

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 28, 2023 at 10:30 a.m.

1. 16-90083-E-7 ICE-5	VALLEY DISTRIBUTORS, INC. Iain Macdonal	MOTION FOR COMPENSATION FOR IRMA EDMONDS, CHAPTER 7 TRUSTEE(S) 8-16-23 [437]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2023. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Trustee 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 Trustee Fees is granted.

Irma Edmonds, the Chapter 7 Trustee, (“Applicant”) for the Estate of Valley Distributors, Inc. (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period of February 2, 2016, through March 22, 2023.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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 the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include the rendering of all Trustee services since appointment to this case. The Estate has \$359,649.13 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$35,252.19
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$41,002.19
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$41,002.19
Less Previously Paid	\$0.00
<u>Total First Final Fees Requested</u>	\$41,002.19

The fees are computed on the total sales generated \$755,043.86 of net monies (exclusive of these requested fees and costs), with an estimated gross value of \$359,649.13 remaining to be distributed.

COSTS AND EXPENSES REQUESTED

Trustee requests the court approve costs and expenses in the amount of \$5,545.11 for postage, travel, deposit slips, copies, checks, storage unit fees, and “other.” Exhibit A, Dckt. 440.

While the expenses are detailed, there are several expense which are identified only as “other:”

Other 1.0 OTHR at \$167.29

Other 1.0 OTHR at \$288.45

Exhibit A; Dckt. 440. These “other” expenses are 8.2% of the total expenses requested.

As the Trustee can appreciate, costs and expenses sought to be recovered by professionals employed by the estate, attorneys, and even the Trustee need to be adequately identified. This disclosure must be provided by all, and the court does not have the luxury of saying, “well, this applicant is someone I trust, so they don’t need to tell me what the expenses are they want to be paid from the estate.”

In addition to reviewing the Motion, Trustee’s Declaration, and the Exhibit filed in support of the Motion, the court has reviewed the Trustee’s Final Report (Dckt. 432). Unfortunately, the court cannot identify what these Other Expenses for \$167.29 and \$288.48 are for.

At the hearing, **XXXXXXX**

~~FEES AND COSTS ALLOWED~~

~~_____ The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First Final Fees in the amount of \$41,002.19 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.~~

~~_____ In this case, the Chapter 7 Trustee currently has \$359,649.13 of unencumbered monies to be administered. The Chapter 7 Trustee rendered Trustee services since appointment to this case. Applicant’s efforts have resulted in a realized gross of \$755,043.86 recovered for the estate. Dckt. 432.~~

~~_____ This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.~~

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

_____ Fees _____	\$41,002.19
_____ Costs and Expenses _____	\$5,545.11

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

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

~~_____ The Motion for Allowance of Fees and Expenses filed by Irma Edmonds, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~IT IS ORDERED~~ that Irma Edmonds is allowed the following fees and expenses as trustee of the Estate:

Irma Edmonds, the Chapter 7 Trustee

Fees in the amount of \$41,002.19

Costs and Expenses in the amount of \$5,545.11,

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.

2. [21-90418-E-7](#)
[HCS-2](#)

MIGUEL TERRIQUEZ
Richard Jare

MOTION TO SELL
8-23-23 [\[202\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2023. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 5912 Squire Wells Way, Riverbank, California ("Property"). Miguel Terriquez ("Debtor") owns approximately 50% of the Property with the other half belonging to Griselda Solorzano.

The proposed purchaser of the Property is Anthony Solorzano, Ms. Solorzano's brother, and the terms of the sale are:

- A. The purchase price is \$420,000.00.
- B. There are three mortgages against the Property, which will be paid in full from escrow at closing:
 - ▶ First Mortgage, Midland Mortgage - \$170,399.00 (estimated)
 - ▶ Second Mortgage, Real Time Solutions - \$52,354.00 (estimated)
 - ▶ Third Mortgage, HUD - \$51,536.00 (estimated)
- C. There is an IRS lien recorded against the Property in the amount of \$33,238, which is solely for the Debtor's unpaid federal tax liability, which will be paid from escrow at the time of closing.
- D. To the extent that there is any other liens or encumbrances, the sale is subject to such liens and encumbrances.
- E. The sale should net the Bankruptcy Estate \$60,000. As a condition to closing, Griselda Solorzano has agreed that to the extent the net funds to the Bankruptcy Estate are less than \$60,000, she will issue payment to the Bankruptcy Estate at closing to pay any shortfall to the estate. Alternatively, she will direct the title company, in writing, to do so from the sale proceeds, with a copy to the Trustee and his counsel.
- F. To the extent that the sale closes in an amount in excess of \$420,000, Ms. Solorzano will receive 90% of the net amount in excess and the Bankruptcy Estate will receive 10%.
- G. The Bankruptcy Estate will not be liable for any commissions, fees, or expenses to any Realtors in connection with the sale. In consideration of the services made by Realtor Marilu Ibarra of Referral City Realty, subject to the Court's approval, she will receive, from escrow at closing, a commission of 1% of the purchase price, which shall be paid solely from Griselda Solorzano's share of the proceeds.
- H. Within three court days after the escrow, Ms. Solorzano will file in the State Court Action a Request for Dismissal of the entire action without prejudice, each party to bear its own fees and costs.
- I. Ms. Solorzano filed a claim in the instant case in the amount of \$350,000, partially secured by the Property. She agreed she will not be paid on the claim and she will not file any additional claims in the Bankruptcy Case.
- J. The sale is subject to overbidding in the court's discretion.
- K. The sale is to close within three days after the Court's order authorizing the sale is final.

- L. The Buyer has removed all contingencies.
- M. The sale is “as is” and “where is” with all defects, known or unknown, latent and patent.
- N. The Buyer is paying the escrow fee and is paying for his title policy. The buyer is also paying county transfer taxes.
- O. The Buyer is paying for the purchase using his own funds and mortgage, and Ms. Solorzano is not paying any portion of the purchase price.

Dckt. 202.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale price is fair and reasonable, notice to creditors was proper, and the sale will be made in good faith. The sale is for \$20,000 more than the Debtor scheduled the value of the Property. Schedule A/B, Dckt. 1. If the Trustee were to look for a different buyer in the \$450,000 price range, the estate would also have to pay a realtor commission of approximately \$27,000, an industry standard 6%. This commission would reduce the net proceeds in line with the current proposed purchase price. Ms. Solorzano has signed and consented to the proposed sale which will net at least \$60,000 for the Bankruptcy Estate. Although the sale is being made to an arguable insider, Ms. Solorzano’s brother, the court find’s the sale to reflect the Property’s fair market value.

