

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

September 12, 2024 at 10:30 a.m.

1. [23-23834-E-7](#)
[DNL-8](#)

ANTONETTE TIN
Peter Macaluso

MOTION FOR TURNOVER OF
PROPERTY
8-7-24 [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.

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, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Turnover 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 Turnover is granted.

Nikki Farris, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin ("Debtor Tin") to account for and turn over her interest in The Retreat at Skylake LLC ("Skylake LLC") and The Retreat at Greenhurst LLC ("Greenhurst LLC").

Movant argues that on the petition date, Debtor Tin held 100% ownership of Skylake LLC and Greenhurst LLC. She used these LLCs to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way, Sacramento real properties, currently controlled by Debtor Tin and her spouse, Exequiel Fernando. Mot. 2:15-18, docket 177. According to Movant, monthly income from Debtor

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Tin's interest in the LLCs is estimated to be at least \$16,000 per month. *Id.* at 2:19-22. A sale of these interests could generate income for the Bankruptcy Estate. However, Debtor Tin has not complied with accounting and turnover requests made by Movant on April 23, 2024, and August 1, 2024. *Id.* at 2:25-26.

Movant submits her own Declaration in support at Docket 180, authenticating the facts alleged in the Motion. Movant submits as Exhibits the prior requests for turn over and accounting. Docket 179.

On September 10, 2024, Movant submitted a Supplemental Declaration, detailing Bank of America's response to a Rule 2004 Examination Request. Docket 216. Movant testifies as to large amounts of money being moved around among the entities post-petition, including a \$56,000 sum paid from Skylake LLC to a trust controlled by Debtor Tin, and Greenhurst LLC paying \$52,000 to a trust controlled by Mr. Fernando. *Id.* at ¶ 6.

DISCUSSION

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

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

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

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

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

No opposition has been filed to this Motion by Debtor or any other party in interest.

The interests in the LLC's are property of the Bankruptcy Estate and it is not clear what will be "turned over." The Motion further requests that the Debtor turnover the proceeds of the LLCs that come into her possession, which would be the monies generated from the operations of the businesses therein.

At the hearing, **XXXXXXX**

Enforcement of Turnover Orders

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

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

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

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

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

IT IS FURTHER ORDERED that Antonette Tin ("Debtor Tin") shall deliver on or before **xxxx, 2024, and , XXXXXXXX**, for her interests in The Retreat at Skylake LLC ("Skylake LLC") and The Retreat at Greenhurst LLC ("Greenhurst LLC"), which are property of the Bankruptcy Estate.

Item #5 on 10:00 Calendar

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 in parties in interest, administrative claimants, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on August 23, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Employ is granted.</p>
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Ismoil Kasimov ("Debtor in Possession") seeks to employ David Foyil ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel for general representation and case prosecution.

Debtor in Possession argues that Counsel's appointment and retention is necessary due to the complexity of Debtor in Possession's financial affairs and the Bankruptcy Code generally as it pertains to individual Chapter 11 debtors. Mot. 2:21-22, Docket 59.

David Foyil testifies that he has experience in matters of this character and is well qualified to represent Debtor in Possession in this proceeding. Decl. ¶ 5, Docket 59. Mr. Foyil testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor in Possession, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 8, Docket 59.

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 Counsel, considering the declaration demonstrating that Counsel 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 David Foyil as Counsel for the Chapter 11 Estate and Debtor in Possession. 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 Ismoil Kasimov ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, effective **June 28, 2024**, and Debtor in Possession is authorized to employ David Foyil as for Debtor in Possession.

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.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an

authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

3. [19-22653-E-7](#) **REECE/RODINA VENTURA** **MOTION BY PETER G. MACALUSO TO**
[PGM-8](#) **Peter Macaluso** **WITHDRAW AS ATTORNEY**
8-13-24 [\[515\]](#)

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, Chapter 7 Trustee, attorneys of record who have appeared in the case, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on August 13, 2024. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is XXXXXXX.
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Peter Macaluso (“Movant”), counsel of record for Reece Ventura and Rodina Cordero Ventura (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e). Mot. 1:17, Docket 515.
- B. Counsel cannot effectively represent Debtor due to inconsistency of and lack of communication. *Id.* at 3:26-4:9.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 3-700(c)(1)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor has not communicated with him. Movant states in his declaration:

1. The last meaningful contact with client was in November of 2006 and since that time the Debtor has failed to respond to telephone calls or written communications regarding his Chapter 7 and the pending adversary. Decl. ¶ 10, Docket 517.
2. Debtor has failed to cooperate with the Trustee and his attorney and such failure to participate has rendered this counsel unable to effectively represent the debtor. *Id.* at ¶ 11.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 7 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out the employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

The Motion is granted, Peter Macaluso, Esq., is authorized to withdraw as counsel for the Debtors, and each of them, and the two Debtors are substituted in *pro se*.

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 Withdraw as Attorney filed by Peter Macaluso ("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 to Withdraw as Attorney is, and Movant is permitted to withdraw as counsel for Reece Ventura and Rodina Cordero Ventura, the two Debtors in this Case, and Reece Ventura and Rodina Cordero Ventura, and each of them, are substituted in *pro se* in place of Mr. Macaluso.

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) as stated on the Certificate of Service on August 13, 2024. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338 due on July 29, 2024.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$338.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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 requesting special notice, other parties in interest, and Office of the United States Trustee on September 6, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

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

The Motion for Order Authorizing Maintenance of Prepetition Accounts for the Purpose of Accepting Electronic Deposits is granted on an interim basis, with a final hearing to be conducted at 10:30 a.m. on xxxxxxx, 2024.

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver ("Debtor in Possession") move this court for an order authorizing Debtor in Possession to maintain prepetition accounts for the sole purpose of accepting electronic deposits. Debtor in Possession states in their Motion:

1. Debtor in Possession does business as Amador Flower Farm ("Amador"). Debtor in Possession receives credit card payments for flowers, plants and other goods sold by Amador. These payments are deposited into a checking account at Bank of Marin, account number xxxx978 ("Bank Account"). Mot. 2:12-15, Docket 21.
2. The task of redirecting payments to a new bank account would be time-consuming and, to the extent that the Debtor in Possession must close the Bank Account, there is a risk that payments will not be received. The

monies electronically deposited into the Bank Account represent 100% of all payments made to the Debtor in Possession by their customers. Because of the nature of the Debtor in Possession collections, the disruption that would result if it were forced to immediately close the existing Bank Account could result in a significant amount of lost sales and funds potentially not being properly deposited and, thus, never received. *Id.* at 2:16-23.

3. There are no alternative means that the Debtor in Possession can employ to receive customer payments and not disrupt their operations. *Id.* at 2:23-24.
4. Debtor in Possession acknowledges the U.S. Trustee's guidelines for this District require closing prepetition accounts in a Chapter 11 case and opening Debtor in Possession accounts, but, if applicable here, Debtor in Possession requests the court waive this requirement for the purpose of Debtor in Possession accepting electronic funds in the Bank Account. *Id.* at 3:6-16.

Debtor in Possession authenticates the facts alleged in the Motion in Debtor Kenneth Deaver's Declaration in support. Docket 23. Debtor in Possession informs the court that they will sweep the Bank Account on a weekly basis and remove electronic deposits from the Bank Account and deposit them into designated Debtor in Possession accounts. *Id.* at ¶ 10. Mr. Deaver further testifies that are opening a Debtor in Possession account and will make all disbursements from the Debtor in Possession account. *Id.* at ¶ 11. Debtor in Possession will not make any disbursements from the Bank Account and will account for all funds received. *Id.* at ¶ 13.

DISCUSSION

For Chapter 11 cases, 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").

However, the court has not been presented with an analogous rule requiring a Chapter 12 Debtor in Possession to seek an order permitting use of prepetition bank accounts. Collier's Treatise on Bankruptcy states:

The basic structure and conduct of a chapter 12 case is similar to that of a business chapter 13 case. The debtor in a chapter 12 case remains in possession and control of all of the debtor's property and continues to operate the farm or fishing operation. A chapter 12 trustee is appointed in each case but the trustee does not become involved in operating the debtor's farm or fishing operation unless the debtor is removed as a debtor in possession. Federal Rules of Bankruptcy Procedure regarding the automatic stay, use, sale, or lease of property, obtaining credit, executory contracts and unexpired leases, and the estate's avoidance powers are all, with a few modifications, applicable in a chapter 12 case.

