

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 20, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [21-10853](#)-A-12 **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-6-2021 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [21-11970](#)-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2021 [[1](#)]

GARY KAPLAN/ATTY. FOR DBT.

NO RULING.

4. [21-11970](#)-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**
[PJL-2](#)

CONTINUED MOTION FOR AN ORDER EXCUSING TURNOVER OF PROPERTY
9-1-2021 [[40](#)]

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

If the debtor's bankruptcy case is dismissed pursuant to matter #5 on this calendar, this motion will be DENIED AS MOOT.

CONTINUED MOTION TO DISMISS CASE
9-1-2021 [\[46\]](#)

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This continued motion was originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #67. The United States Trustee for Region 17 filed a reservation of rights should the court deny this motion to dismiss. Doc. #56. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

On September 29, 2021, the court heard extensive oral argument on the motion and continued the hearing on the motion to October 20, 2021, to permit the debtor and the moving party to file supplemental legal briefing on the limited issue of the admissibility of evidence submitted by the moving party. In addition to the legal arguments addressing admissibility, both parties submitted additional evidence. The court has not considered any of the additional evidence or submissions of either party that go beyond the admissibility of the initial evidence objected to by the HPM Entities.

This motion to dismiss was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings"), case no. 21-11970. Doc. #46. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves to dismiss the HPM Bankruptcies under 11 U.S.C. § 1112(b) or, alternatively, to dismiss the HPM Bankruptcies under 11 U.S.C. § 305(a)(1). Doc. #46. The court has considered the motion, opposition, reply, supplemental pleadings and oral argument presented at the hearing on September 29, 2021. After due consideration, Receiver's motion to dismiss will be GRANTED pursuant to 11 U.S.C. § 1112(b). Moreover, even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to dismiss or abstain ("McNamara Declaration"). Obj.,

Doc. #72; McNamara Decl., Doc. #48. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #72. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions. Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001).

To clarify the record, the court is admitting Exhibits 11 through 14 to establish the following:

- (1) With respect to Exhibit 11, on January 20, 2021, Receiver responded to a motion for an order to show cause that was filed by the HPM Entities in the State Court Action.
- (2) With respect to Exhibit 12, on February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants.
- (3) With respect to Exhibit 13, on May 21, 2021, Receiver filed a motion to sell real property owned by HPM Holdings in the State Court Action.
- (4) With respect to Exhibit 14, on June 11, 2021, the state court granted Receiver's motion to sell real property owned by HPM Holdings, and that order states that the net proceeds of escrow from the sale of that real property should be disbursed to the receivership estate.

The High Plains Entities

HPM Mgmt. is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6; Decl. of Terry Hansen Opposing Motion to Dismiss ("Hansen MTD Decl.") ¶ 3, Doc. #68.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31, Case No. 21-11971. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen MTD Decl. ¶ 3, Doc. #68. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.

HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at \$40,000. HPM Mgmt. Schedule A/B, Doc. #23, Case No. 21-11971.

HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, Case No. 21-11971.

HPM Mgmt. is the general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #68. HPM Holdings is a Texas limited partnership doing business in California. Hansen MTD Decl. ¶ 3, Doc. #68.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.

According to its bankruptcy schedules, HPM Holdings held \$499.34 cash in a BBVA checking account as of the petition date. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited \$154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 (APN 305-181-31-00-2), valued at \$338,000.00, and 19840 Aloha Way, California City, CA 93505 (APN 305-230-38-00-0), valued at \$310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled by HPM Holdings is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at \$4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling \$21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who holds a deed of trust on both Residences and is owed \$10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1.

HPM Holdings scheduled one unsecured claim of \$419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively, the "Securities Defendants") initiating People of the State of California v. Silver Saddle Commercial Development, LP, Case No.

37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #48; Ex. 4, Doc. #49. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen MTD Decl. ¶ 12, Doc. #68; Ex. 4, Doc. #49. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #49.

The state court issued a receivership order on October 30, 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶ 3, 15, Doc. #48; Receivership Order, Ex. 1, Doc. #49. The Receivership Order authorized and directed Receiver to

take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #49. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants and, upon so doing, required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #49.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they each qualified as Receivership Defendants. McNamara Decl. ¶ 20, Doc. #48; Ex. 10, Doc. #50. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #48. Receiver responded. McNamara Decl. ¶ 21, Doc. #48. On February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants. Minute Order, Ex. 12, Doc. #50. After the determination of the HPM Entities as Receivership Defendants, on May 13, 2021, Receiver filed a motion seeking state court approval to sell the Vacant Land owned by HPM Holdings to 69SV 8ME LLC for the purchase price of approximately \$4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings ("Sale Motion"). McNamara Decl. ¶ 23, Doc. #48; Hansen MTD Decl. ¶ 11, Doc. #68.