Movant has estimated a 1 percent realtor’s commission from Griselda Solorzano’s share of the proceeds of the sale of the Property. As part of the sale in the best interest of the Estate, the court permits Movant to pay the realtor an amount not more than 1 percent commission.

On September 7, 2023 creditor Real Time Resolutions, Inc. (“Creditor”), holding a second mortgage on the Property, filed a non-opposition, so long as its lien is paid in full. Dckt. 210. The proposed sale would pay all creditors’ liens on the Property in full.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because repeatedly rising interest rates put the transaction in danger. If interest rates continue to rise, the buyer will ultimately be unable to afford the loan. Additionally, the parties have been negotiating this transaction for many months, and it is important to all the parties to be able to close the sale as soon as possible. The buyer has also already qualified for a mortgage loan of \$399,000. The Property is the only asset the Trustee is administering, so once the sale closes, the Trustee will be able to move this case to a close.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Anthony Solorzano or nominee (“Buyer”), the Property commonly known as 5912 Squire Wells Way, Riverbank, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$420,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 207, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The net proceeds of the sale shall be used to satisfy the liens of Midland Mortgage, Real Time Resolutions, and HUD, as well as the IRS tax lien on the Property.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate realtor’s commission in an amount not more than 1 percent from Griselda Solorzano’s share of the proceeds of the actual purchase price upon consummation of the sale. The 1 percent commission shall be paid to broker, Marilu Ibarra.

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

Item 3 thru 4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

**The Motion to Approve Purchase and Sale Agreement and Motion to Sell
Property is **xxxxx**.**

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 253 Tissot Drive, Patterson, CA 95363 ("Property").

The proposed purchaser of the Property is Avinash Singh ("Debtor"), and the terms of the sale are:

- A. Debtor has agreed to Purchase the bankruptcy estate's interest in the Property, as is where is, within 30 days following this court's approval of the sale.
- B. Debtor agrees to make the following payments to Movant:
- ▶ \$50,000 due concurrently with the execution of the sales agreement (Debtor has already paid this initial amount),
 - ▶ fifteen monthly installments of \$12,000 each due on the first day of each calendar month, and
 - ▶ one balloon payment of \$45,000 due on November 1, 2024.
- D. Concurrently with approval of the sales agreement Trustee shall abandon the bankruptcy estate's interests in Randhawa Fuel, LLC and Randhawa Petroleum, LLC ("Gas Station Entities").
- E. After all payments have been made, Trustee agrees to abandon the bankruptcy estate's interest in the commercial property located at 1001 E. Yosemite Avenue, Manteca, California ("Manteca Commercial Property") and reconvey the deed of trust in the Property back to Debtor.
- F. Debtor shall execute a deed of trust on the residence to Trustee to secure the remaining payment obligations arising under the sales agreement.

Purchase and Sale Agreement, Dckt. 139.

DISCUSSION

Movant does not inform the court the value of the Property in either his Motion or declaration in support thereof. Debtor has listed the value of the Property at \$580,000 in his amended Schedule A/B. Dckt. 35. Debtor has claimed an exemption in the Property in the amount of \$415,000. Most of Debtor's liabilities consist of secured debts.

Debtor's largest debt is owed to the California Department of Tax and Fee Administration ("CDTFA") and is asserted in the amount of \$481,725.19. CDTFA asserts \$277,893.52 of that amount as a secured claim and \$203,831.67 of that amount as a priority claim. The San Joaquin Tax Collector asserts a secured claim, secured by Debtor's interest in the Manteca Commercial Property, of \$88,796.09.

Debtor also has three secured vehicle loans: Mercedes Benz asserts a secured claim in the amount of \$6,234.82, U.S. Bank National Association asserts a secured claim in the amount of \$51,580.70, and Capital One Auto Finance asserts a secured claim in the amount of \$36,108.11. Additionally, Debtor has two claims secured by deeds of trust on the Property: Nationstar Mortgage asserts a secured claim in the amount of \$117,397.96, and Usha and Vikash Sharma assert a secured claim in the amount of \$332,651.57.

Quantum3 Group LLC asserts a secured claim in the amount of \$4,056.83, likely also secured by the Property. California Franchise Tax Board asserts a priority claim of \$6,243.98. The IRS also asserts a priority claim in the amount of 11,464.26. There are three general unsecured creditors: AT&T Mobility II LLC asserts a general unsecured claim of \$5,224.97, Bahman Noori and Javad Soltani assert a general unsecured claim of \$138,254.77, and LVNV Funding, LLC asserts a general unsecured claim of \$1,199.06.

Movant has not informed the court how any of the funds it receives from the sales agreement will be distributed to any of these creditors. From what has been presented, it is unclear how this sale is of benefit to the Bankruptcy Estate and creditors holding unsecured claims and those owed administrative expenses.

At the hearing, ~~XXXXXXX~~

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

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale price is fair and reasonable, notice to creditors was proper, and the sale will be made in good faith.~~

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

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

~~The Motion to Sell Property filed by Geoffrey Richards, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Avinash Singh or nominee ("Buyer"), the Property commonly known as 253 Tissot Drive, Patterson, CA 95363 ("Property"), on the following terms:~~

~~A. The Property shall be sold to Buyer for a total purchase price of \$275,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dekt. 139, and as further provided in this Order.~~

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

~~C. The Property is sold subject to existing liens.~~

~~D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

4. [22-90225-E-7](#)
[WF-4](#)

AVINASH SINGH
David Johnston

MOTION TO ABANDON
9-6-23 [[142](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is XXXXX.

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

The Motion filed by Geoffrey Richards ("Trustee") requests that the court authorize him to abandon the Bankruptcy Estate's interests in Randhawa Fuel, LLC and Randhawa Petroleum, LLC ("Gas Station Entities") pursuant to the Sale Agreement, Exhibit A, Dckt. 144. Trustee informs the court that he has investigated these entities and has been unable to discern a valuation of Debtor's interests in the Gas

Station Entities. Declaration, Dckt. 145. Additionally, Trustee believes the expenses necessary for Trustee to operate the Gas Station Entities would make their operation not feasible for the bankruptcy estate. *Id.*

The Motion also requests the court to authorize Trustee to abandon the bankruptcy estate's interest in property commonly known as 1001 E. Yosemite Avenue, Manteca, California ("Manteca Commercial Property") pursuant to the Sale Agreement, Exhibit A, Dckt. 144. Trustee believes a sale of Debtor's residence commonly known as 253 Tissot Drive, Patterson, CA 95363 ("Property") is more advantageous than a sale of the Manteca Commercial property. Trustee does not indicate the value of the Manteca Commercial Property interest, but does indicate creditor San Joaquin Tax Collector asserts a claim of \$88,796.09 secured by the Manteca Commercial Property. Trustee asks the court for permission to abandon the Manteca Commercial Property after Debtor has made all payment requires by the Sales Agreement, Exhibit A, Dckt. 144.