8 COLLIER ON BANKRUPTCY ¶ 1200.01[3][b]. There is similarly no analogous provision requiring a business Chapter 13 case to open Debtor in Possession Accounts.

At the hearing, **XXXXXXX**

The court notes that 11 U.S.C. § 1203 provides:

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation.

Such a provision would permit the court to enter the requested order as the Debtor in Possession here must perform the same functions and duties a trustee serving under Chapter 11 would, which includes opening a Debtor in Possession Account. To the extent that the requested order would prevent confusion and allow Debtor in Possession to continue receiving electronic funds without disruption, the Motion is granted on an interim basis through and including **XXXXXXX**, 2024.

The final hearing on this Motion shall be conducted at 10:30 a.m. on **XXXXXXX**, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXX**, 2024.

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 Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“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 on an interim basis to continue using the prepetition bank account ending in 978 with Bank of Marin for the sole purpose of receiving electronic deposits through and including **XXXXXXX** 2024.

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at 10:30 a.m. on **XXXXXXX**, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXX**, 2024.

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 requesting special notice, other parties in interest, and Office of the United States Trustee on September 6, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

The Motion for Order Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion for Order Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection is granted on an interim basis up and through **xxxx, 2024.**

The hearing is continued to 10:30 a.m. on **xxxxxxx, 2024**

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver ("Debtor in Possession") move this court for an order for the following:

- A. Prohibiting PG&E from altering, refusing or discontinuing service to Debtors or requiring additional adequate assurance of payment as condition to provide utility services;
- B. Deeming the utility providers to be adequately assured of future payment by the Debtors pursuant to. 11 U.S.C. §§ 366 and 105, and;
- C. Establishing procedures for resolving a request by any utility provider for additional assurance of payment.

Mot. 2:18-23, Docket 24. Debtor in Possession proposes an adequate assurance payment equaling an average month of Debtor in Possession's utility usage. Debtor in Possession provides the following table of what an average month can expect in utility usage:

Account Number	Account Holder	Services for (Entity)	Average Monthly Usage
4732287590-8	Ken Deaver	Individuals	\$1,400.00
4690620926-0	Kenneth Deaver	Individuals (Flower Farm)	\$600.00
5753248104-1	Ken Deaver	Vineyards	\$500.00
6773953083-9	Ken Deaver	Vineyards	\$250.00
5211581472-6	Ken Deaver	Ranch	\$180.00
6433973171-2	Mary Jean Deaver	Ranch	\$480.00
5253248136-4	Mary Jean Deaver	Ranch	\$550.00
2345806410-2	Ken Deaver	Ranch	\$100.00
3814618896-3	Ken Deaver	Ranch	\$500.00
5169914808-9	Ken Deaver	Individuals (Flower Farm)	\$580.00
4148952208-0	Ken Deaver	Ranch	\$50.00
4190618872-1	Ken Deaver	Ranch	\$580.00
6482286435-7	Ken Deaver	Vineyards	\$90.00
4190618872-1	Ken Deaver	Ranch	\$580.00
TOTAL:			\$6,440.00

Mot. 4:8-20, Docket 24.

Debtor in Possession explains the various entities on the farm all receive utility services under Debtor in Possession's names. Debtor in Possession must have electricity service at their various locations.

Should PG&E refuse or discontinue service, even for a brief period, Debtor in Possession's ability to continue their farming operations would be interrupted. Debtor in Possession's need for uninterrupted utility service is critical in this case. *Id.* at 4:24-5:3. Debtor in Possession's proposed adequate assurance payment is in an amount not to exceed \$3,000. *Id.* at 10:11.

Debtor in Possession proposes the following procedures for accommodating requests for adequate assurances, should PG&E request additional adequate assurance of future payment:

1. Debtor in Possession shall serve a copy of the order approving the relief requested herein upon PG&E by United States First Class mail within five business days after the date of entry of the order and as described below, each utility provider that is listed on any subsequently filed Supplement to this Motion by United States First Class Mail within five business days after the date of filing of the supplement;
2. If a PG&E (or any subsequent utility provider) is not satisfied with the assurance of future payment provided by the Debtor in Possession, the utility provider must serve a written request upon the Debtor in Possession setting forth the locations for which utility services are provided, the account numbers for such locations, the outstanding balance for each account, a summary of the Debtor in Possession's payment history on each account, and an explanation of why the proposed adequate assurance is inadequate assurance of payment.
3. The request must be received by Debtor in Possession's counsel at the following addresses within 45 days of the date of the order.