The HPM Entities did not oppose the Sale Motion, and on June 11, 2021, the Sale Motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #48; Sale Order, Ex. 14, Doc. #50. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order. McNamara Decl.

¶¶ 25-26, Doc. #48; Hansen MTD Decl. ¶¶ 16-17, Doc. #68. The proceeds from the sale, approximately \$4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #48; Hansen MTD Decl. ¶ 17, Doc. #68. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #50.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. Receiver has moved for an order excusing turnover that is opposed by the HPM Entities because the HPM Entities will have no ability to fund a reorganization without turnover by Receiver. Hansen MTD Decl. ¶ 18, Doc. #61.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #48; Ex. 16, Doc. #50.

Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud unsophisticated investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #49; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #49.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #49. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Schedules A/B, Doc. #81, and Schedule G, Doc. #31; Hansen MTD Decl. ¶ 8, Doc. #68. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #68. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #68. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen MTD Decl. ¶ 9, Doc. #68. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #68; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen MTD Decl. ¶ 14, Doc. #68. Hansen has assisted in preparing financial reports

and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, Silver Saddle Development and MCQ Corporation. Hansen MTD Decl. ¶ 10, Doc. #68. For this work, Hansen was paid a "minimum salary" to support Hansen's health insurance coverage. Hansen MTD Decl. ¶ 10, Doc. #68. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen MTD Decl. ¶ 10, Doc. #68.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child in Opposition to Motion to Dismiss ("Child Decl.") ¶ 1, Doc. #70; Hansen MTD Decl. ¶ 3, Doc. #68. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #70. Silver Saddle Development is indebted to Child in the amount of \$1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #70. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #70. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #70.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #70; Hansen MTD Decl. ¶ 3, Doc. #68.

Receiver Has Standing

The HPM Entities contend that Receiver's motion must be dismissed because Receiver is not a party in interest and thus lacks legal standing to bring the motion. Doc. #67. The HPM Entities argument focuses on whether Receiver is a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Section 1112(b) of the Bankruptcy Code states that a motion to dismiss a chapter 11 case under this subsection must be brought "on request of a party in interest." 11 U.S.C. § 1112(b)(1).

Section 1109(b) provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). The statutory "list is illustrative, and not exhaustive." Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC), 803 F.3d 450, 457 (9th Cir. 2015). The Ninth Circuit has "observed that the party-in-interest standard has 'generally been construed broadly,' and that '[c]ourts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings so as to require representation.'" Tower Park, 803 F.3d at 457 (quoting Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 884 (9th Cir. 2012)).

However, "an entity 'that may suffer collateral damage' but does not have a legally protected interest does not have standing under § 1109(b). Such interests are 'too remote to entitle the entity to intervene in a bankruptcy case.'" Id. (quoting In re C.P. Hall Co., 750 F.3d 659, 661 (7th Cir. 2014)).

Some courts have found pre-petition receivers to lack standing as a party in interest. In In re Rimsat, Ltd., 193 B.R. 499 (Bankr. N.D. Ind. 1996), cited by

the HPM Entities, the bankruptcy court found the pre-petition receiver lacked standing as a party in interest because the receiver had not been relieved of the obligation to comply with the turnover requirements of 11 U.S.C. § 543. Rimsat, 193 B.R. at 502. The Rimsat court indicated that, had the receiver been excused from compliance with § 543, "the excused custodian would be a party in interest." Id. at 502 n.2, 503. Additionally, the Rimsat bankruptcy court determined that even if the receiver were a party in interest under § 1109(b), the receiver did not have any interests protected by § 1112(b), again, because the receiver had not attempted to be excused from the obligations of § 543(a) and (b) and had thus lost any protectable interest he may have had as a pre-petition receiver. Id. at 503.

Other courts have acknowledged that "[w]here the petition has been filed to allegedly end-run [a nonbankruptcy court's] liquidation order, the Receiver has a sufficient interest to qualify him as a real party in interest with standing for purposes of" motions brought under § 1112(b) and § 305(a). In re Ofty Corp., 44 B.R. 479, 482 (Bankr. D. Del. 1984); accord El Torero Licores v. Raile (In re El Torero Licores), No. SACV 13-08875-VAP, 2013 WL 6834609, 2013 U.S. Dist. LEXIS 179953 *1 (C.D. Cal. Dec. 20, 2013). This is true where the pre-petition receiver was appointed to liquidate the debtor's assets and the filing of the bankruptcy petition stayed the receiver's ability to carry out this function and put the debtor under the same control as when the receiver was first appointed. Ofty, 44 B.R. at 481-82.

Unlike in Rimsat, Receiver has moved for an order excusing turnover under § 543. Doc. #40. Moreover, the HPM Entities and Receiver have stipulated to defer Receiver's obligations under § 543 until this court rules on this motion and Receiver's motion to excuse turnover. Doc. #25; Order, Doc. #37. Because Receiver currently is excused from turnover under § 543 by the filing of his motion as well as the stipulation of the parties, the court determines that Receiver has standing to pursue this motion.

