

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

September 19, 2024 at 10:30 a.m.

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1. [24-23905-E-12](#)      **DEAVER RANCH, INC., A**      **CONTINUED MOTION TO USE CASH**  
[GG-1](#)                      **CALIFORNIA CORPORATION**      **COLLATERAL**  
                                    **David Goodrich**                      **9-3-24 [5]**

**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).**

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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 Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

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

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

Deaver Ranch, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession is a California certified sustainable vineyard located in Amador County, California. Debtor in Possession owns the vines which produce wine grapes. In addition to the vines, the

Debtor owns cows and sheep that are used primarily for weed control. The land on which the vineyard is situated is owned by the Debtor in Possession's principals, Kenneth Deaver and Mary Jean Deaver. Debtor in Possession also owns various motor vehicles, equipment and tools.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 6. The first budget is a proposed 13-week budget, and the second budget is a proposed year budget. Over 13 weeks the total projected income is \$204,500, and over a year the projected income is \$1,265,000. Ex. 1 at 3-4, Docket 6. The total expenses over the 13-week period are projected to be \$156,492, and over the one year period are projected to be \$1,238,322. *Id.* The budgets account for general operating expenses of the business, including paying employees, rent, and utilities.

Debtor in Possession argues no adequate protection is needed because the collateral will only decrease in value marginally, if at all. Mem. 5:13-21, Docket 8.

Debtor in Possession submits four Declarations in support. Dockets 7, 9, 27, and 28. Mr. Goodrich, Debtor in Possession's attorney, testifies at Dockets 7 and 27 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits.

Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 9. Mr. Deaver testifies that other than the annual sale of grapes to wine makers, the value of the Debtor's assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted. *Id.* at ¶ 9. Mr. Deaver also testifies that the value of the grapes after harvest will be depressed because of an over saturation of the wine market for 2024. Mr. Deaver estimates the sale of grapes harvested in 2024 will yield less than \$300,000 over the fall and winter months. *Id.* at ¶ 11.

## **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 vineyard and farm 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, to the extent that the use of cash collateral results in a diminution of the value of such creditor’s collateral.

The hearing is continued to 10:30 a.m. on **XXXXXXXX**, 2024, to consider a supplement to the Motion. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXXX**, 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 Deaver Ranch, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period **xxxx, 202x**, through **xxxx, 202x**, and the cash collateral may be used pursuant to the two budgets filed at Exhibit 1, Docket 6.

**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 continued hearing on this Motion shall be conducted at 10:30 a.m. on **xxxxxxx**, 2024, to consider a supplement to the Motion. 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.

2. [24-23905-E-12](#)  
[GG-2](#)

DEAVER RANCH, INC., A  
CALIFORNIA CORPORATION  
David Goodrich

**CONTINUED MOTION FOR ORDER  
AUTHORIZING PAYMENT OF  
UNSECURED PRIORITY WAGE CLAIMS  
AND/OR MOTION CONFIRMING RIGHT  
TO CONTINUE PAYING EMPLOYEES  
WAGES POST-PETITION , MOTION  
CONFIRMING RIGHT TO PAY  
WITHHOLDING AND PAYROLL TAXES  
9-3-24 [11]**

**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).**

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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 Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

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

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**The Motion for Authority to Pay Unsecured Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes is granted.**

Deaver Ranch, Inc. (“Debtor in Possession”) moves this court for an order pursuant to 11 U.S.C. §§ 105(a), 363(b), 363(c), 507(a), 541, and 1184, and Fed. R. Bankr. P. 6003. Debtor in Possession seeks authorization in its discretion to pay prepetition unsecured priority wage claims, any and all local, state, and federal withholding and payroll-related taxes relating to the unsecured priority wage claims and employee

wages including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes. Mot. 2:4-13, Docket 11.

Debtor in Possession seeks authority to pay priority wage claims for the period of March 2024 through May 4, 2024 (“Pre-Petition Payroll”) in order to avoid losing valuable labor needed to tend to the vineyard and pick grapes so they can be sold. Debtor in Possession has been unable to pay the Pre-Petition Payroll because of cash-flow issues caused by AgWest Farm Credit’s collection of accounts receivable due to the Debtor in Possession.

This Pre-Petition Payroll period is one that occurred four (4) months prior to the filing of this Bankruptcy Case on August 30, 2024.

As of the Petition Date, the Debtor in Possession had nineteen (19) employees (“Employees”) who work at the Ranch on an as-needed basis and who are paid weekly. The total amount of the claims is \$36,356.72. Mot. 4:19-20, Docket 11. *See* Ex. 2, copy of Schedule E/F; Docket 14.

## **APPLICABLE LAW**

11 U.S.C. § 507(a) provides, in relevant part:

(a) The following expenses and claims have priority in the following order:

...

(4) Fourth, allowed unsecured claims, but only to the extent of \$10,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual. . .

Such claims are often authorized to be paid during the course of a Chapter 11 case by motion when a Debtor in Possession shows the payments will assist in an effective reorganization. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 467,68 (2017) (discussing the role of “first-day” motions when bankruptcy courts authorize payment of employees’ prepetition wages). Collier’s Treatise on Bankruptcy states:

Because wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be more difficult to justify “first day” orders approving payment of prepetition wages.

4 COLLIER ON BANKRUPTCY ¶ 507.06[1].

The wages and taxes to be paid are for a period within 180 days of the August 30, 2024 filing of this Bankruptcy Case.

### **Interim Order Granting Issued**

On September 4, 2024, the court entered an Interim Order granting the Motion. Order; Dckt. 34.