Abandonment of these estate assets is contingent upon the court approving the Sales Agreement. However, until the concerns are addressed with Trustee's Motion to Sell, the court is unable to grant Trustee's request to abandon.

At the hearing, **XXXXXXX**

~~The court finds that the estate is best suited with the sale of the Property, and that the Gas Station Entities and Manteca Commercial Property interest should be abandoned.~~

~~————— 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 Abandon Property filed by Geoffrey Richards ("the Chapter 7 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 Compel Abandonment is granted, and the assets identified as Randhawa Fuel, LLC and Randhawa Petroleum, LLC ("Gas Station Entities") and 1001 E. Yosemite Avenue, Manteca, California ("Manteca Commercial Property") are abandoned to Avinash Singh by this order, with no further act of the Chapter 7 Trustee required.~~

5. [23-21438-E-12](#)
[CAE-1](#)

WESLEY/RUTH WOOLERY

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-2-23 [1](#)

Item 5 thru 6

Debtors' Atty: Stephen M. Reynolds

Notes:

Continued from 8/10/23 to be conducted with the continued hearing on the Motion to Use Cash Collateral.

Operating Reports filed: 9/14/23 [period ending 7/31/23]; 9/14/23 [period ending 8/31/23]

[RLC-1] Motion to Confirm Chapter 12 Plan filed 8/14/23 [Dckt 80]; Third Interim Order authorizing use of cash collateral filed 8/14/23 [Dckt 84]

Trustee Report at 341 Meeting lodged 8/15/23

[RLC-5] Notice of Withdrawal of Motion to Confirm Chapter 12 Plan filed 8/30/23 [Dckt 91]

Trustee Report at 341 Meeting lodged 9/14/23

The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2023.
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SEPTEMBER 28, 2023 STATUS CONFERENCE

September 28, 2023 at 10:30 a.m.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee and fewer than all creditors on May 12, 2023. By the court's calculation, 4 days' notice was provided. The court required 4 days' notice. Dckt. 30.

The Certificate of Service, Dckt. 26, indicates fewer than all creditors have been served, however, no "box" is checked to indicate whether these creditors are:

1. Creditors that have filed claims,
2. Creditors holding allowed secured claims,
3. Creditors holding allowed priority unsecured claims,
4. Creditors holding leases or executory contracts that have been assumed, or
5. 20 largest creditors

as required by EDC Form 7-005. At the hearing, counsel addressed shortcoming in the initial service.

In light of Creditor having filed an opposition and being in attendance at the hearing, the court waived the deficiency for this Initial Hearing on the Motion.

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 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Authority to Use Cash Collateral is XXXXXXXX.
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SEPTEMBER 28, 2023 HEARING

On August 30, 2023, the Debtor in Possession filed a dismissal of the Motion to Confirm the Chapter 12 Plan filed in this Case. Dckt. 19. Further, that an amended Plan would be filed the week of September 5, 2023. The Docket does not reflect such an amended Plan having been filed.

At the hearing, **XXXXXXX**

AUGUST 10, 2023 CONTINUED HEARING

The court has authorize the prior use of cash collateral as agreed by the Parties. The most recent order was entered on June 9, 2023. Dckt. 58. No supplemental pleadings for the further use of cash collateral have been filed.

At the hearing, counsel for the Debtor in Possession reported that the Debtor in Possession is preparing the Chapter 12 Plan and anticipates having the confirmation hearing set for September 7, 2023. Counsel for Creditor Rabo Agrifinance LLC requested that the authorization be on a further interim basis in light of the Debtor in Possession not yet selling cattle and generating income (including the monies to be paid Creditor under the agreed cash collateral term.

The court grants the Motion on an interim basis, authorizing the use of cash collateral as state din the budget. Counsel for the Debtor in Possession shall lodge with the court a proposed order authorizing the use of cash collateral through September 30, 2023.

The court continues the hearing on this Motion to 10:30 a.m. on September 28, 2023, for consideration of the further authorization to use cash collateral.

REVIEW OF MOTION

Wesley and Ruth Woolery (“ Debtor in Possession”) moves for an interim order authorizing the use of cash collateral and requests the court schedule a final hearing to consider entry of a final order authorizing use of cash collateral, granting replacement liens, and approving the proposed Debtor in Possession budget.

Debtor in Possession requests the use of cash collateral to (1) pay post-petition operating expenses incurred in the ordinary course of business; (2) pay costs and expenses of administration of the case; and (3) pay all other amounts as specified in the Debtor in Possession budget. Debtor’s Declaration in support of the Motion states the use of cash collateral is necessary to continue farming operations. Dckt. 23. Upon review of the proposed budget, Exhibit 1, Debtor’s budget is funded by the sale of the following:

Spring 2023 Calves.....\$355,000 generated February 2024

AB Fats.....\$20,000 generated December 2023

Cull Cows.....\$20,000 generated May 2023

September 28, 2023 at 10:30 a.m.

.....\$18,750 generated February 2024

MC Fats.....\$7,215 generated monthly, beginning in June 2023

FSA Livestock Forage.....\$90,000 generated July 2023
.....\$75,000 generated September 2023

Equipment Sales.....\$20,000 generated June 2023.

REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(i).

CREDITOR'S OPPOSITION

Creditor Rabo Agrifinance LLC ("Creditor RAF") filed a preliminary opposition on March 15, 2023. Dckt. 27.

Debtor's Motion states Creditor holds first-priority lien on substantially all assets, due to a perfected UCC-1 filing, as well as real property located at 42563 Wilcox Road, Hat Creek, California, in the amount of approximately \$1,700,000. Debtor's Motion, Dckt. 21. Debtor's Schedules, however, state under penalty of perjury that Creditor RAF has a secured claim in the amount of \$0.00, supported by collateral in an amount of \$0.00 and unsecured in the amount of \$0.00. Schedule D, Dckt. 1 at 11. Creditor RAF has not yet filed a proof of claim, however, their opposition states Debtor owes approximately \$2,269,868.81 on an Operating Line of Credit and \$496,569.11 on a Real Estate Line of Credit. Opposition, Dckt. 27 at 3:21-22.