The facts presented in this case are strikingly similar to those in Ofty. As in Ofty, Receiver alleges that this bankruptcy was filed solely so the HPM Entities could avoid the consequences of an unfavorable state court proceeding. The HPM Entities agree, having repeatedly stated that the HPM Entities intend to use the protections of the Bankruptcy Code "so that proceeds of [the sale of the Vacant Land] inure to [HPM Holding]'s stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. The Receivership Order requires Receiver, in the event that an entity designated as a Receivership Defendant files bankruptcy, to continue to collect any rents and other income and make disbursements to preserve and protect the assets while Receiver awaits a decision from the State as to whether it intends to seek relief from the requirement to turnover assets to the debtor in possession. The State has objected to any turnover and requested Receiver remain in possession and preserve the assets in issue. McNamara Decl. ¶¶ 11-12, Doc. #48. As in Ofty, the filing of this bankruptcy case has stayed Receiver's ability to carry out his duties and subjects Receiver to competing, inconsistent obligations.

Accordingly, the court finds that Receiver has standing as a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

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A. Applicable Legal Standard

Receiver argues that the HPM Bankruptcies should be dismissed for cause under 11 U.S.C. § 1112(b) because they were not filed in good faith. Doc. #46. "Dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion." In re Stolrow's, Inc., 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988). A bankruptcy court "may consider any factors which evidence an intent to abuse the judicial process and the purposes of" reorganization. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988)).

If a motion to dismiss is based on bad faith, "[t]he moving party has the initial burden of making a prima facie case to support its allegations of bad faith." In re Avalon Hotel Partners, LLC, 302 B.R. 377, 384 (Bankr. D. Or. 2003). "Once such a showing has been made, the burden shifts to the debtor to establish that its chapter 11 case was filed in good faith." Id.; accord Marshall, 721 F.3d at 1048.

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. for Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7 or appointment of a trustee, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

In determining whether to dismiss a bankruptcy case for not being filed in good faith, the bankruptcy court may, in theory consider an unlimited number of facts. In practice, courts regularly turn to a variety of tailor-made lists, and both the HPM Entities and Receiver recite a number of factors typically present when a bankruptcy court determines that a bankruptcy petition is not filed in good faith. The court has considered these recited factors and relies on the following factors that evince an intent to abuse the judicial process and the purposes of reorganization:

- (1) The debtor has few unsecured creditors and few assets;
- (2) The few assets that the debtor has are the subject of ongoing state court litigation that is not going favorably for the debtor;
- (3) The debtor filed bankruptcy to protect its assets from unfavorable state court decisions before exhausting state court options;
- (4) There is no possibility of an effective reorganization within a reasonable time without awaiting the conclusion of the state court litigation; and
- (5) The state court litigation is not a dispute contemplated by the Bankruptcy Code or other authority to be resolved in bankruptcy court.

See Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828 (9th Cir. 1994); Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'ship), 30 F.3d 734, 738 (6th Cir. 1994); St. Paul Self Storage Ltd. P'ship v. Port Auth. (In re St. Paul Self Storage Ltd. P'ship), 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995); In re Mense, 509 B.R. 269, 279 (Bankr. C.D. Cal. 2014).

B. Receiver's Initial Prima Facie Showing of Bad Faith

The court finds that Receiver has met his initial burden of making a prima facie showing that the HPM Bankruptcies were filed in bad faith. Based on evidence submitted by Receiver in support of the Motion, Receiver was appointed in the State Court Action on October 30, 2019. In the State Court Action, commenced by the State on September 9, 2019, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud unsophisticated investors that, broadly stated, involved the sale of unqualified securities and undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club.

The Receivership Order allowed Receiver to identify nonparty entities as Receivership Defendants and, upon so doing, required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they each qualified as Receivership Defendants. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. Receiver responded and, on February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants.

After the determination of the HPM Entities as Receivership Defendants, on May 13, 2021, Receiver filed the Sale Motion, seeking state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately \$4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. The HPM Entities did not oppose the Sale Motion, and on June 11, 2021, the Sale Motion was granted in the State Court Action. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. HPM Mgmt. scheduled no unsecured claims and its sole asset is a 1% ownership interest in HPM Holdings. The only unsecured creditor of HPM Holdings is an attorney with a claim for \$419. The HPM Entities admit that the HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' stakeholders, rather than to the constituents of the receivership estate in the State Court Action. Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes, the only other pre-petition secured debt scheduled by the HPM Entities.

Based on the above, the court finds Receiver has met his initial burden of making a prima facie showing that the HPM Bankruptcies were filed in bad faith.

