 17 Authorized Depositories. Both banks declined. *Id.* at 3:1-10.

Debtor submits the Declaration of its managing member John Richter in support. Decl., Docket 36. Mr. Richter authenticates the facts alleged in the Motion.

DISCUSSION

Local Bankruptcy Rule 2015-2(a) states:

New Bank, Deposit, and Investment Accounts. For all moneys of the bankruptcy estate, immediately upon filing a chapter 11 petition, the debtor-in-possession shall close all bank, deposit, and investment accounts. The debtor-in-possession shall open and maintain a new general bank account in a federally insured depository. If the debtor has an ongoing business with employees, the debtor-in-possession shall similarly open and maintain a tax account, unless the Court deems it unnecessary. If the debtor maintained a separate payroll account immediately prior to filing, the debtor-in-possession shall similarly open and maintain a payroll account, unless the Court deems it unnecessary. The signature cards for the new accounts shall clearly indicate that the debtor is the “debtor-in-possession.”

Likewise, the U. S. Department of Justice Office of the U.S. Trustee’s Chapter 11 Operating and Reporting Guidelines for Debtors in Possession state:

After filing the bankruptcy petition, the debtor must immediately close all existing bank accounts and open new accounts. Each account must be designated as a debtor in possession account (“DIP Account”).

Office of the U.S. Trustee, Chapter 11 Operating and Reporting Guidelines for Debtors in Possession at 2 (last visited August 21, 2024), <https://www.justice.gov/ust/ust-regions-r17/file/guidelines.pdf/dl>.

Debtor in this case has provided evidence that the banks that the U.S. Trustee has listed, Umpqua Bank and U.S. Bank, have declined to open Debtor in Possession Accounts. Decl. ¶ 7, Docket 36. Umpqua Bank's email declining Debtor's attempt to open a Debtor in Possession Account is attached to the Declaration. *Id.* at 4. Debtor has also testified that closing the prepetition account would result in significant disruption in its day to day operations, likely impeding progress in the case. *Id.* at ¶ 6.

However, Debtor has not provided this court with authority to issue an Order authorizing use of the prepetition accounts. To the contrary, Debtor has only cited to rules that expressly prohibit such activity.

The U.S. Trustee's Office for the Central District of California permits the use of a prepetition bank account under certain conditions, stating:

In cases where the pre-petition [bank] accounts have not been closed, the Declaration Regarding Compliance must provide a justifiable reason why the requirement [to close pre-petition accounts] has not been met.

Office of the U.S. Trustee, Guidelines and Requirements for Chapter 11 Debtor in Possession at 5 (last visited August 21, 2024), https://www.justice.gov/ust/ust-regions-r16/file/ch11_debtors_possession.pdf/dl. The court has not found an analogous provision for the Eastern District of California, and Movant has not presented the court with any law or authority authorizing the court issue the requested order.

At the hearing, **XXXXXXX**

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

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

The Motion for Order Authorizing Maintenance of Prepetition Accounts filed by R & A Enterprises, LLC ("Debtor/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 Debtor/Debtor in Possession is authorized to continue using the pre-petition bank account ending in 5944 with Banner Bank as the Debtor in Possession Account.~~

2. [24-22531](#)-E-11 R & A ENTERPRISES, LLC CONFIRMATION OF PLAN
Stephen Reynolds 6-17-24 [\[21\]](#)

Final Ruling: No Appearance at the August 22, 2024 Hearing required.

The court issued an Order on August 16, 2024, continuing the hearing on Debtor's Motion to Confirm the Plan to October 3, 2024 at 10:30a.m. Docket 47.

3. [24-22531](#)-E-11 R & A ENTERPRISES, LLC CONTINUED MOTION TO USE CASH
[RLC-1](#) Stephen Reynolds COLLATERAL AND/OR MOTION FOR
ORDER GRANTING REPLACEMENT
LIENS , MOTION FOR ORDER
APPROVING DIP BUDGET
6-12-24 [\[14\]](#)

Final Ruling

The court issued an Order on August 16, 2024, granting the Stipulation for the use of cash collateral through October 31, 2024. Order, Docket 46. Stipulation, Docket 44.

The hearing on this Motion is continued to October 3, 2024 at 10:30a.m. to be heard in conjunction with the Motion to Confirm the Plan.

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

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

The Motion for Use of Cash Collateral filed by R&A Enterprises, LLC, the Debtor/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 that the hearing on the Motion is continued to **10:30 a.m. on October 3, 2024** (to be conducted in conjunction with the hearing on confirmation of the Subchapter V Plan), to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before September 15, 2024, Debtor/Debtor in Possession shall file and serve supplemental pleadings, if any, for the further use of cash collateral and notice of the October 3, 2024 hearing. Any

opposition to the requested use of cash collateral may be presented orally at the hearing