Andy C. Warshaw
DiMarco Warshaw, APLC
P. O. Box 704
San Clemente, CA 92674
Email: andy@dimarcowarshaw.com
4. Without further order of the Court, the Debtor in Possession may enter into agreements granting additional adequate assurance to a utility provider serving a timely request if the Debtor in Possession, in their discretion, determine that the request is reasonable.
5. If Debtor in Possession believes that a request is unreasonable, then they shall, within 30 days after the request deadline date, file a motion pursuant to 11 U.S.C. § 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the utility deposit, plus any additional consideration offered by Debtor in Possession, constitutes adequate assurance of payment.
6. Pending notice and a hearing on the determination motion, the utility provider that is the subject of the unresolved request may not alter, refuse or discontinue services to Debtor in Possession or recover or set off against a pre-petition deposit.

7. Any utility provider that fails to make a timely request shall be deemed to be satisfied that the proposed adequate assurance provides adequate assurance of payment to such utility provider within the meaning of 11 U.S.C. § 366 and shall further be deemed to have waived any right to seek additional adequate assurance during the course of this Chapter 12 case, except as provided in 11 U.S.C. §§ 366(b)(2) or 366(c)(3), as applicable.
8. If an entity that is not identified in this Motion as a utility provider believes that it provides Debtor in Possession with utility services within the meaning of 11 U.S.C. § 366, then that entity must make a written request to be added as a utility provider within 20 days of the date of the court's order granting the relief requested herein. Failure to make a written request within the 20-day period bars such entity from terminating the services it provides to Debtor in Possession. Under 11 U.S.C. § 366, absent further order of the court.

Mot. 5:24-7:13, Docket 24.

Debtor in Possession further requests that they be allowed, without further order of the court, to supplement the list if any utility provider has been inadvertently omitted from this Motion. If Debtor in Possession determines that the list of utility providers should be supplemented, Debtor in Possession will, as soon as practicable, file a notice with the Court amending their list of utility providers.

Debtor Kenneth Deaver submits his own Declaration in support. Docket 26. Mr. Deaver explains the nature of the businesses he and his wife operate, including the operations of the Deaver Ranch, Inc. ("Ranch"), and the Shenandoah Investment Properties, Inc., d/b/a Deaver Vineyards ("Vineyards"), as well as the Amador Flower Farm, a sole proprietorship, on 20-acres of their 88- acre ranch. *Id.* at ¶¶ 4-5. Mr. Deaver states:

As an integrated operation, I own the land, the grapes are grown and sold by the Ranch, and the wine is made, distributed and sold by the Vineyards. A similar pattern has been followed with respect to utility service, with all accounts held in my name, or my wife's name. Separate accounts were set up for services to each of the various operations and accounting entries were made in our books and records, although the bills were paid by my wife and me.

Id. at ¶ 7.

DISCUSSION

11 U.S.C. § 366 provides:

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

(c)

(1)

(A) For purposes of this subsection, the term “assurance of payment” means—

(i) a cash deposit;

(ii) a letter of credit;

(iii) a certificate of deposit;

(iv) a surety bond;

(v) a prepayment of utility consumption; or

(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

The court finds that a cash deposit for an average month of utility usage is a reasonable form of adequate assurance in this case, pursuant to 11 U.S.C. § 366(c)(1)(A)(i). However, the amount proposed is not more than \$3,000, while the chart depicts an average monthly use of \$6,440 for the entire integrated operation. It may be that this Motion only seeks the desired relief as to only the utility bills Debtors Ken and Mary Deaver pay on behalf of themselves in their individual capacity. Such a monthly usage amounts to \$2,580, which is within the proposed payment of \$3,000.