C. The HPM Entities' Showing of Good Faith

At the hearing on September 29, 2021, counsel for the HPM Entities argued that the HPM Bankruptcies were filed in good faith because prosecuting the

HPM Bankruptcies is the only way to protect the interests of the HPM Entities and the interests of Maney, Child and Hansen in the HPM Entities. Counsel for the HPM Entities asserted at the hearing that there were no mechanisms or procedures in the State Court Action for the HPM Entities and their equity security holders to protect their property interests.

However, the day before filing for bankruptcy, the HPM Entities appealed the Sale Order and that appeal remains pending. At the hearing, counsel for the HPM Entities acknowledged that while the HPM Entities are Receivership Defendants, the state court has not decided whether the property of the HPM Entities, as Receivership Defendants, should be used to pay alleged victims in the State Court Action, distributed to the HPM Entities' equity security holders, or a little of both. The HPM Entities concede that the State Court Action has not made any decision regarding the disposition of the assets of Receivership Defendants and neither the HPM Entities nor the equity security holders have even attempted to resolve these issues in the State Court Action. The HPM Bankruptcies were filed so that the decision of what to do with the property of the HPM Entities, as Receivership Defendants, would be made by the bankruptcy court, because, as counsel for the HPM Entities explained, the HPM Entities thought bankruptcy court would be a more favorable forum.

Additionally, the declarations of Child and Hansen filed in opposition to Receiver's motion emphasize the HPM Entities' position that the HPM Entities were not involved in the Galileo Project and are not named defendants in the State Court Action. Yet the state court determined the HPM Entities to be Receivership Defendants in February 2021 in response to an objection filed by the HPM Entities in the State Court Action. The declarations of Child and Hansen also state that, despite their personal connections to Securities Defendants, neither Child nor Hansen have any continued personal involvement with the businesses of the Securities Defendants (although payments from Silver Saddle Development to Child may be ongoing). Neither declaration sets forth any additional facts, separate from the State Court Action, demonstrating that the HPM Bankruptcies were filed in good faith, that an effective reorganization is possible within a reasonable time, or that creditors (as distinguished from equity security holders) would benefit from bankruptcy protection.

In essence, the HPM Entities seek to demonstrate that Child and Hansen are not connected to Securities Defendants or the Galileo Project, but this does not demonstrate an absence of cause to dismiss the HPM Bankruptcies. The HPM Entities were determined to be Receivership Defendants in the State Court Action, and the HPM Entities are now attempting to use the Bankruptcy Code to avoid the consequences of that determination. While bankruptcy courts are empowered to avoid, modify, and discharge state judgments, pre-petition state judgments regarding identical issues raised in the bankruptcy proceedings are given full faith and credit in bankruptcy courts. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1079, 1084 (9th Cir. 2000).

It is undisputed that the HPM Entities are Receivership Defendants. It also is undisputed that the HPM Entities unsuccessfully opposed, though did not appeal, that designation in the State Court Action. This court does not presume to know what it may mean for the HPM Entities to be Receivership Defendants in the State Court Action. However, the filing of the HPM Bankruptcies does not change the status of the HPM Entities as Receivership Defendants, and the bankruptcy court is not the appropriate forum to decide unresolved issues in the State Court Action.

Based on the above, the court finds the HPM Entities have not met their burden of showing that the HPM Bankruptcies were filed in good faith, and cause exists to dismiss the HPM Bankruptcies.

D. Other Factors Support Dismissal

Other factors also weigh in favor of dismissal. Combined, the HPM Entities have scheduled assets worth just shy of \$5 million, unsecured liabilities of less than \$500 and secured liabilities of less than \$35,000. Of the scheduled assets, the Vacant Land (or proceeds therefrom) is valued at \$4,155,188.47, and the Residences are valued at a combined \$648,000. There are no employees for either entity. HPM Mgmt. has only one asset, its 1% ownership interest in HPM Holdings. HPM Holdings has more than one asset, but those assets may be subject to the receivership estate. The primary asset, the Vacant Land, was sold by Receiver in the State Court Action. Receiver intends to sell the Residences, the sale of which would pay all secured liabilities in full. There are no significant assets that have not been incorporated into the State Court Action. Whatever the number of assets, these bankruptcy cases are essentially two-party disputes, Receiver against the HPM Entities, that will be better resolved outside of the bankruptcy court's jurisdiction. Resolution outside of the bankruptcy court's jurisdiction, in fact, is already happening in the context of the ongoing State Court Action and related appeals.

The HPM Entities have no possibility of effectively reorganizing within a reasonable time before the conclusion of the rights of the HPM Entities as Receivership Defendants in the State Court Action. To the extent a plan of reorganization is possible, the HPM Entities claim that they will have no ability to fund a reorganization without turnover by Receiver. But even turnover by Receiver will not necessarily enable the HPM Entities to fund a reorganization. This point was illuminated at the hearing on September 29 when counsel for the HPM Entities acknowledged that requiring Receiver to turnover the Residences and the proceeds from the sale of the Vacant Land would not authorize the HPM Entities to actually use those assets to fund a plan. Assuming all property was in the custody of the HPM Entities, Receiver's claim in the property would still need to be resolved, and that resolution would occur in the State Court Action.