### **DISCUSSION**

The court finds that authorization for Debtor in Possession to pay the Pre-Petition Payroll for its Employees, as well as the local, state, and federal withholding and payroll-related taxes is in the best interest of the Estate. Mr. Deaver testifies in his Declaration in support that:

The Employees are invaluable to the Debtor’s farming operations. If the Employees refuse to work during the harvest season, the Debtor may be left with inadequate or no labor to prune the vineyard, pick and sort the grapes, and prepare the grapes for delivery to the Debtor’s customers. Retention of the Employees is critical to the reorganization efforts of the Debtor.

Decl. ¶ 7, Docket 13.

The court agrees. Without the payment of prepetition wages, the Employees would be less motivated to tend to the Ranch, and the Debtor in Possession would be unable to produce income for itself or creditors of the Estate.

The court notes that Debtor in Possession states in the title of the Motion a request for authorization to continue paying post-petition wages as well. Mot. 1:13-16, Docket 11. However, in the prayer and body of the Motion, Movant makes no request or argument for such relief. In reviewing the Motion for Authority to Use Cash Collateral, postpetition wages are approved in the related proposed cash collateral budgets at Exhibit 1, Docket 6.

In the prayer, the Debtor in Possession adds the following additional type of relief to be included in the order, stating:

Based on the foregoing, the Debtor respectfully requests that this Court enter an order:

. . . (c) authorizing and directing the applicable bank(s) and other financial institutions to receive, process, honor and pay all checks presented for payment and to honor all electronic payment requests made by the Debtor related to the foregoing.  
...

It is unclear as to the legal basis for the issuance of such an “authorization” for parties not before the court, as well as mandatory injunctive relief “directing” conduct of such parties not before the court.

At the hearing, **XXXXXXX**

The Motion for Authority to Pay Unsecured Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes is granted, the court finding such payment is necessary for an effective reorganization.

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 Pay Unsecured Prepetition Priority Wage Claims and Payroll-Related Local, State, and Federal Withholding Taxes filed by Deaver Ranch, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor in Possession is authorized to pay unsecured prepetition priority wage claims in the amount of \$36,356.72.

**IT IS FURTHER ORDERED** that the Debtor in Possession is authorized to pay any and all payroll-related local, state, and federal withholding taxes, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, for the above authorized priority wage claims totaling \$36,356.72..

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause, the court finding payment pursuant to this Order is necessary immediately.



3. [24-23909-E-12](#)      **SHENANDOAH INVESTMENT**      **CONTINUED MOTION TO USE CASH**  
[GG-1](#)                      **PROPERTIES, INC. A**                      **COLLATERAL**  
                                    **CALIFORNIA CORPORATION**                      **9-3-24 [10]**  
                                    **David Goodrich**

**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).**

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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 Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 32.

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

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

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession sells approximately 2,500 - 3,000 cases of wine annually, primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members (“Business”). The Debtor in Possession’s assets consist of bulk wine, bottled wine, gift bag supplies, equipment, barrels and tumblers. Although Debtor in Possession’s wine club is lucrative, the delivery of wine is a prerequisite to payment from its club members. Mot. 4:4-9, Docket 10.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 13. The first budget is a proposed year budget, and the second budget is a proposed 13-week budget. The budgets propose adequate protection payments of \$1,000 per month to the Small Business Administration (“SBA”) and \$500 a month to AgWest Farm Credit (“AgWest”). *Id.* SBA’s lien is estimated to be in the amount of \$773,614 and AgWest’s lien

is estimated to be in the amount of \$1,200,000. Mot. 4:20-28, Docket 10. The budgets account for general operating expenses of the business, including paying employees, for insurance and permits, and utilities.

Debtor in Possession submits four Declarations in support. Dockets 11, 12, 29, and 30. Mr. Goodrich, Debtor in Possession's attorney, testifies at Dockets 12 and 30 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits. Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 11. Mr. Deaver testifies:

Debtor makes wine seasonally. During the next several months, the Debtor's wine inventory (bulk and bottled) will decrease because of sales. Debtor will purchase additional supplies, including grapes, and produce more wine to be sold in the future. If cash collateral use is not permitted, the Debtor will be unable to produce additional wine and the value of the Debtor's lucrative wine-making business will be lost. The value of the Debtor's assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted.

*Id.* at ¶ 9.

## **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 winery business 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, to the extent that the use of cash collateral results in a diminution of the value of such creditor’s collateral.

Debtor in Possession is authorized to make payments of \$1,000 per month to the SBA and \$500 a month to AgWest as adequate protection payments for their secured claims.

The hearing is continued to 10:30 a.m. on **XXXXXXXX**, 2024, to consider a supplement to the Motion. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before **XXXXXXXX**, 2024. Oppositions, if any, shall be filed and served on or before **XXXXXXXX**, 2024, and Replies filed and served on or before **XXXXXXXX**, 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 Shenandoah Investment Properties, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period **xxxx, 202x**, through **xxxx, 202x**, and the cash collateral may be used pursuant to the two budgets filed at Exhibit 1, Docket 13.

**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 Debtor in Possession shall make monthly adequate protection payments of \$1,000 per month to the Small Business Administration ("SBA") and \$500 a month to AgWest Farm Credit ("AgWest").

**IT IS FURTHER ORDERED** that the continued hearing on this Motion shall be conducted at 10:30 a.m. on **xxxxxxx**, 2024, to consider a supplement to the Motion. 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.