Schedule Creditor RAF objects on the following grounds:

1. No Emergency Articulated:
 - a. The Emergency Motion fails to explain why Debtor in Possession must use Creditor RAF's cash collateral on an emergency basis.
 - b. The Motion fails to provide any details regarding the status of Creditor RAF's collateral, or what, precisely, Debtor in Possession would like to sell. The Motion only states Debtor in Possession plans to sale \$20,000 in "Cull Cows."
2. Shortcomings of Budget:
 - a. The budget does not indicate what is truly necessary for Debtor's continued operations.

September 28, 2023 at 10:30 a.m.

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- b. The proposed accounting expense is inappropriate because Debtor has not sought approval to employ an accountant.
- c. It is not clear whether May budgeted items relate to pre-petition obligations.
- d. Creditor RAF does not know what cash collateral Debtor currently has on hand.

Creditor RAF requests the Emergency Motion be denied or set on full notice so Debtors may file their schedules and provide information necessary for Creditor RAF and the court to evaluate the proposed use of collateral.

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

The court has not been provided with enough financial information to determine whether the proposed use of cash collateral is in the best interest of the Estate.

First, Debtor has not yet filed all of their required Schedules. Rather, Debtor has only filed Schedules D and E/F. Even these Schedules appear inaccurate as there are discrepancies with the amount of Creditor RAF's secured claim, as detailed above. The court has no information regarding Debtor's financial information, which is necessary to determine whether to grant the Motion.

Second, the court has no information regarding Debtor's assets as of the petition date. Debtor states the "balance available" after one year of the Debtor in Possession Proposed Budget will be \$334,811:

	Monthly Expenses	Monthly Income	Balance Available
May-23	\$11,717	\$20,000	\$8,283
Jun-23	\$23,467	\$27,215	\$12,031
Jul-23	\$75,667	\$97,215	\$33,579
Aug-23	\$20,667	\$7,215	\$20,127
Sep-23	\$23,167	\$82,215	\$79,175
Oct-23	\$32,917	\$7,215	\$53,473
Nov-23	\$23,167	\$7,215	\$37,521
Dec-23	\$20,667	\$27,215	\$44,069
Jan-24	\$15,467	\$7,215	\$35,817
Feb-24	\$58,967	\$380,965	\$357,815
Mar-24	\$17,967	\$7,215	\$347,063
Apr-24	\$19,467	\$7,215	\$334,811
Total	\$343,304	\$678,115	\$334,811

However, the Debtor has not provided the court with information as to what the balance of cash on hand is currently, nor at the time of filing the petition. The court is unable to determine whether the income generated is necessary for the farming operations.

Third, Debtor has not filed their Schedules A/B or C. Debtor appears to be generating income from the sale of cattle and equipment. The Proposed Budget does not indicate the quantity of herd that will be sold in order to generate the necessary income, the fair market value for the specific type of cattle, and what percent of Debtor's herd they will be selling. Absent this information, the court cannot postulate whether the proposed budget is fair and in the best interest of the estate.

Fourth, as Creditor RAF has stated, Debtor has not adequately described what the "emergency" is. It is not clear why the Motion is set on an emergency basis, and why it cannot be set by the full noticed

period, allowing creditors and the court proper time to review Debtor's financial reality, and whether the use of cash collateral is necessary for the continued farming operation.

Fifth, although Debtor states Creditor RAF will be adequately protected, Debtor has not described what the "adequate protection payments the Debtor proposes to pay equal to the accruing interest on the Secured Claims" will be.

Sixth, Debtor's Budget includes a monthly expense of \$500 for "Accounting." If Debtor is using an accountant, the employment and compensation of such must be approved consistent with Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327(a), 328(a), and 330.

MAY 16, 2023 HEARING AND INTERIM AUTHORIZED USE OF CASH COLLATERAL

Counsel for the Debtor in Possession reported that on May 16, 2023, a cattle report to Creditor. There are 658 head of cattle. The Debtor in Possession is providing documentation to Creditor's counsel.

A long, constructive discussion was conducted at the May 16, 2023, Emergency First Day hearing for the use of cash collateral. Counsel for the Debtor in Possession reported that the FSA Livestock Forage are direct payments from the Dept of Agriculture. Other than that, the Debtor in Possession is generating revenues from the sale of Creditor's collateral.

Counsel for the Debtor in Possession advanced the argument that the monies being spent are to not just maintain Creditor's collateral, the herd, but enhance its value. If the revenues to be generated from the sale as show on the budget are accurate, such would be true.

Counsel for the Debtor in Possession also reported that there is very little cash in the bank today for the estate, and the sale of Creditor's collateral is necessary to move forward, care for the herd, and generate increased revenues from the sale of the her.

Counsel for Creditor pointed out that in January 2023 the Debtor reported that there were 687 cows in the herd, but in June that number had dropped to 658 cows in June 2023 - which included 183 new cows just born. Under the agreements in the State Court Receivership Action Debtor was to report any proposed sales to the Receiver and Creditor, and Creditor does not have information about how the herd was reduced between January and June 2023.

The Debtor in Possession and Creditor agreed to authorize the emergency use of cash collateral to pay the necessary expenses to care for and preserve the herd. These are only for post-petition expenses. The Parties will meet and confer to draft an order authorizing the interim use of cash collateral and continue the hearing to 11:30 a.m. on June 8, 2023.

As discussed at the hearing, the order will not authorize the use of cash collateral for expenses not relating to preserving the herd pending further hearings. An example of such is the "Vehicle Payments" listed on the proposed budget. That is for the Debtor's truck and will be addressed later.

The Debtor in Possession, Creditor, their respective counsel, and the court are limited at this point in time, the Schedules and Statement of Financial Affairs not having yet been filed.

The court authorizes the use of cash collateral for May and June 2023 as outlined above for the proposed budget (Dckt. 31).

Counsel for Creditor and counsel for Debtor in Possession shall joint prepare and lodge with the court a proposed order authorizing such use.

June 8, 2023 Hearing

The court's review of the Docket as of June 5, 2023, showed that no further pleadings were filed.