Taking all the circumstances into consideration, it is evident from the record before this court that the HPM Bankruptcies were filed to prevent Receiver from complying with the Sale Order, to renew unsuccessful state court arguments pertaining to the HPM Entities' status as Receivership Defendants, to prevent sale proceeds from being distributed in the manner required by the State Court Action, as well as to forum shop and have the bankruptcy court decide issues pending in the State Court Action before the state court could rule against the HPM Entities. Accordingly, the court determines that both HPM Bankruptcies were filed in bad faith and there is cause for dismissal under 11 U.S.C. § 1112(b).

Dismissal is in the best interest of creditors and the estate. There are no creditors with claims secured by the Vacant Land that would be in a better position if the proceeds from the sale of the Vacant Land went to the HPM Entities rather than Receiver. The Kern County Tax Commissioner will be paid from the sale proceeds no matter who ultimately claims the pot. Additionally, dismissing the HPM Bankruptcies to permit Receiver to continue under the authority of the State Court Action will likely result in the full satisfaction of Accelerated Assets' secured claim against the Residences and the payment in full of all outstanding property taxes, thus satisfying all secured claims against the HPM Entities.

Accordingly, Receiver's motion to dismiss under 11 U.S.C. § 1112(b) will be granted. Both HPM Bankruptcies will be dismissed.

Dismissal under § 305(a)(1)

Even if dismissal is not warranted under § 1112(b), the court determines that dismissal under § 305(a) would be appropriate.

Section 305(a) of the Bankruptcy Code allows the court to dismiss or suspend bankruptcy proceedings if "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1).

In the Ninth Circuit, dismissal under § 305(a)(1) most frequently arises in involuntary cases. See Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc.), 370 B.R. 236, 252 (B.A.P. 9th Cir. 2007) (stating that § 305(a)(1) is "intended to deal with involuntary petitioners who . . . improperly seek to impose the consequences of bankruptcy on an unwilling debtor"); Marciano v. Fahs (In re Marciano), 459 B.R. 27, 49-50 (B.A.P. 9th Cir. 2011) (holding the two-step process for dismissal under § 1112(b) "is appropriate in the context of deciding a § 305(a) motion with respect to a pending Involuntary Petition"). Courts have also held that dismissal under § 305(a) is not confined to involuntary cases, see In re Honolulu Affordable Hous. Partners, LLC, No. 15-00146, 2015 Bankr. LEXIS 1558 *1 (Bankr. D. Haw. May 7, 2015), In re Law Offices of T. Robert Hill, P.C., No. 17-10597, 2017 Bankr. LEXIS 4321 *1 (Bankr. W.D. Tenn. June 20, 2017), and the HPM Entities do not argue that § 305(a) is inapplicable to this proceeding. Therefore, the court will address the § 305(a) arguments of the parties.

"Dismissal under § 305(a)(1) is appropriate 'only in the situation where the court finds that both creditors and the debtor would be better served by a dismissal.'" Marciano, 459 B.R. at 46 (quoting Eastman v. Eastman (In re Eastman), 188 B.R. 621, 624 (9th Cir. 1995)). As with the motion to dismiss under § 1112(b), both Receiver and the HPM Entities recite and apply various factors that courts frequently apply. The parties recite the following seven factors set forth in Marciano:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.

Marciano, 459 B.R. at 44-45. "While a court may afford more weight to any factor it deems most relevant, many courts have held that the first factor, the economy and efficiency of administration, is the paramount concern when determining if abstention under § 305(a) is appropriate." Law Offices of T. Robert Hill, P.C., 2017 Bankr. LEXIS 4621 at *9.

The economy and efficiency of administration favor dismissal of this case. The HPM Entities do not seek to avoid the sale of the Vacant Land; they only seek to retain the net proceeds from the sale. The HPM Entities have stated repeatedly that chapter 11 protection was sought so that net proceeds from the sale of the Vacant Land as well as the net value of the Residences are distributed among HPM Entities' equity holders, including Maney, rather than to the receivership estate. The dispute over the validity of the sale of Vacant Land by Receiver is ongoing in the State Court Action, as the HPM Entities have appealed the Sale Order and that appeal remains pending. The State Court Action alleges violations of state corporate law against numerous Securities Defendants on behalf of many individual investors. Decisions impacting the HPM Entities would be more efficiently resolved by the state court that has expertise and jurisdiction over all parties in the State Court Action. Additionally, the State Court Action likely would need to be resolved in full to settle competing interests in the assets of the bankruptcy estates of the HPM Entities. Dismissal favors economy and efficiency of administration for creditors and the HPM Entities.