4. [24-23909-E-12](#)  
[GG-2](#)

**SHENANDOAH INVESTMENT  
PROPERTIES, INC. A  
CALIFORNIA CORPORATION**  
David Goodrich

**CONTINUED MOTION FOR ORDER  
AUTHORIZING MAINTENANCE OF  
EXISTING BANK ACCOUNT FOR THE  
SOLE PURPOSE OF ACCEPTING  
ELECTRONIC DEPOSITS PURSUANT TO  
U.S.C. 105, 345, AND 363**  
9-3-24 [\[16\]](#)

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

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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 Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

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.**

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) moves 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 Deaver Vineyards. Debtor in Possession sells wine through a tasting room and a wine club which has approximately 1,000 members. Payments for these goods and services are deposited into a checking account at Bank of Marin, account number xxxx9558 (“Bank Account”). Mot. 2:4-8, Docket 16.
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. Debtor in Possession will sweep the Bank Account on a weekly basis to ensure that all funds received are deposited into the debtor-in-possession accounts (“DIP Accounts”). Moreover, the Debtor in Possession will not make any other disbursements from the Bank Account and will account for all funds received on its monthly operating reports filed with the Court. *Id.* at 2:9-17.

Debtor in Possession authenticates the facts alleged in the Motion in Kenneth Deaver’s Declaration in support, who is a principal of the Debtor in Possession. Docket 17. Mr. Deaver 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 Debtor in Possession is 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 properly 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”).

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>.

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.

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.

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 Shenandoah Investment Properties, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor/Debtor in Possession is authorized to continue using the prepetition bank account ending in 9558 with Bank of Marin for the sole purpose of receiving electronic deposits.

**Item 5 thru 6**

Debtor's Atty: Pro Se

Notes:

Continued from 7/18/24. Specially set to be conducted in conjunction with the continued hearing on the Motion for Use of Cash Collateral.

[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 10:30 a.m. on September 19, 2024 filed 7/25/24 [Dckt 2014]

[FWP-30] Order to Motion for Entry of an Order Authorizing Plan Administrator to Make a Post-Confirmation Distribution to Secured Creditor filed 7/31/24 [Dckt 2015]

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional fees for Services During the Month of July 2024 filed 8/12/24 [Dckt 2017]

**The Post-Confirmation Status Conference is ~~XXXXXXXX~~**

**SEPTEMBER 19, 2024 STATUS CONFERENCE**

On September 12, 2024, the Plan Administrator and Summit filed a further Stipulation for the use of cash collateral. Dckt. 2019. The use of cash collateral is agreed to terminate December 31, 2024, unless further extended.

The Plan Administrator's July 17, 2024 Filed Post-Confirmation Status Report advised the court that most of the Estate's assets have been abandoned or transferred by a deed-in-lieu of foreclosure. Notwithstanding the abandonment of most of the Estate's real properties and the foreclosure on the Business Park Property, the remaining assets and issues to be addressed through the Plan are stated to include:

- (i) Substantial tax reserve funds from the sale of real property and tax refunds,
- (ii) the Murphy Ranches,
- (iii) the Westly Lot (less than one half acre undeveloped),
- (iv) the 1/3 interest in the Oakdale Development Property,



(v) the Estate's asserted interest in the remaining property held by Filbin Land & Cattle Company,

(vi) the Estate's partial interest in a 5 acre property on Laird Road that the Estate owns a partial interest in with the remainder owned by Mr. Arambel's sister(s),

(vii) certain crop retains, and

(viii) certain other assets.

Status Report, ¶ 3; Dckt. 2007 (paragraph reformatted by the court).

The Status Report continues, advising the court that it is doubtful that there is any value for the Plan Estate in excess of the secured claims that encumber these assets. *Id.*; ¶ 4. Further, the Plan Administrator is not aware of any assets from which there can be a distribution to creditors holding general unsecured claims.

However, from the court authorized distribution of \$1,500,000 to Summit, there is a \$200,000 carve out for distribution to creditors holding general unsecured claims (for an estimated 2.5% dividend). *Id.*; ¶ 5.

With respect to the completion of the Plan and closing of this Bankruptcy Case, counsel for the Plan Administrator reported, **XXXXXXX**

#### **JULY 18, 2024 STATUS CONFERENCE**

The court conducted a hearing on the Motion for Use of Cash Collateral at 10:30 a.m. on July 18, 2024. All persons who had registered to appear for the 2:00 p.m. Status Conference set for July 18, 2024, appeared at the 10:30 cash collateral hearing.

From the review of the Plan Administrator's Status Report, the court having authorized the further use of cash collateral, and there not appearing any other "Status Issues" to be addressed, the hearing on the Status Conference is continued to 10:30 a.m. on September 19, 2024, specially set time to be conducted in conjunction with the continued hearing on the Motion for Use of Cash Collateral.

**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 Objection. 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 (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

**~~The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized through December 30, 2024.~~**

**The hearing on the Motion is continued to 10:30 a.m. on ~~xxxx~~, 2024.  
Supplemental Pleadings shall be filed and served on or before ~~xxxx~~, 2024.**

### September 19, 2024 Hearing

The court continued this hearing from July 18, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through December 30, 2024, was filed on was filed September 12, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 2019. The court issued an order continuing the Stipulated Use of Cash Collateral to September 30, 2024. Order, Docket 2014.

In reviewing the proposed Budget for September through December 2024, it appears that the vast majority of the expenses to be paid are the fees for the Plan Administrator, Plan Administrator's Attorney, the Plan Administrator's Accountant, and U.S. Trustee Fees. Exhibit A, Budget; Dckt. 2019.

There is no income or "cash-in" being generated for the Plan Estate, other than a \$200,000 carve out for distribution to creditors holding general unsecured claim from a \$1,500,000 payment made to Summit on its secured claim.

The proposed Budget running through December 2024, has an additional column after December, which is titled "Funeral Expense 13th Month." *Id.* These have been previously identified final expenses to be paid in the month the Plan is concluded.

~~The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 2019) through December 30, 2024.~~

The hearing on the Motion is continued to 10:30 a.m. on ~~xxxx~~, 2024. Supplemental Pleadings shall be filed and served on or before ~~xxxx~~, 2024.