The Debtor in Possession filed Status Conference Report on May 31, 2023. Dckt. 51. In this Status Report the Debtor in Possession states that are no significant Motion to be prosecuted and that the Debtor in Possession intends to timely file a Chapter 12 Plan of Reorganization.

With respect to providing evidence that Debtor was eligible to file a case under Chapter 12, the following is stated:

The creditor meeting in this case is scheduled for June 6, 2023. Debtors are providing the Chapter 12 Trustee various documents which may provide the Trustee the information he requires to make his report regarding Chapter 12 Eligibility. The vast majority of the debt and income in this case is farm related and eligibility issues are not anticipated.

Status Report, p. 2:7-11; Dckt. 51.

Michael Meyer, the Chapter 12 Trustee, provided his Status Report, filed on June 2, 2023. Dckt. 52. The Trustee discusses the delay in Debtor in filing the required Schedules. Additionally, the Trustee states that the Debtor, who is serving as the Debtor in Possession, has not provided various documents, which is preventing the 341 Meeting of Creditors being conducted. These documents, requested on May 9, 2023, include:

- a. Last Two Years Tax Returns
- b. Bank Statements for The Last Six Months.
- c. Business Licenses
- d. Income Statement and Balance Sheets
- e. Insurance Policies
- f. Cash Flow Statements
- g. Copies of the Deed for each property owned or leased by the debtor including details as to acreage and crop status
- h. Production records with respect to growing crops. Corporate and LLC or LLLP documents.

I. All lawsuits

j. List of all inventory and equipment with current values dates of purchase and values when purchased

k. List of all funds, accounts receivables, claims pending escrows, owed to the business at the time of filing.

l. Any and all permits required to operate the business.

Trustee Status Report, p. 2:10-27; Dckt. 52.

The Trustee notes that the Order Setting the Chapter 12 Status Conference requires the Debtor, serving as the Debtor in Possession, file with the court for the Status Conference evidence showing eligibility to file a Chapter 12 Case, not merely provide it to the Trustee. The court's Order setting the Status Conference states:

The court also intends to review the issue of Chapter 12 eligibility. Before the court can confirm a Chapter 12 plan, the court must make a finding that the plan complies with the provisions of Chapter 12 and the other applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1225(a)(1). **One of those provisions is 11 U.S.C. § 101(18), which defines who is a "family farmer" eligible for relief under Chapter 12. Eligibility is a necessary requirement to confirmation of a Chapter 12 plan under § 1225(a)(1). *In re Garako Farms, Inc.*, 98 B.R. 506, 508 (Bankr. E.D. Cal. 1988). The Debtor has the burden of proof to convince the court that the requirements of § 1225 have been met. *Id.* at 509.**

On or before 6/14/23, the **Debtor(s) shall file and serve** on the Chapter 12 Trustee a status report together with **evidence and legal authority to establish that these Debtor(s) are a "family farmer" as that term is defined in § 101(18)(A).** Said evidence shall include, but not be limited to, documentation which illustrates the nature of and parties to each of the farm related secured debts listed in Schedule D. The parties shall also file and serve evidence to show the terms of any partnership agreements, real property leases, crop sharing agreements or other documents which tend to show who owns and operates the farming operation of the Debtors' property. The Trustee is invited to file his report and analysis regarding the issue of eligibility.

Order Setting Chapter 12 Status Conference, p. 2; Dckt. 10. (Emphasis added.)

At the hearing, counsel for the Debtor in Possession reported that a stipulation has been reached with Rabo Agrifinance for the interim use of cash collateral. The parties have prepared a Stipulation to be filed with the court and a proposed order to be lodged with the court. The Stipulation provides for the use of cash collateral through August 11, 2023.

Motion Granted

As agreed by the parties, the court authorized the use of the cash collateral.

September 28, 2023 at 10:30 a.m.

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September 28, 2023 Hearing

At the hearing, xxxxxxxx

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 hearings.

The Motion for Authority to Use Cash Collateral filed by Wesley and Ruth Woolery (“Debtor in Possession”) having been presented to the court, the court having determined at the August 10, 2023 hearing to authorize the use of cash collateral on an interim basis, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to use Cash Collateral is
xxxxxxx

~~The court shall enter a separate order granting the Motion and authorizing the use of cash collateral on an interim basis as stated in the budget presented to the court.~~

~~Counsel for the Debtor in Possession shall lodge with the court a proposed order authorizing the use of cash collateral through xxxxxxxx, with the budget attached as an exhibit to the proposed order.~~

Item 7 thru 8

Debtor's Atty: Dennis D. Miller; Kathleen L. DiSanto

Notes:
Continued from 6/15/23

Operating Reports filed: 7/14/23; 8/14/23; 9/12/23

[DDM-22] Debtor in Possession's Amended Ex Parte Application for Authorization to Pay Expenditures for Priority Repairs to Indiana Avenue Property filed 6/27/23 [Dckt 233]

[UST-1] Motion of the United States Trustee to Convert or Dismiss Chapter 11 Case filed 7/25/23 [Dckt 241]; heard 9/7/23 and continued to 9/28/23 at 10:30 a.m.

The Status Conference is XXXXXXX
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SEPTEMBER 28, 2023 STATUS CONFERENCE

On September 21, 2023, the Debtor in Possession filed an updated Status Report. Dckt. 269. The information provided by the Debtor in Possession includes the following.

The Debtor in Possession reports that the Bankruptcy Estate currently has substantial cash reserves, in the mid six figures. Additionally, the Estate has the Indiana Avenue property in Chicago.

The Debtor in Possession intends to proceed with an amended disclosure statement and amended plan, but they have not been filed yet. The Debtor in Possession is working to address issues concerning the certificate holders, possible secured claim status. The target confirmation time is prior to the end of 2023.

The Debtor in Possession states that a total of \$10,000.00 in general unsecured claims have been filed in this Case. It is not clear from the claims docket which of the Proofs of Claims filed are identified as unsecured, versus possible secured claims of certificate holders.

The Debtor in Possession is considering seeking authorization to make an interim *pro rata* distribution to the certificate holders prior to confirmation of the Chapter 11 Plan.

The Debtor in Possession has filed "General Notes" to the Monthly Operating Reports which provide background information. In the latest filed on September 12, 2023, (Dckt. 264), the Debtor in

Possession has not made any new loans in the past two years and that no certificates (borrowing by the Debtor) have been issued since 2016.