In addition, there already is a pending proceeding, the State Court Action, that has been pending in state court for two years. Seven months ago, the HPM Entities were designated Receivership Defendants after challenging that designation in accord with procedures set forth in the Receivership Order. The state court has the subject matter expertise to resolve the state law allegations in the State Court Action, to determine the scope of the receivership estate created in the State Court Action, and to consider appropriate remedies. The HPM Entities have appealed the state court Sale Order, and the California courts of appeal can properly determine the appeals already filed by the HPM Entities. No final determination of the distribution of the assets of Receivership Defendants has been made in the State Court Action. Accordingly, the proceedings in the State Court Action are still available for an interested party to try to protect the interests of the HPM Entities, State, Receiver, HPM Entities' creditors, Maney, Child and Hansen in the assets of the HPM Entities.

Finally, federal proceedings are not required to reach a just and equitable resolution of the issues that the HPM Entities assert are the reasons for filing the HPM Bankruptcies. It would be a waste of resources and a damper on efficient administration for all parties to continue with the HPM Bankruptcies. Based on the record before the court, dismissing the HPM Bankruptcies would be less expensive for all parties, and all parties would be better served by resolving outstanding issues through the State Court Action.

Conclusion

Accordingly, the motion to dismiss pursuant to § 1112(b) is GRANTED. Were the court not dismissing this case pursuant to § 1112(b), it would be dismissed pursuant to § 305(a).

6. [21-11971](#)-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2021 [\[1\]](#)

GARY KAPLAN/ATTY. FOR DBT.

NO RULING.

7. [21-11971](#)-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
[PJL-2](#)

CONTINUED MOTION FOR AN ORDER EXCUSING TURNOVER OF PROPERTY
HELD BY A CUSTODIAN
9-1-2021 [\[34\]](#)

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

If the debtor's bankruptcy case is dismissed pursuant to matter #8 on this calendar, this motion will be DENIED AS MOOT.

8. [21-11971](#)-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
[PJL-3](#)

CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO DISMISS CASE
9-1-2021 [\[40\]](#)

THOMAS MCNAMARA/MV
GARY KAPLAN/ATTY. FOR DBT.
PAUL LEEDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This continued motion was originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on September 15, 2021. Doc. #60. The United States Trustee for Region 17 filed a reservation of rights should the court deny this motion to dismiss. Doc. #50. The failure of other creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the

granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

On September 29, 2021, the court heard extensive oral argument on the motion and continued the hearing on the motion to October 20, 2021, to permit the debtor and the moving party to file supplemental legal briefing on the limited issue of the admissibility of evidence submitted by the moving party. In addition to the legal arguments addressing admissibility, both parties submitted additional evidence. The court has not considered any of the additional evidence or submissions of either party that go beyond the admissibility of the initial evidence objected to by the HPM Entities.

This motion to dismiss was filed in the chapter 11 bankruptcy case of High Plains Mesa Management LLC ("HPM Mgmt."), case no. 21-11971, Doc. #40. A near identical motion was filed in the chapter 11 bankruptcy case of High Plains Mesa Holdings LP ("HPM Holdings"), case no. 21-11970. When referenced together, HPM Holdings and HPM Mgmt. will be referred to as "the HPM Entities" and their bankruptcies will be the "HPM Bankruptcies."

The movant Thomas McNamara ("Receiver"), a state-court appointed receiver, moves to dismiss the HPM Bankruptcies under 11 U.S.C. § 1112(b) or, alternatively, to dismiss the HPM Bankruptcies under 11 U.S.C. § 305(a)(1). Doc. #40. The court has considered the motion, opposition, reply, supplemental pleadings and oral argument presented at the hearing on September 29, 2021. After due consideration, Receiver's motion to dismiss will be GRANTED pursuant to 11 U.S.C. § 1112(b). Moreover, even if dismissal is not warranted under § 1112(b), dismissal under § 305(a) would be appropriate.

Debtor's Objection to Declaration of Thomas McNamara

The HPM Entities object to the Declaration of Thomas McNamara filed in support of Receiver's motion to dismiss or abstain ("McNamara Declaration"). Obj., Doc. #65; McNamara Decl., Doc. #42. Specifically, the HPM Entities object to paragraphs 21 through 24 of the McNamara Declaration and the attachments referenced by those paragraphs and attached to the declaration as exhibits 11 through 14 (the "Exhibits"). Doc. #65. The HPM Entities object to the admission of that portion of the McNamara Declaration and Exhibits to the extent they purport to establish the truth of the contents of the documents as evidence in this proceeding.