## **REVIEW OF THE MOTION**

Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator"), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC ("Summit") for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit's cash collateral constitutes the sole source of funds to operate Debtor's business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### **Proposed Stipulation**

Summit entered into a stipulation with the Plan Administrator detailing how Summit's cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit's cash collateral, and Summit is willing to consent to the Plan Administrator's use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

## APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee 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

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan

payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continued the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

### **January 11, 2024 Hearing**

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

### **March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court’s attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

### **June 27, 2024 Hearing**

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”) authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as “cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). The proposed budget is as follows:

Arambel Cash Budget Plan of Conversion of Remaining Assets	Actual April 55	Actual May 56	June 57	July 58	August 59	September 60	Funeral Expense 13th Month	Cumulative Post January 2021 Period
Starting Cash	\$ 3,361,206	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 778,733	\$ 1,601,766
<b>Cash-In</b>								
Summit Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MetLife Funding	-	-	-	-	-	-	-	-
FLCC Deposit	-	-	-	-	-	-	-	500,390
Additional Funding/LBA Settlement	-	-	-	-	-	-	-	525,118
Farm Equipment Auction Net Proceeds	-	-	-	-	-	-	-	172,546
Property Tax Refunds - Stanislaus County	-	-	-	-	-	-	-	157,169
Crop Retainage/Coop Patronage	-	-	-	-	-	-	-	-
IRS/CA Tax Refunds	-	-	-	-	-	-	-	1,544,827
Rental Income	-	-	-	-	-	-	-	17,928
Property Sales	-	-	-	-	-	-	-	-
<b>Total Cash-In</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,917,978</b>
<b>Cash-Out</b>								
<b>Personal Expenses</b>								
<b>Total Personal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Farm Expenses</b>								
Lot Line Adj and Other Asset Admin	145	183	170	170	170	170	2,000	13,496
Reorganizing Debtor's Professionals	-	-	-	-	-	-	-	11,645
<b>Total Farm</b>	<b>\$ 145</b>	<b>\$ 183</b>	<b>\$ 170</b>	<b>\$ 170</b>	<b>\$ 170</b>	<b>\$ 170</b>	<b>\$ 2,000</b>	<b>\$ 25,141</b>
<b>Plan Expenses</b>								
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,462
Property Taxes	10,991	-	-	-	-	-	10,000	218,861
Accountant	-	-	1,000	1,000	1,000	1,000	6,000	93,457
Plan Administrator's Attorneys	2,349	1,272	10,000	10,000	10,000	10,000	17,500	467,376
US Trustees Fees	500	-	-	500	-	-	-	32,730
Plan Administrator Fees	2,901	3,061	7,500	7,500	7,500	7,500	20,000	549,168
Contingency Reserve	-	-	-	-	-	-	(903,030)	-
<b>Total Plan</b>	<b>\$ 16,740</b>	<b>\$ 4,332</b>	<b>\$ 18,500</b>	<b>\$ 19,000</b>	<b>\$ 18,500</b>	<b>\$ 18,500</b>	<b>\$ (841,643)</b>	<b>\$ 1,374,053</b>
<b>Sub-Total</b>	<b>\$ 16,885</b>	<b>\$ 4,516</b>	<b>\$ 18,670</b>	<b>\$ 19,170</b>	<b>\$ 18,670</b>	<b>\$ 18,670</b>	<b>\$ (839,643)</b>	<b>\$ 1,399,194</b>
Accrued Professional Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022 Income Tax	-	-	-	-	-	-	-	2,174
Unpaid Utilities	-	-	-	-	-	-	-	-
Class 2 Pre-Petition Property Taxes	-	-	-	-	-	-	-	-
Class 3 Cure Payments	-	-	-	-	-	-	-	-
<b>Sub-Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,174</b>
<b>Property Sale Disbursements</b>								
Payment on Debt - BrightHouse	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment on Debt - Summit	-	-	-	1,500,000	-	-	1,418,376	2,918,376
Sale Expenses (Title, Escrow, Recording)	-	-	-	-	-	-	-	-
Property Taxes	-	-	-	-	-	-	-	-
Other Costs (Carve Out Unsecureds)	-	-	-	-	-	-	200,000	200,000
<b>Sub-Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,500,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,618,376</b>	<b>\$ 3,118,376</b>
<b>Total Cash-Out</b>	<b>\$ 16,885</b>	<b>\$ 4,516</b>	<b>\$ 18,670</b>	<b>\$ 1,519,170</b>	<b>\$ 18,670</b>	<b>\$ 18,670</b>	<b>\$ 778,733</b>	<b>\$ 4,519,744</b>
<b>Ending Cash</b>	<b>\$ 3,344,321</b>	<b>\$ 3,339,805</b>	<b>\$ 3,321,135</b>	<b>\$ 1,801,965</b>	<b>\$ 1,783,295</b>	<b>\$ 1,764,625</b>	<b>\$ 0</b>	<b>(0)</b>
<b>Period Ending Cash Balance:</b>								
PA Operating Account	\$ 223,946	\$ 219,614	\$ 201,114	\$ 182,114	\$ 163,614	\$ 145,114	(1,618,022)	
PA Filbin Account	204	204	204	204	204	204	204	
PA U.S. Trustee Fees Reserve	-	-	-	-	-	-	-	
PA 10% Holdback after \$2M to Summit	-	-	-	-	-	-	-	
PA Tax Reserve Account	\$ 3,120,171	\$ 3,119,987	\$ 3,119,817	\$ 1,619,647	\$ 1,619,477	\$ 1,619,307	\$ 1,617,817	
RD Checking/Petty Cash	-	-	-	-	-	-	-	
<b>Period Ending Cash Balance</b>	<b>\$ 3,344,321</b>	<b>\$ 3,339,805</b>	<b>\$ 3,321,135</b>	<b>\$ 1,801,965</b>	<b>\$ 1,783,295</b>	<b>\$ 1,764,625</b>	<b>\$ (0)</b>	

Stipulation for Use of Cash Collateral; Dckt. 1994.