At the Status Conference, **XXXXXXX**

JUNE 15, 2023 STATUS CONFERENCE

As of the court's June 13, 2023 review of the Docket, no updated Status Report was filed by the Debtor in Possession. On June 13, 2023, the court entered an order authorizing the employment of a real estate broker for the marketing of the Indiana Avenue Property. Dckt. 225. The court had previously authorized the expenditure of monies to make necessary repairs to the Indiana Avenue Property. May 16, 2023 Order; Dckt. 221.

In the Debtor in Possession's most recent Status Report, filed January 25, 2023 (Dckt. 194), the Debtor in Possession stated that it intended to have filed and commence prosecution of confirmation of a Chapter 11 Plan within thirty to forty-five days of January 25, 2023. No proposed plan and disclosure statement have been filed.

At the Status Conference, counsel for the Debtor in Possession reported that the Debtor in Possession has not been making interim disbursements in light of the potential sale of the Indiana Property. For the Indiana Property, the Debtor in Possession is finalizing the necessary repairs to satisfy the City of Chicago health and safety issues.

The U.S. Trustee questions why the notices are going only to the Custodians and not also send notice to the account owners. Counsel for the Debtor in Possession reported that she will address this further with the U.S. Trustee.

FEBRUARY 16, 2023 STATUS CONFERENCE

On January 25, 2023, the Debtor in Possession filed its updated Third Status Report. Dckt. 194. Items reported include:

- A. The Estate continues to have substantial cash reserves, in addition to other non cash assets, and is administratively solvent.
- B. The Debtor in Possession has authorization to use cash collateral through the end of April 2023, with a continued hearing on the Motion to Use Cash Collateral set for 10:30 a.m. on April 16, 2023.
- C. The Debtor in Possession intends to file an amended Chapter 11 Plan within the next forty-five (45) days. The Debtor in Possession continues to work to determine the nature and scope of certificate holders' interests in property and claims of creditors.
- D. With the Claims Bar Date having passed, there are less than \$10,000 in claims filed.

E. The Debtor in Possession reports that TMI confirms that notice are being mailed to the certificate holders.

At the Status Conference, counsel for the Debtor in Possession provided an overview of where this case now sits and where it should be heading.

The U.S. Trustee commented that in an unrelated case which had “certificate holders,” there was active creditor participation. It was questioned why, if the Debtor in Possession believes that the Certificate Holders are the actual creditors, why notice is not being given directly.

8. 22-90160-E-11 UST-1	EAGLE LEDGE FOUNDATION, INC. Kathleen DiSanto	CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 7-25-23 [241]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice on July 25, 2023. By the court’s calculation, 44 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).

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

<p>The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is XXXXXX</p>
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This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Eagle Ledge Foundation, Inc. (“Debtor”) has been filed by Tracy Hope Davis (“Movant”), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor’s failure to expeditiously prosecute the case.
- B. Debtor’s failure to provide insurance information reasonably requested by Movant.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 24, 2023. Dckt. 250. Debtor states that:

- 1. Debtor’s failure to expeditiously prosecute the case is excusable because the delay is due to circumstances outside of Debtor’s control, such as Debtor’s inability to gain possession and control over its real property. Furthermore, once Debtor was able to gain possession and control over its property, it was forced to spend time curing the state of disrepair.
- 2. Debtor complied with Movant’s requests regarding proof of insurance, showing that Debtor had Worker’s Compensation and General Liability coverage at all relevant times.

U.S. TRUSTEE’S RESPONSE

U.S. Trustee filed a Response on August 28, 2023. Dckt. 257. U.S. Trustee states and reiterates that:

- 1. Regardless of any proffered excuses, Debtor has inexcusably failed to expeditiously prosecute its case.
- 2. Debtor has obtained professional liability insurance coverage through May 25, 2024. Debtor has also obtained property insurance; however, the named insured is TMI Trust Company, not Debtor.
- 3. Debtor’s general liability insurance is only limited to claims arising at the Indiana Avenue Property, and again, the named insured is TMI Trust Company.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Delay of Confirmation

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's disclosure statement and prior plan on October 31, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1112(b)(1). 7 Collier on Bankruptcy ¶ 1112.04 (16th ed. 2023).

At the hearing, the parties agreed to a continuance to 10:30 a.m. on September 28, 2023, to afford the Debtor in Possession and creditors to move forward with the prosecution of this Case.

Failure to Provide Proof of Insurance

Furthermore, because the record shows that insurance has not been properly maintained on the property, the court finds dismissal to be appropriate. 11 U.S.C. § 1112(b)(4)(C) and (H).

At the hearing the U.S. Trustee reported that evidence of insurance has been provided, and this appears to address this point.

The hearing is continued to allow the Debtor in Possession and creditors to work further on the prosecution of this Case.

SEPTEMBER 28, 2023 HEARING

At the hearing, **XXXXXXX**

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

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

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis, the U.S. 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 or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is **XXXXXXX**

9. [22-90160-E-11](#) [DDM-5](#) **EAGLE LEDGE FOUNDATION, INC.**
Kathleen DiSanto **CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO GRANT REPLACEMENT LIENS, MOTION FOR ADEQUATE PROTECTION MOTION/APPLICATION TO APPROVE DIP BUDGET**
6-1-22 [35]

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve DIP Budget O.S.T. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Use Cash Collateral and/or Motion to Grant Replacement Liens, Motion for Adequate Protection, and Motion/Application to Approve Debtor in Possession Budget is **XXXXXXX.**

Eagle Ledge Foundation, Inc., as the Debtor in Possession seeks to use cash collateral, provide adequate protection, grant replacement liens, and get an operating budget approved.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves in the place of a bankruptcy trustee as the fiduciary to the bankruptcy estate 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

The Bankruptcy Estate includes the Debtor's pre-petition business and property. Debtor states that there are currently five active loans which total in the aggregate \$719,394.36. Motion, p. 4:14-15; Dckt. 35.

Upon receiving payments on these loans, the monies are deposited in interest bearing accounts, after deducting servicing fees, "for the benefit of the Debtor." *Id.*, p. 4:16-22.

Not more than two times per month, Debtor can request disbursements from the accounts. The Motion then states:

16. The Debtor believes the funds held by TMI and that will be collected on a postpetition basis by TMI may constitute cash collateral, and that the Collateral Agent may assert an interest in such funds for the benefit of the Certificate Holders, as such amounts represent proceeds of the mortgages held by the Debtor and the notes payable to the Debtor.