The objection is SUSTAINED only to the extent paragraphs 21 through 24 of the McNamara Declaration and Exhibits 11 through 14 are offered to prove the truth of the allegations contained therein. The Exhibits are admissible to the extent the Exhibits establish the nature and timeline of proceedings in the state court action, discussed in greater detail below. Therefore, the Exhibits are admissible to prove what happened in the state court action, what are the allegations in the state court action, what motions have been filed in the state court action, and how the state court has ruled on those motions. Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001).

To clarify the record, the court is admitting Exhibits 11 through 14 to establish the following:

- (5) With respect to Exhibit 11, on January 20, 2021, Receiver responded to a motion for an order to show cause that was filed by the HPM Entities in the State Court Action.
- (6) With respect to Exhibit 12, on February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and

Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants.

- (7) With respect to Exhibit 13, on May 21, 2021, Receiver filed a motion to sell real property owned by HPM Holdings in the State Court Action.
- (8) With respect to Exhibit 14, on June 11, 2021, the state court granted Receiver's motion to sell real property owned by HPM Holdings, and that order states that the net proceeds of escrow from the sale of that real property should be disbursed to the receivership estate.

The High Plains Entities

HPM Mgmt. is a Texas limited liability company authorized to do business in California. Decl. of Terry Hansen Supporting Chapter 11 Filings ("Hansen Bankr. Decl.") ¶ 1, Doc. #6; Decl. of Terry Hansen Opposing Motion to Dismiss ("Hansen MTD Decl.") ¶ 3, Doc. #61.

HPM Mgmt. is owned by three members. HPM Mgmt. List of Equity Security Holders, Doc. #31. Thomas M. Maney ("Maney") holds a 57% equity interest; Justin G. Child ("Child") holds a 33% equity interest; Terry E. Hansen ("Hansen") holds a 10% equity interest. Id. Hansen is the current manager of HPM Mgmt., although Child also has held the title of manager of HPM Mgmt. Hansen MTD Decl. ¶ 3, Doc. #61. Hansen is responsible for handling day-to-day operations of HPM Mgmt. Id.

HPM Mgmt. scheduled a single asset: a 1% ownership interest in HPM Holdings valued at \$40,000. HPM Mgmt. Am. Schedule A/B, Doc. #74. HPM Mgmt. scheduled no creditors, is not a party to any executory contracts or unexpired leases, and has no codebtors. HPM Mgmt. Schedules D, E/F, G, H, Doc. ##24-27, 75.

HPM Mgmt. is the general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #61. HPM Holdings is a Texas limited partnership doing business in California. Hansen MTD Decl. ¶ 3, Doc. #61.

HPM Holdings is owned by four limited partners. HPM Holdings List of Equity Security Holders, Case No. 21-11970, Doc. #27. Maney holds a 56.43% equity interest; Child holds a 21.29% equity interest; Hansen holds a 21.28% equity interest; and HPM Mgmt. holds a 1% equity interest. Id.

According to its bankruptcy schedules, HPM Holdings held \$499.34 cash in a BBVA checking account as of the petition date. HPM Holdings Am. Schedule A/B, Doc. #81. Pre-petition, HPM Holdings deposited \$154,451 with Farella Braun + Martel LLP, legal counsel for the HPM Entities, as a retainer. HPM Holdings Am. Schedule A/B, Doc. #81; HPM Holdings Am. Stmt. of Financial Affairs Ques. 11, Doc. #84. HPM Holdings has no accounts receivable, no investments, neither owns nor leases any inventory, office furniture or equipment, machinery, or vehicles. HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings scheduled undivided fee simple interests in residential real properties known as 19790 Remos Ct., California City, CA 93505 (APN 305-181-31-00-2), valued at \$338,000.00, and 19840 Aloha Way, California City, CA 93505 (APN 305-230-38-00-0), valued at \$310,000.00 (collectively, the "Residences"). HPM Holdings Am. Schedule A/B, Doc. #81. HPM Holdings has no interest in any intangibles or intellectual property. HPM Holdings Am. Schedule A/B, Doc. #81. The only other asset scheduled by HPM Holdings is a cause of action for turnover/avoidance against Receiver to recover the proceeds from the sale of approximately 640 acres of vacant land in unincorporated Kern County, California (the "Vacant Land") valued at \$4,160,000. HPM Holdings Am. Schedule A/B, Doc. #81.

The only two scheduled secured creditors of HPM Holdings are (1) the Kern County Treasurer with claims totaling \$21,493.18 from unpaid real property taxes on the Residences and Vacant Land, and (2) Accelerated Assets LLC who holds a deed of trust on both Residences and is owed \$10,434.11. HPM Holdings, Schedule D, Doc. #29; Proof of Claim #1, Case No. 21-11970.

HPM Holdings scheduled one unsecured claim of \$419.18 owed for legal services provided by Parker Mills LLP. HPM Holdings Schedule E/F, Doc. #30.