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V AG ILLC (“Summit”), being heard in conjunction with this Motion.

### July 18, 2024 Hearing

The court continued this hearing from June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through September 30, 2024, was filed on was filed June 20, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 1994. The court issued an order continuing the Stipulated Use of Cash Collateral to July 18, 2024.

At the July 18, 2024, the parties confirmed that they stipulated to the use of cash collateral through September 30, 2024, the end of the current budget, and requested a continued hearing so pleadings may be filed for further use of cash collateral.

Counsel for the Plan Administrator stated that while the budget provides for a \$1.5 Million payment to Creditor, such payment shall be authorized by a separate order of the court. The order authorizing the used of cash collateral through September 30, 2024, shall include the statement of such further order being required.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 1994) through September 30, 2024.

The hearing on the Motion is continued to 10:30 a.m. on September 19, 2024. Supplemental Pleadings shall be filed and served on or before September 12, 2024.

**Counsel for the Plan Administrator shall prepare a proposed order authorize the use of cash collateral and setting the continued hearing dates as provided in this Ruling, and lodge such proposed order with the court.**



7. [24-90343-E-11](#)  
[GEL-1](#)

MARTINEZ PALLET  
SERVICES, INC.  
Gabriel Liberman

CONTINUED MOTION TO USE CASH  
COLLATERAL AND/OR MOTION FOR  
ADEQUATE PROTECTION , MOTION  
FOR SCHEDULING DEADLINES  
RELATING TO A FINAL HEARING ON  
USE OF CASH COLLATERAL  
7-3-24 [15]

**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).**

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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 in Possession, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

At the hearing, opposition was stated by Creditor asserting the lien on the cash collateral that is to be used.

**The Motion for Authority to Use Cash Collateral is granted, and the hearing is continued to 10:30 a.m. on ~~xxxx~~, 2024.**

### September 19, 2024 Hearing

The court continued the hearing as counsel for First Chatham Bank stated an opposition to the use of cash collateral at the hearing held on August 29, 2024. However, Debtor/Debtor in Possession provided counsel with additional financial information that can be used to update the information provided and the Schedules.

The Monthly Operating Reports for June (which was only for four post-petition days) and July 2024 have been received by counsel for the Debtor/Debtor in Possession and will be filed. Counsel for Debtor in Possession reported that for July, First Chatham Bank received adequate protection payments. The court continued the hearing after the parties agreed to the proposed use of cash collateral through September 30, 2024. Order, Docket 47.

On September 17, 2024, the Monthly Operating Reports for August and July 2024 were refiled. Dckts. 48, 49.

A review of the Docket on September 17, 2024 reveals nothing new has been filed with the court. At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

Martinez Pallet Services, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral from operating its business on the commercial property commonly known as 3925 W. Linwood Avenue, Turlock, California 95380 (“Property”). Debtor in Possession’s business manufactures and sells wood pallets by buying new wood material and donated recycled wood it receives from various businesses. Mot. 2:13-14, Docket 15. Debtor in Possession’s gross receipts from January 1- through June 27, 2024 was \$498,372.64 with a net profit of \$4,960.19. *Id.* at 3:1-2.

Debtor in Possession’s business performed well during the Covid years when wood products were in high demand. However, the price of wood has since dropped by 50%. *Id.* at 3:17-18. Furthermore, the interest rate on the note secured by the Property has increased from 3.5% in 2022 to 8.5% today, increasing the mortgage payment. *Id.* at 3:13-16. Debtor in Possession requests the use of cash collateral to continue operating the business in the ordinary course from the Property and to make adequate protection payments.

Debtor in Possession proposes to use cash collateral for the following expenses:

<b>Martinez Pallet Services, Inc.</b>							
Income/Expense	Interim	Final Budget					
	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	
<b>Income</b>							
Sales- Pallet Sales	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	
Sales- Wood Shavings	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Sales- Pickup Services	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	
<b>Total Income</b>	<b>\$ 91,000</b>	<b>\$ 91,000</b>	<b>\$ 91,000</b>	<b>\$ 91,000</b>	<b>\$ 91,000</b>	<b>\$ 91,000</b>	
<b>Cost of Goods Sold</b>							
Raw Materials- Wood	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	
Raw Materials- Broken Pallets	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	
Raw Materials- Nails	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	
<b>Total COGS</b>	<b>\$ 10,500</b>	<b>\$ 10,500</b>	<b>\$ 10,500</b>	<b>\$ 10,500</b>	<b>\$ 10,500</b>	<b>\$ 10,500</b>	
<b>Gross Profit</b>	<b>\$ 80,500</b>	<b>\$ 80,500</b>	<b>\$ 80,500</b>	<b>\$ 80,500</b>	<b>\$ 80,500</b>	<b>\$ 80,500</b>	
<b>Expense</b>							
Bookkeeping & Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Fuel (Diesel, Gas, & Propane)	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	
Merchant Service Fee	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	
Office Supplies	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	
Salaries & Wages - 8 employees	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	
Shareholder Salaries & Wages - 3 employees	\$ -	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	
Meals & Entertainment	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Card and Bank Fees	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	
IT & Telcom Expense	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
Utilities	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	
Insurance - Liability	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	
Insurance - Auto	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	
Saw Blades - Replacements	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	
Auto Expense - Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
<b>Total Business Expense</b>	<b>\$ 38,898</b>	<b>\$ 50,398</b>	<b>\$ 50,398</b>	<b>\$ 50,398</b>	<b>\$ 50,398</b>	<b>\$ 50,398</b>	
<b>Net Operating Income</b>	<b>\$ 41,602</b>	<b>\$ 30,102</b>	<b>\$ 30,102</b>	<b>\$ 30,102</b>	<b>\$ 30,102</b>	<b>\$ 30,102</b>	
<b>Adequate Protection to secured creditors</b>							
First Chatham Bank		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Balboa Capital		\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	
<b>Total Adequate Protection Expense</b>	<b>\$ -</b>	<b>\$ 21,000</b>	<b>\$ 21,000</b>	<b>\$ 21,000</b>	<b>\$ 21,000</b>	<b>\$ 21,000</b>	
<b>Net Income</b>	<b>\$ 41,602</b>	<b>\$ 9,102</b>	<b>\$ 9,102</b>	<b>\$ 9,102</b>	<b>\$ 9,102</b>	<b>\$ 9,102</b>	