Debtor in Possession states that they and “their two related entities will also seek authority to use the cash collateral of their various secured creditors, as appropriate. For the purposes of that motion, for post-petition utility services, each entity has budgeted for its own utility usage.” Mot. 5:4-6, Docket 24. Although the related entities will be paying their own utilities with court authorized use of cash collateral, it does not appear that the Ranch and Vineyard are filing their own 11 U.S.C. § 366 Motions.

At the hearing, **XXXXXXX**

The court further finds the proposed procedures for accommodating requests for adequate assurances, should PG&E request additional adequate assurance of future payment, are fair and reasonable.

At the hearing, **XXXXXXX**

The Motion is granted on an interim basis, with the final hearing to be conducted at 10:30 a.m. on **XXXXXXX**, 2024.

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 Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection filed by Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“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 on an interim basis up and through **xxxx, 2024**, and the utility provider PG&E is prohibited from altering, refusing or discontinuing service to Debtor/Debtor in Possession, the court finding the payment of \$3,000 to constitute reasonable adequate assurance pursuant to 11 U.S.C. § 366(b). The \$3,000 payment shall be made to PG&E on or before **XXXXXXX, 2024**.

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at 10:30 a.m. on **XXXXXXX**, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXX**, 2024.

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 requesting special notice, Chapter 12 Trustee, other parties in interest, and Office of the United States Trustee on September 9, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

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

The Motion for Authority to Use Cash Collateral is granted on an interim basis, and the hearing is continued to xx:xx a.m. on xxxx, 202x.

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an order approving the use of cash collateral generated from the following encumbered assets:

REAL PROPERTY

Lienholder	Collateral/Real Property Address	Estimated Parcel Value	Loan Balance	Payment Terms
Prudential Bank & Trust FSB	a) 21643 Shenandoah School Road, Plymouth, CA 95669 Amador County (88 acres w/vineyards and residence)	\$2,000,000	\$4,256,115 (secured by multiple properties)	\$155,000 semi-annually

	b) 19940 Shenandoah School Road, Pleasant Grove, CA 95668 (41.87 acres w/vineyards and 2 modular homes)	\$1,050,000		
	c) 21424 Shenandoah School Road, Pleasant Grove, CA 95668 (108.3 acres w/vineyards, house, barn and pasture)	\$1,900,000		
	d) 19944 Shenandoah School Road, Plymouth, CA 95669 (40 acres w/vineyards and 6-8 acres of pasture)	\$875,000		
	e) 11850 Shenandoah Road, Plymouth, CA 95669 (raw land)	\$350,000		
Stonetree	17705 State Hwy. 49, Plymouth, CA 95669 (9.69 acres leased to Ace Hardware, StoreStorage Unit, and Shenandoah Vet Clinic); owned jointly with Gerry Ninnis, who is making payments and receiving rental income	\$3,250,000	\$2,500,000	
Totals:		\$9,425,000	\$6,756,115	

Decl. 5:8-25, Docket 39.

PERSONAL PROPERTY

Lienholder	Priority	Collateral	Loan Balance	Debtors and Codebtors
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Prudential Insurance Company	1 UCC File Number: 187638891768 entered on 03/19/2018	All personal property located on or used in operation of real property, including crops, equipment, water rights and intangibles	\$4,256,115	Deaver Ranch Inc. Kenneth Deaver Mary Jean Deaver Shenandoah Investment Properties, Inc.
United States of America, Acting Through the Farm Service Agency – Stockton, CA	2 UCC File Number: 187675962061 entered on 10/15/2018	Includes crops, livestock, equipment, proceeds, intangibles	Unknown	Kenneth Deaver Deaver Ranch Amador Flower Farms Shenandoah Investment Propertis [sic] Inc.
NXGEN Capital	3 UCC File Number: 207774231457 entered on 04/21/2020	Accounts, goods, work in progress, etc., and general intangibles	Unknown. Debtors believe this UCC secured a loan Kapitius that has been paid in full	Amador Flower Farm Deaver Vineyards Kenneth Deaver Shenandoah Investment Properties, Inc.
AgWest Farm Credit, PCA	4 UCC File Number: U210040219527 with an initial lien financing statement entered on 09/21/2020	Farm products, crops, livestock, equipment, inventory, general intangibles, etc.	\$1,200,000	Amador Flower Farm Deaver Ranch Inc. Kenneth Henry Deaver Mary Jean Deaver Shenandoah Investment Properties Inc. The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012