Id., ¶ 16. In a footnote, Debtor states that it does not admit any lien or secured claim. However, on the Schedules Debtor states that the Certificate Holders have claims secured by all of Debtor's assets, excluding the real property.

It is then further asserted that only the Collateral Agent is a person who can assert an interest in the property constituting cash collateral. It appears that this "Collateral Agent" is asserting the liens of the Certificate Holders.

Adequate Protection

In the Motion Debtor states having \$761,165.00 in its Operating Account. Debtor does not believe that these monies are subject to Creditor liens. The source of these monies is not identified in the Motion. However, on Schedule D, it is stated that the Collateral Agent for the Certificate Holders has a lien in all "cash, liquid security, and mortgage loan investments" of the Debtor.

To provide adequate protection for the Certificate Holders having claims (as stated on Schedule F for which it's Collateral Agent has a lien to secure their claims) totaling (\$4,043,001) (computed by deleting out the non Certificate creditors listed on Schedule F), Debtor states in the Motion:

24. As adequate protection of any interest the Collateral Agent may have in the loan proceeds collected on a post-petition basis, the Debtor proposes provide the Collateral Agent with monthly written reporting as to the status of collections and disbursements, in addition to complying with the reporting requirements under the Bankruptcy Code and Bankruptcy Rules (such as monthly operating reports).

25. To provide further adequate protection of the interests of any secured creditor, the Debtor proposes to open a third debtor-in-possession account (the "Collateral Account") and to the extent the balance of the Cash Proceeds in the Servicing Account exceeds \$75,000.00 on the last business day of the month, the Debtor, on or before the tenth day of next month, will direct TMI to transfer the funds in excess of \$75,000.00 to the Collateral Account.

However, it appears that the "adequate protection" is to merely a report of the status of the collateral and to transfer some of the existing collateral to the Collateral Agent.

Looking at Debtor's non-real property assets, it appears that the (\$4,043,001) is secured by personal property having a value, as stated by Debtor, of \$1,402,423. The purported adequate protection is to just hold part of the existing collateral as the collateral is reduced. Summary of Assets, Part 1; Dckt. 24.

Filed as Exhibit A in support of the Motion is an unauthenticated document titled Debtor's Proposed Budget. Dckt. 36. The Budget is stated to be:

	May 2022	June 2022	July 2022	August 2022	Sept 2022	Oct 2022	
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	TOTAL
Beginning Balance ¹	625,318.00	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	19,000.00
Cash Receipts ²	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	21,000.00
Rental Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL SOURCES	628,818.00	625,023.00	616,978.00	609,683.00	602,388.00	595,093.00	40,000.00
Expenses							
Bank Fees	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Copies/Postage	100.00	100.00	100.00	100.00	100.00	100.00	600.00
Insurance	0.00	500.00	0.00	0.00	0.00	0.00	500.00
Officer Salaries/ Payroll Taxes	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	6,145.00	36,870.00
Office Supplies	50.00	50.00	50.00	50.00	50.00	50.00	300.00
Property Management Fees		1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	7,500.00
TMI Loan Servicing and Escrow Fees	950.00	950.00	950.00	950.00	950.00	950.00	5,700.00
U.S. Trustee Fees	0.00	250.00	0.00	0.00	0.00	250.00	0.00
Legal	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
Accounting Fees	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
TOTAL USES	7,295.00	11,545.00	10,795.00	10,795.00	10,795.00	11,045.00	53,770.00
ENDING BALANCE	621,523.00	613,478.00	606,183.00	598,888.00	591,593.00	584,048.00	-13,770.00

Reviewing this Budget, Debtor projects receiving \$3,500.00 in cash receipts, which appear to be the payments on the loan that are the collateral for Certificate Holders, which total \$21,000.00. For the period May 2022 through October 2022, Debtor projects spending (\$53,770.00).

Footnote 2 to the Budget states that Debtor's cash receipts are generated from collection of borrower loan payments. Thus, for that period Debtor projects losing \$32,770.00 from its operations (which appears to be a reduction in the Certificate Holder's collateral).

No Declarations or other authenticated documentary evidence is provided by Debtor.

JUNE 7, 2022 HEARING

At the June 7, 2022 hearing, the court determined that issuance of an interim order granting the relief and creating replacement liens was proper. Further hearing will be conducted at 2:00 p.m. on June 30, 2022.

JUNE 24, 2022 DECLARATION

On June 24, 2022, Mark Young, employed by TMI, filed a declaration stating TMI receives and processes loan payments from borrowers and manages Debtor's church bond portfolio. Dckt. 76. TMI has not and does not provide brokerage or investment advice to Debtor. Additionally, Mr. Young states TMI serves as an escrow agent, paying agent, and registrar, pursuant to the agreement with Debtor.

JUNE 30, 2022 HEARING

At the continued hearing, counsel for the Debtor in Possession reviewed for the court the updated budget, filed at Dckt. 79, which includes some additional expenses and income.

The Motion is Granted and the Debtor in Possession is authorized to use cash collateral as provided in the updated Budget filed on June 27, 2022, Dckt. 79, with replacement liens granted for creditors with secured claims to the extent that there is a diminution in their collateral. See Interim Order, Dckt. 60.

A continued hearing on the Motion shall be conducted at 10:30 a.m. on October 6, 2022, to consider a supplemental request to use cash collateral and grant replacement liens. Supplemental pleadings for the further use of cash collateral shall be filed and served on or before September 22, 2022. Oppositions, if any, may be presented orally at the hearing.

Counsel for Debtor shall prepare an order authorizing the use of cash collateral, granting of replacement liens, and setting the further hearing consistent with the Ruling above, and lodge the proposed order with the court. A copy of the updated budget, Dckt. 79, shall be attached to the proposed order.

Supplemental Pleadings

On September 21, 2022, Debtor filed Supplemental Pleadings and Exhibits. Dckts. 147, 148. Debtor states:

1. On September 15, 2022, Debtor in Possession filed their Chapter 11 Plan, Disclosure Statement, and Supporting Documents.
2. Debtor in Possession has acted in compliance with the Cash Collateral Orders.
3. Debtor in Possession seeks authorization for continued use of Cash Collateral in a manner consistent with the terms of prior Cash Collateral orders.
4. Debtor in Possession requests an order:
 - a. Granting the Cash Collateral Motion;
 - b. Authorizing Debtor's continued use of Cash Collateral;
 - c. Granting replacement liens and adequate protection;
 - d. Approving the Debtor in Possession budget on an interim basis;
 - e. Scheduling a final hearing to coincide with the hearing on confirmation of the Chapter 11 Plan to consider relief requested in this Motion on a final basis; and
 - f. Such other and further relief the court deems appropriate.