Exhibit A, Docket 18. As seen in the chart, First Chatham Bank would be receiving adequate protection payments of \$20,000 per month, and Balboa Capital will be receiving adequate protection payments of \$1,000 per month.

First Chatham Bank holds a first priority security interest secured by a UCC-1 financing statement recorded on December 8, 2022 against all of Debtor in Possession's personal property assets utilized in the Debtor in Possession's business and a first priority Note secured by a deed of trust in the Property. Mot. 4:25-5:12. The Note is also personally guaranteed by Debtor in Possession's shareholders, Francisco J. Mora Martinez and Adela Espinoza Sanchez. Mr. Martinez testifies in his Declaration that "without cash collateral use Debtor would suffer irreparable harm to their business operations if not permitted immediate use of cash collateral." Decl. 6:13-14, Docket 17.

Debtor in Possession estimates the Property to be worth \$3,159,000 (Decl. 2:24-25, Docket 17), while First Chatham Bank's Claim is estimated to be \$3,000,000 (Decl. 4:20, Docket 17). Balboa Capital's claim is estimated to be in the amount of \$129,819.33. *Id.* at 4:21.

## APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

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 business and generating cash for adequate protection payments to secured creditors. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period July 24, 2024, through December 24, 2024, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

However, at the hearing counsel for First Chatham Bank stated an opposition to the use of cash collateral. Schedules are still to be filed (July 19, 2024, the extended deadline for such to be filed) and from the information provided, this Creditor cannot determine that the purported cash flow can be generated by the Debtor/Debtor in Possession.

The Parties agreed to authorize the use of cash collateral on the existing budget through and including September 6, 2024. The hearing is continued to 10:30 a.m. on August 29, 2024. Supplemental pleadings, in support of or in opposition to the use of cash collateral shall be filed and served on or before August 22, 2024. Replies may be presented orally at the continued hearing.

### **August 29, 2024 Hearing**

The court granted interim authority to use cash collateral through September 6, 2024. Order, Docket 31. The court set the date of August 22, 2024, for any supplemental pleadings in support or opposition of the use of cash collateral. *Id.* Replies may be heard at the hearing.

On August 22, 2024, First Chatham Bank (“Creditor”) filed a Supplemental Brief to the Motion. Docket 42. Creditor states:

1. Creditor respectfully requests that the Court require the debtor to file updated, accurate versions of the bankruptcy schedules and the documents used to support the Motion to Use Cash Collateral and Grant Adequate Protection. The Meeting of Creditors revealed many problems with the Debtor’s prior filings – missing assets, missing debts, questions concerning cash flow – and these issues must be resolved before the Court allows the Debtor to engage in the long-term use of cash collateral, and to ensure that the protection provided is actually adequate. Reply 1:22-27, Docket 42.
2. The following issues were identified at the Meeting of Creditors:
  - a. Debtor’s schedules stated that the business had no accounts receivable when the petition was filed. However, Ms. Espinosa (one of the owners of the debtor company and the secretary/treasurer of the company) testified under oath that the schedules were incorrect and that the business did, in fact, have accounts receivable when the petition was filed. *Id.* at 2:5-9.
  - b. Ms. Espinoza recently submitted a declaration that stated that the business’ 2021 and 2022 taxes had not been filed. When asked about potential tax liabilities, Ms. Espinoza represented that she believed the tax liability to be modest. However, the IRS has since filed a proof of claim for just over \$250,000, consisting mostly of unpaid corporate taxes dating back to 2019, but also over \$40,000 in unpaid payroll taxes. *Id.* at 2:10-15.
  - c. The assets stated by the Debtor list did not list the property that secures the loan from First Chatham Bank. That property is worth nearly \$3,000,000. *Id.* at 2:16-17.



- a. The hearing on the Motion to Use Cash Collateral be continued to the earliest possible date after the continued Meeting of Creditors on September 10, 2024.
- b. Debtor immediately obtain property insurance to cover the real estate that secures the First Chatham Bank loan to Debtor, as required by the loan agreement, and file proof of that insurance within 3 business days.
- c. Debtor file complete and accurate amended versions of all previously filed financial documents within 5 business days.
- d. Debtor file a statement under oath concerning the viability of the “interim budget” submitted with the Motion for Use of Cash Collateral, including whether the projected revenue targets were reached in the time since the document was filed and remain valid, whether the projected expenses proved accurate and remain valid, and verify the Debtor’s current liquid assets (bank accounts), as well as accounts receivable and payable.

*Id.* at 3:14-26.

At the hearing, counsel for the Debtor/Debtor in Possession reported that on August 28, 2024, the Responsible Representative for the Debtor/Debtor in Possession provided counsel with additional financial information that can be used to update the information provided and the Schedules. Additionally that copies of tax returns for 2021, 2022, and 2023, which have been filed, have also provided to counsel. There is a balance due on 2021 taxes to the IRS. Taxes are also due for 2022, the priority tax claim computed to be \$289,275.