Farm Credit West, PCA – Tulare, CA	5 UCC File Number U200020600411 recorded on 09/21/2020	Existing and after-acquired goods, crops livestock, offspring, equipment, accounts, etc.	\$0	Amador Flower Farm Deaver Ranch, Inc. Mary Jean Deaver Shenandoah Investment Properties, Inc. The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012
C T Corporation System as Representative	6 UCC File Number: U220240228730 Recorded on 11/01/2022	Accounts, contract rights, chattel paper, general intangibles, etc.	\$50,000.00	Amador Affordable Housing Amador Affordable Housing Inc. Deaver Ranch Deaver Ranch Inc. Kenneth Deaver Dever [sic] Vineyards Rancho Del Oro Park LP Shenandoah Investment Properties, Inc.
C T Corporation System as Representative	7 UCC File Number: U220240859435 recorded on 11/01/2022	All assets owned or hereafter acquired, including accounts and general intangibles	Unknown	Deaver Ranch Inc Shenandoah Investment Properties Inc
Corporation Service Company, as Representative for Prosperum Capital Partners LLC	8 UCC File Number U240037112828 recorded on 04/29/2024	Accounts, AR, etc., and general intangibles	\$32,000	Deaver Vineyards Kenneth Deaver Shenandoah Investment Properties

(collectively, “Collateral”). Decl. 6:1-7:28, Docket 39. The UCC-1 Financing Statements depicting the secured transactions of the various items of Personal Property are included as authenticated Exhibits 3-10, at Docket 40.

Proposed Use of Cash Collateral Budgets

Debtor in Possession proposes to use cash collateral for the following expenses, submitting two proposed budgets:

AMADOR FLOWER FARM -13 WEEK													
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24	11/10/24
INCOME													
SHOP SALES	2,000	2,000	2,000	3,500	4,000	4,000	3,000	3,100	2,100	2,100	2,100	2,100	2,100
PUMPKIN SALES							11,000	15,000	14,000	16,000	13,000	500	200
SALES TAX	-155	-155	-155	-271	-310	-310	-233	-240	-163	-163	-163	-163	-163
TOTAL INCOME	\$1,845	\$1,845	\$1,845	\$3,229	\$3,690	\$3,690	\$13,768	\$17,860	\$15,937	\$17,937	\$14,937	\$2,437	\$2,137
SHOP EXPENSES													
ADVERTISING			200	300		500		200	200	200	200	100	
BANK CHARGES	75	75	75	75	75	75						75	75
DUCK FOOD							200						
FOOD / LODGING / TRAVEL							10	10	10				
INVENTORY PURCHASED		1,000		1,000		1,000	7,500	7,500	7,000		5,000	1,000	
DON POTTER (INVENTORY)										30,000			
LIABILITY INSURANCE			700						700				
MAINTENANCE & REPAIRS													
MERCHANT FEES	16	16	18	20	30	30	300	300	300	300	300	25	25
STAFF PAYROLL (reimb. by Deaver Ranch)	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250
POSTAGE	30	30	30	30	30	30	30	30	30	30	30	30	30
OUTSIDE SERVICES (MARKETING, ETC.)					302			302		302			
SHIPPING (UPS)						30				30			30
UTILITIES - ELECTRICITY					650				650				650
UTILITIES - PROPANE													
UTILITIES - TELEPHONE			250					250				250	
TOTAL SHOP	\$2,371	\$3,371	\$3,523	\$3,675	\$3,337	\$3,915	\$10,290	\$10,842	\$11,140	\$33,112	\$7,780	\$3,730	\$3,060
TOTAL EXPENSES													
BEGINNING CASH	\$5,000	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934
NET CASH FLOW	-\$526	-\$1,526	-\$1,678	-\$446	\$353	-\$225	\$3,478	\$7,018	\$4,797	-\$15,175	\$7,157	-\$1,293	-\$923
ENDING CASH	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934	\$6,011

Ex. 1, Docket 40.