Debtor in Possession's exhibits include:

1. Debtor in Possession's Proposed Budget (Exhibit A, Dckt 148); and

2. A Third Interim Order for Cash Collateral granting and the above requested relief (Exhibit B, *Id.*).

At the October 6, 2022 hearing, counsel for the Debtor in Possession reported that the use is for the period through April 2023, which she foresees as being sufficient to run through the confirmation of the Plan.

The Motion is granted.

The hearing is continued to 10:30 a.m. March 30, 2023, for the filing of any supplemental requests for use of cash collateral.

APRIL 6, 2023 HEARING

MARCH 22, 2023 DEBTOR IN POSSESSION'S SUPPLEMENT TO MOTION

On March 22, 2023, Debtor in Possession filed a Supplement to the Motion. Dckt. 206. Debtor in Possession states:

1. Debtor in Possession's proposed six-month budget for the period of April 2023 through October 2023 is attached as Exhibit A.
2. The proposed fourth interim order is attached as Exhibit B.
3. Debtor in Possession has operated in compliance with the prior Cash Collateral Orders.
4. Debtor in Possession's Budget contemplates expenditures in line with prior cash collateral budgets.
5. Debtor in Possession recently secured access to the Indiana Avenue property in Chicago, after completing foreclosure, and anticipates incurring additional expenses to make the property saleable. Debtor in Possession is in the process of obtaining estimates and bids and will file an updated budget when the information is available.
6. The Debtor in Possession continues to have over \$700,000 in cash in the estate. Therefore, Debtor in Possession anticipates interim distributions in the amount of \$100,000, subject to an upcoming motion for court approval, to Certificate Holders in May 2023.

Debtor in Possession requests the entry of an order:

- a. Granting the Cash Collateral Motion;

- b. Authorizing Debtor's continued use of Cash Collateral, granting the replacement liens and adequate protection, and approving the DIP Budget on an interim basis;
- c. Scheduling a final hearing to coincide with the hearing on confirmation of the chapter 11 plan to consider the relief requested in this Cash Collateral Motion on a final basis; and
- d. Other and further relief the Court deems appropriate.

April 6, 2023 Hearing

The Motion is granted and the Debtor in Possession is authorized to use cash collateral as provided in the Budget filed as Exhibit A, Dckt. 207.

The hearing is continued to 10:30 a.m. on September 28, 2023, to consider any further requests to use cash collateral.

SEPTEMBER 28, 2023 HEARING

SEPTEMBER 20, 2023 DEBTOR IN POSSESSION'S SUPPLEMENT TO MOTION

On September 20, 2023, Debtor in Possession filed a Supplement to the Motion. Dckt. 266. Debtor in Possession states:

- 1. Debtor in Possession has attached its proposed six-month budget for the period of October, 2023 through April, 2024. Exhibit A, Dckt. 267.
- 2. Debtor in Possession continues to operate its business and manage its property pursuant to 11 U.S.C. § 1107(a) and 11 U.S.C. § 1108.
- 3. Debtor in Possession has operated in compliance with the prior cash collateral budgets in this case.
- 4. Debtor in Possession contemplates expenditures generally in line with the prior cash collateral budgets, so Debtor in Possession seeks authorization for the continued use of cash collateral in a manner consistent with the terms of the prior Cash Collateral Orders.

Debtor in Possession requests the entry of an order:

- a. Granting the Cash Collateral Motion;
- b. Authorizing Debtor's continued use of Cash Collateral, granting the replacement liens and adequate protection, and approving the DIP Budget on an interim basis;

September 28, 2023 at 10:30 a.m.

- c. Scheduling a final hearing to coincide with the hearing on confirmation of the chapter 11 plan to consider the relief requested in this Cash Collateral Motion on a final basis; and
- d. Other and further relief the Court deems appropriate.

At the hearing, xxxxxxxxxx

~~Counsel for the Debtor in Possession will prepare a proposed order consistent with the above ruling and lodge it with the court.~~

FINAL RULINGS

10. [23-90375](#)-E-11

AMERICAN REAL ESTATE
GROUP, INC

Pro Se

DEBTOR DISMISSED: 09/01/23

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES

8-29-23 [[17](#)]

Final Ruling: No appearance at the September 28, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) as stated on the Certificate of Service on August 31, 2023. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the filing fee.

The Order to Show Cause is discharged as moot, this bankruptcy case having been previously dismissed.

The court having dismissed this bankruptcy case by prior order filed on September 1, 2023 (Dckt. 19), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

Final Ruling: No appearance at the September 28, 2023 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 Debtors, Debtor’s Attorney, and Chapter7 Trustee, on August 18, 2023. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and/or Motion to Extend Time to File a Motion to Dismiss under Sec. 707(B) 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 Extend Deadline to File a Complaint Objecting to Discharge and the Deadline to Motion to Extend Time to File a Motion to Dismiss under § 707(b) is granted.

Tracy Hope Davis, United States Trustee, (“Movant”) moves to extend the deadline for the U.S. Trustee to file a complaint objecting to Donald Edward Duarte and Kristene Ambre Duarte’s (“Debtor”) discharge because Carla K. Cordero (“U.S. Trustee”) requires additional time to inspect documents Debtor has submitted. Dckt. 20.

The deadline for filing a complaint objecting to discharge was August 21, 2023. Dckt. 9. The Motion requests that the deadline to object to Debtor’s discharge be extended to November 21, 2023.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

When the motion is filed after the objection deadline but before discharge is granted, the underlying objection must be “based on facts that, if learned after the discharge, would provide a basis for revocation under” 11 U.S.C. § 727(d), and the moving party must not have had “knowledge of those facts in time to permit an objection.” FED. R. BANKR. P. 4004(b)(2).

The instant Motion was filed on August 20, 2023, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete its investigation, namely continuing to gather all necessary financial information about Debtor’s assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor’s discharge is extended to November 21, 2023.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Tracy Hope Davis, United States Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadlines in this Case for Movant to: (1) object to the Debtors, and each of them, being granted a discharge under 11 U.S.C. § 727 and (2) filing a motion to dismiss under 11 U.S.C. §§ 707(b)(1) and (3) are extended to November 21, 2023.