The Monthly Operating Reports for June (which was only for four post-petition days) and July 2024 have been received by counsel for the Debtor/Debtor in Possession and will be filed. Counsel reported that for July, \$121,104 received in cash, made (\$115,852) in payments (including cash collateral adequate protection payment)

The amendments to the Schedules will include listing wage claims for former Employees (who appeared at the 341 meeting stating that they had such claims), which were not listed on the Schedules previously filed with the court. These wage claims are stated to be in the amount of (\$61,954), most of which would be priority claims if allowed.

Counsel addressed the issue of the Debtor/Debtor in Possession not have insurance on the real property. The Debtor/Debtor in Possession still has not yet obtained the property insurance for the real estate. There is general liability and auto insurance in place.

It appears from the information provided, that the impediment to obtaining the real property insurance has been the cost.

Counsel for Chatham Bank, the creditor asserting lien rights on the uninsured real property addressed the point of the Debtor needing to promptly get the financial information corrected. Counsel for

the Debtor/Debtor in Possession concurred and reported that it is being done in short order. The counsel and the Subchapter V Trustee all agreed to a short interim authorization to use cash collateral to keep the focus on getting everything filed.

Counsel for the Debtor/Debtor in Possession also reported that the Debtor/Debtor in Possession is considering surrendering the real property and moving the operation to a rental space.

Counsel for Chatham Bank reported that if the Debtor/Debtor in Possession did not have the insurance in place for the real property by the end of August 2024, Chatham Bank would obtain forced place insurance (which is expensive) to protect the obligation secured by the real property. Both counsel for Chatham Bank and the Subchapter V Trustee noted that such insurance only protects Chatham Bank's interests and does not insure the interests of the Bankruptcy Estate or Debtor.

The 341 Meeting of Creditors has been continued to September 10, 2024. August 13, 2024 Trustee Docket Entry Report.

The Parties agreed to the further authorization of the use of cash collateral on the same terms and conditions as under the court's prior Order (Dckt. 31) through September 30, 2024.

The Motion is granted and the use of cash collateral is further authorized on an interim basis through and including September 30, 2024. The hearing is continued to 10:30 a.m. on September 19, 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 Martinez Pallet Services, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the used of cash collateral is authorized through **xxxx**, 2024, to pay the following expenses and adequate protection payments set forth in the cash collateral budget:



**Martinez Pallet Services, Inc.**

Income/Expense	Interim		Final Budget			
	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24
<b>Income</b>						
Sales- Pallet Sales	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000
Sales- Wood Shavings	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Sales- Pickup Services	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
<b>Total Income</b>	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000
<b>Cost of Goods Sold</b>						
Raw Materials- Wood	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
Raw Materials- Broken Pallets	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Raw Materials- Nails	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
<b>Total COGS</b>	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500
<b>Gross Profit</b>	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500
<b>Expense</b>						
Bookkeeping & Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fuel (Diesel, Gas, & Propane)	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000
Merchant Service Fee	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30
Office Supplies	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75
Salaries & Wages - 8 employees	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550
Shareholder Salaries & Wages - 3 employees	\$ -	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500
Meals & Entertainment	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Card and Bank Fees	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26
IT & Telcom Expense	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350
Utilities	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600
Insurance - Liability	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167
Insurance - Auto	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000
Saw Blades - Replacements	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100
Auto Expense - Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
<b>Total Business Expense</b>	\$ 38,898	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398
<b>Net Operating Income</b>	\$ 41,602	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102
<b>Adequate Protection to secured creditors</b>						
First Chatham Bank		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
Balboa Capital		\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
<b>Total Adequate Protection Expense</b>	\$ -	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000
<b>Net Income</b>	\$ 41,602	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102

**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 Debtor in Possession shall continue to make monthly adequate protection payments of \$20,000 to First Chatham Bank, and monthly adequate protection payments of \$1,000 to Balboa Capital as provided in the Budget Above.

**IT IS FURTHER ORDERED** that the hearing on the Motion is continued to xx:xx x.m. on xxxx, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before xxxx, 2024, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the xxxx, 2024 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

**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.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 43 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 7 Trustee, Peter L. Fear ("Trustee"), seeks dismissal of the case on the grounds that Anabel Contreras ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:00 p.m. on October 9, 2024. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing. Docket 13.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 30, 2024. Dckt. 15. Debtor states that she tried to communicate with Trustee that Debtor's attorney would be unavailable on the original date of the 341 Meeting. Debtor's attorney did not receive a response from Trustee. However, Debtor will appear at the continued meeting and will be examined.

#### **DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

However, Debtor has explained the initial absence in her Opposition and has ensured the court she will attend the continued meeting. The Motion is denied without prejudice.

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 7 case filed by The Chapter 7 Trustee, Peter L. Fear (“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 denied without prejudice.

**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including December 8, 2024.

# FINAL RULINGS

9. [24-90411-E-7](#)  
[SLH-1](#)

HERMES HU  
Seth Hanson

MOTION TO AVOID LIEN OF CAN  
CAPITAL, INC.  
8-12-24 [\[11\]](#)