Debtor in Possession proposes another cash collateral budget at Exhibit 2, titled “Ken & Jeanne Deaver - 13 Week.” *Id.* at 6. However, the budget is not complete, and the image of the chart cuts off after week 11. What is provided is as follows:

KEN & JEANNE DEAVER -13 WEEK												
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24
INCOME												
DEAVER RANCH RENT			20,000					20,000				
FLOWER FARM PAYROLL												
DEAVER VINEYARDS PAYROLL	2,537	2,537	2,037	2,537	2,537	2,537	2,537	2,037	2,537	2,537	2,537	
SHEEP GOATS COWS												
SOCIAL SECURITY (KEN & JEANNE)	3,354				3,354			3,354				
TOTAL INCOME	\$5,891	\$2,537	\$22,037	\$2,537	\$5,891	\$2,537	\$2,537	\$25,391	\$2,537	\$2,537	\$2,537	\$
HOUSEHOLD EXPENSES												
BANK FEES	30	30	30	30	30	30	30	30	30	30	30	30
FUEL - GASOLINE	100	100	100	100	100	100	100	100	100	100	100	100
INSURANCE - MEDICAL EXPENSES		652					652				652	
INSURANCE - LIFE			2,300					2,300				
INSURANCE PKG INC LIABILITY, FIRE, ETC			3,000					3,000				
INSURANCE VEHICLES			121					121				
MAINTENANCE & REPAIRS		300				300						300
MEDICAL EXPENSES			260					260				
FOOD AND MISC PERSONAL EXPENSES	500	250	250	250	500	250	250	250	500	250	250	
PROPERTY TAXES												
SHEEP GOAT COW EXPENSE			7,000					2,000				
UTILITIES			3,000					3,000				
TELEPHONE		300					300					300
PROPANE	300				300				300			
TOTAL HOUSEHOLD EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$
PRUDENTIAL												
TOTAL NON-HOUSEHOLD EXPENSE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$
TOTAL EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$
BEGINNING CASH	\$5,000	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$
NET CASH FLOW	\$4,961	\$905	\$5,976	\$2,157	\$4,961	\$1,857	\$1,205	\$14,330	\$1,607	\$2,157	\$905	\$
ENDING CASH	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$46,021	\$

Debtor in Possession seeks authorization for the court to approve both proposed cash collateral budgets in Exhibit 1 and Exhibit 2. Of importance, the court ruled on the interim cash collateral motions of Deaver Ranch Inc., a California Corporation, Case no. 24-23905, and Shenandoah Investment Properties, Inc., a California Corporation, Case no. 24-23909, ruling that those related debtors may not distribute payments to Debtor in Possession in this case in the interim period. *See* Order, Docket 35, Case no. 24-23905; Order, Docket 34, Case no. 24-23909. As such, Debtor in Possession proposes using the income generated by Amador Flower Farm in Exhibit 1 to pay allowed living and business expenses until the court approves payment to Debtor in Possession generated from the related cases. Mot. 12:22-27, Docket 37.

At the hearing, **XXXXXXX**

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category. Mot. 2:25, Docket 37.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the various business operations and generating income to fund a Chapter 12 plan.

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period **xxxx, 2024**, through **xxxx, 2024**. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral from the Collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

All creditors with claims secured by cash collateral, are granted replacement liens on the property of the Bankruptcy Estate in the same types of assets acquired and the same extent, validity, and priority as their pre-petition liens the extent that the use of cash collateral results in a diminution of the value of such creditor’s collateral.

The hearing is continued and the final hearing on this Motion shall be conducted at 10:30 a.m. on **XXXXXXX**, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXX**, 2024.

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

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

The Motion for Authority to Use Cash Collateral filed by Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“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, pursuant to this order, on an interim basis for the period **xxxx, 2024**, through **xxxx, 2024**, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the following monthly total budgets:

AMADOR FLOWER FARM -13 WEEK													
8/18/24 8/25/24 9/1/24 9/8/24 9/15/24 9/22/24 9/29/24 10/6/24 10/13/24 10/20/24 10/27/24 11/3/24 11/10/24													
INCOME													
SHOP SALES	2,000	2,000	2,000	3,500	4,000	4,000	3,000	3,100	2,100	2,100	2,100	2,100	2,100
PUMPKIN SALES							11,000	15,000	14,000	16,000	13,000	500	200
SALES TAX	-155	-155	-155	-271	-310	-310	-233	-240	-163	-163	-163	-163	-163
TOTAL INCOME	\$1,845	\$1,845	\$1,845	\$3,229	\$3,690	\$3,690	\$13,768	\$17,860	\$15,937	\$17,937	\$14,937	\$2,437	\$2,137
SHOP EXPENSES													
ADVERTISING			200	300		500		200	200	200	200	100	
BANK CHARGES	75	75	75	75	75	75						75	75
DUCK FOOD							200						
FOOD / LODGING / TRAVEL							10	10	10				
INVENTORY PURCHASED		1,000		1,000		1,000	7,500	7,500	7,000		5,000	1,000	
DON POTTER (INVENTORY)										30,000			
LIABILITY INSURANCE			700						700				
MAINTENANCE & REPAIRS													
MERCHANT FEES	16	16	18	20	30	30	300	300	300	300	300	25	25
STAFF PAYROLL (reimb. by Deaver Ranch)	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250
POSTAGE	30	30	30	30	30	30	30	30	30	30	30	30	30
OUTSIDE SERVICES (MARKETING, ETC.)					302			302		302			
SHIPPING (UPS)						30				30			30
UTILITIES - ELECTRICITY					650				650				650
UTILITIES - PROPANE													
UTILITIES - TELEPHONE			250					250				250	
TOTAL SHOP	\$2,371	\$3,371	\$3,523	\$3,675	\$3,337	\$3,915	\$10,290	\$10,842	\$11,140	\$33,112	\$7,780	\$3,730	\$3,060
TOTAL EXPENSES													
BEGINNING CASH	\$5,000	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934
NET CASH FLOW	-\$526	-\$1,526	-\$1,678	-\$446	\$353	-\$225	\$3,478	\$7,018	\$4,797	-\$15,175	\$7,157	-\$1,293	-\$923
ENDING CASH	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934	\$6,011

KEN & JEANNE DEAVER -13 WEEK												
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24
INCOME												
DEAVER RANCH RENT			20,000					20,000				
FLOWER FARM PAYROLL												
DEAVER VINEYARDS PAYROLL	2,537	2,537	2,037	2,537	2,537	2,537	2,537	2,037	2,537	2,537	2,537	2,537
SHEEP GOATS COWS												
SOCIAL SECURITY (KEN & JEANNE)	3,354				3,354			3,354				
TOTAL INCOME	\$5,891	\$2,537	\$22,037	\$2,537	\$5,891	\$2,537	\$2,537	\$25,391	\$2,537	\$2,537	\$2,537	\$2,537
HOUSEHOLD EXPENSES												
BANK FEES	30	30	30	30	30	30	30	30	30	30	30	30
FUEL - GASOLINE	100	100	100	100	100	100	100	100	100	100	100	100
INSURANCE - MEDICAL EXPENSES		652					652				652	
INSURANCE - LIFE			2,300					2,300				
INSURANCE PKG INC LIABILITY, FIRE, ETC			3,000					3,000				
INSURANCE VEHICLES			121					121				
MAINTENANCE & REPAIRS		300				300					300	
MEDICAL EXPENSES			260					260				
FOOD AND MISC PERSONAL EXPENSES	500	250	250	250	500	250	250	250	500	250	250	250
PROPERTY TAXES												
SHEEP GOAT COW EXPENSE			7,000					2,000				
UTILITIES			3,000					3,000				
TELEPHONE		300					300				300	
PROPANE	300				300				300			
TOTAL HOUSEHOLD EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$380
PRUDENTIAL												
TOTAL NON-HOUSEHOLD EXPENSE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$380
BEGINNING CASH	\$5,000	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$45,116
NET CASH FLOW	\$4,961	\$905	\$5,976	\$2,157	\$4,961	\$1,857	\$1,205	\$14,330	\$1,607	\$2,157	\$905	\$905
ENDING CASH	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$46,021	\$46,021

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at 10:30 a.m. on **XXXXXXX**, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXX**, 2024.

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xx:xx x.m. on xxxx, 202x**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 202x**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 202x** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

FINAL RULINGS

8. [24-20346-E-7](#)

RENEE ROSALES
Peter Macaluso

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
8-14-24 [\[70\]](#)

Final Ruling: No appearance at the August 14, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and other parties in interest as stated on the Certificate of Service on August 15, 2024. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$25 due on July 26, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.