## Item 9 thru 10

**Final Ruling:** No appearance at the September 19, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest, Chapter 7 Trustee, and Office of the United States Trustee on August 12, 2024. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Can Capital, Inc. ("Creditor") against property of the debtor, Hermes Hu ("Debtor") commonly known as 1351 Snake Creek, Patterson, CA 95633 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$95,410.05. Exhibit B, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on May 14, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$496,400 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$332,390.00 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$333,000.00 on Schedule C. Schedule C at 17, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Hermes Hu ("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 judgment lien of Can Capital, Inc., California Superior Court for Stanislaus County Case No. CV-23-007617, recorded on May 14, 2024, Document No. 2024-0021799, with the Stanislaus County Recorder, against the real property commonly known as 1351 Snake Creek, Patterson, CA 95633, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the September 19, 2024 Hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest, Chapter 7 Trustee, and Office of the United States Trustee on August 12, 2024. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Regions Bank, Successor by Merger to Ascentium Capital LLC (“Creditor”) against property of the debtor, Hermes Hu (“Debtor”) commonly known as 1351 Snake Creek, Patterson, CA 95633 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$73,259.69. Exhibit B, Docket 19. An abstract of judgment was recorded with Stanislaus County on April 10, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$496,400 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$332,390.00 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 20, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$333,000.00 on Schedule C. Schedule C at 17, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Hermes Hu (“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 judgment lien of Regions Bank, Successor by Merger to Ascentium Capital LLC, California Superior Court for Orange County Case No. 30-2023-01365588-CU-BC-CJC, recorded on April 10, 2024, Document No. 2024-0015974, with the Stanislaus County Recorder, against the real property commonly known as 1351 Snake Creek, Patterson, CA 95633, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the September 19, 2024 Hearing is required.  
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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’s Attorney, attorneys of record who have appeared in the case, 20 largest creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2024. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Final Decree and Order Closing Case 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 Final Decree and Order Closing Case is granted.**

Debtor in Possession, Eagle Ledge Foundation, Inc. (“Debtor in Possession”) moves this court for an Order closing the case and entering a Final Decree. Movant states with particularity:

Debtor in Possession has performed substantially all of the duties required by the Plan and Confirmation Order. The Bankruptcy Case is “fully administered” for the following reasons: (i) the Confirmation Order is final and non-appealable; (ii) the Reorganized Debtor has commenced payments under the Plan and made all plan payments due on the Effective Date, including the initial distribution of \$350,000.00 to the holders of Class 2 General Unsecured Claims; (iii) the conditions precedent set forth in section 6.02 of the Plan have been satisfied or waived; (iv) the Plan became effective; and (v) there are no unresolved motions, contested matters, or adversary proceedings in the bankruptcy case. To the extent that any post-confirmation taxes have accrued, they have been paid. Debtor in Possession is current on its quarterly fee payments to the United States Trustee.



Mot. ¶ 9, Docket 463.

The principal of Debtor in Possession, Chester Reid, submits his Declaration in support. Docket 465. Mr. Reid authenticates the facts alleged in the Motion.

No opposition having been presented by creditors, the U.S. Trustee, or any party in interest, the Motion is granted.

**FINAL DECREE**

It appearing to the Court that the trustee in the above-captioned case, has completed administration of this estate,

**IT IS ORDERED** that the Motion is granted and the case is hereby closed, that the trustee is hereby discharged, that the bond of the trustee is hereby canceled, and that the surety of the trustee's bond is hereby released from further liability thereunder, except any liability which may have accrued during the time such bond was in effect.

**Final Ruling:** No appearance at the September 19, 2024 Hearing is required.

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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, all creditors and parties in interest, Chapter 7 Trustee, and Office of the United States Trustee on July 24, 2024. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Cambridge Place Association (“Creditor”) against property of the debtor, Dawn Marie Barnard (“Debtor”) commonly known as 2210 Monte Carlo Ave. Modesto, CA 95350 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,982.61. Exhibit B, Docket 28. An abstract of judgment was recorded with Stanislaus County on October 24, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$427,800 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$335,964.00 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 22, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$125,000 on Schedule C. Schedule C at 18, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Dawn Marie Barnard (“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 judgment lien of Cambridge Place Association, California Superior Court for San Joaquin County Case No. STK-CV-LBC-2016-7309, recorded on October 24, 2022, Document No. 2022-0069869, with the Stanislaus County Recorder, against the real property commonly known as 2210 Monte Carlo Ave. Modesto, CA 95350, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling: No appearance at the September 19, 2024 Hearing is required.**

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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, Debtor’s Attorney, Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on August 20, 2024. By the court’s calculation, 30 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) and 9014(a) (no response required unless the court orders otherwise); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition). Movant is five days short of the required notice period.

In light of the facts and circumstances of this case, no opposition having been filed, the amount of the fees, and the actual notice period being sufficient for responding to the Motion, the court shortens the notice period to the actual notice given.

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

Gary Farrar, the Chapter 7 Trustee (“Applicant,” “Trustee”) for the bankruptcy estate of George William Mathis and Lynda Paulette Mathis (“Debtor”), hereby applies for approval of final compensation to the Trustee’s general counsel, Kronick, Moskovitz, Tiedemann & Girard (“Counsel”) in this case.

Fees are requested for the period of June 5, 2023 through, and including, August 18, 2024. The order of the court approving employment of Applicant was entered on June 11, 2023, effective June 5, 2023. Docket 38. Applicant requests fees in the amount of \$5,636.00 and no costs. Mot. 1:23, Docket 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 Counsel’s services for the Estate include assisting with resolution of personal injury claims, creating employment and fee applications, and general case administration. Mot. 3:9-14, Docket 66. The Estate has approximately \$30,000 of unencumbered monies to be administered as of the filing of the application. *Id.* at 3:7. 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.

Assisting with Resolution of Personal Injury Claims: Counsel spent 7.7 hours in this category. Counsel’s services include preparing the Motion to Approve the Compromise, communicating with special counsel and its agent related to bankruptcy concerns and issues to address with settlement agreement and payment of Medicare lien, communicating with special counsel and its agent related to expenses incurred, preparing for and appearing at the hearing on the Motion to Approve the Compromise, and advising the Trustee with respect to the settlement. Mot. 3:27-4:5.

Employment and Fee Applications: Counsel spent 8.4 hours in this category. Counsel’s services include preparing its own employment application, preparing the application to employ special counsel, communicating with special counsel and its agent regarding employment, and preparing this fee application. *Id.* at 4:6-11.

General Case Administration: Counsel spent .2 hours in this category. Counsel’s services include communicating with Trustee regarding distributions. *Id.* at 4:12-13.

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:



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 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.