HPM Holdings scheduled two unexpired leases. HPM Holdings Schedule G, Doc. #31. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch & Club Inc. rents the Residences. HPM Holdings Schedule G, Doc. #31. The rent received is HPM Holdings' sole source of revenue. Am. Form 207, Doc. #84.

HPM Holdings scheduled Silver Saddle Ranch & Club Inc. as a codebtor to the debt owed to the Kern County Treasurer and Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32. HPM Holdings scheduled MCQ Corporation as a codebtor with respect to Accelerated Assets LLC. HPM Holdings Schedule H, Doc. #32.

State Court Proceedings, Generally

On September 9, 2019, the California Commissioner of Business Oversight, also referred to by the parties as the California Commissioner of Financial Protection and Innovation, (hereafter, the "State"), filed a complaint against Maney, Silver Saddle Commercial Development LP ("Silver Saddle Development"), Silver Saddle Ranch & Club Inc. ("Silver Saddle Ranch"), the Galileo Commercial Property Owners Association Inc. ("Galileo"), and related entities (collectively, the "Securities Defendants") initiating People of the State of California v. Silver Saddle Commercial Development, LP, Case No. 37-2019-00049151-CU-MC-CTL, Superior Court of California, County of San Diego (the "State Court Action"). McNamara Decl. ¶¶ 2, 14, Doc. #42; Ex. 4, Doc. #43. The allegations in the complaint centered around real estate investments called "LandBanking Plus" or "The Galileo Project" (collectively referred to as "Galileo Project"). Hansen MTD Decl. ¶ 12, Doc. #61; Ex. 4, Doc. #43. The State alleges that Securities Defendants, through the Galileo Project, sold "overpriced fractionalized interests in vacant desert land in rural Kern County" in a scheme to defraud unsophisticated investors. Ex. 4, Doc. #43.

The state court issued a receivership order on October 30, 2019, appointing Receiver in the State Court Action (the "Receivership Order"). McNamara Decl. ¶¶ 3, 15, Doc. #42; Receivership Order, Ex. 1, Doc. #43. The Receivership Order authorized and directed Receiver to

take possession of all real and personal property and assets of Defendants SILVER SADDLE COMMERCIAL DEVELOPMENT, LP; SILVER SADDLE RANCH & CLUB, INC.; THE GALILEO COMMERCIAL PROPERTY OWNERS ASSOCIATION, INC. as well as any other entity that has conducted any business related to Defendants' offering and selling of the Galileo Project investment contracts, including receipt of assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant (hereinafter "Receivership Defendants"), and their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to which Receivership Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership Defendants carry or maintain, or which may be

received during the pendency of this receivership, in order to obtain an adequate accounting of Receivership Defendants' assets and liabilities and to secure a marshalling of said assets.

Receivership Order 5:7-20, Ex. 1, Doc. #43. The Receivership Order further empowered Receiver to identify nonparty entities as Receivership Defendants and, upon so doing, required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Receivership Order 10:16-22, Ex. 1, Doc. #43.

Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they each qualified as Receivership Defendants. McNamara Decl. ¶ 20, Doc. #42; Ex. 10, Doc. #44. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. McNamara Decl. ¶ 21, Doc. #42. Receiver responded. McNamara Decl. ¶ 21, Doc. #42. On February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants. Minute Order, Ex. 12, Doc. #44. After the determination of the HPM Entities as Receivership Defendants, on May 13, 2021, Receiver filed a motion seeking state court approval to sell the Vacant Land owned by HPM Holdings to 69SV 8ME LLC for the purchase price of approximately \$4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings ("Sale Motion"). McNamara Decl. ¶ 23, Doc. #42; Hansen MTD Decl. ¶ 11, Doc. #61.

The HPM Entities did not oppose the Sale Motion, and on June 11, 2021, the Sale Motion was granted in the State Court Action (the "Sale Order"). McNamara Decl. ¶ 24, Doc. #42; Sale Order, Ex. 14, Doc. #44. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order. McNamara Decl. ¶¶ 25-26, Doc. #42; Hansen MTD Decl. ¶¶ 16-17, Doc. #61. The proceeds from the sale, approximately \$4,155,000, are currently being held in escrow by Stewart Title. McNamara Decl. ¶ 27, Doc. #42; Hansen MTD Decl. ¶ 17, Doc. #61. The Sale Order states that the net proceeds of escrow should be disbursed to the receivership estate. Ex. 14, Doc. #44.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The HPM Entities do not oppose the sale of the Vacant Land and intend to proceed with the sale to 69SV 8ME LLC. Hansen Bankr. Decl. ¶ 12, Doc. #6. The HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' "stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. Receiver has moved for an order excusing turnover that is opposed by the HPM Entities because the HPM Entities will have no ability to fund a reorganization without turnover by Receiver. Hansen MTD Decl. ¶ 18, Doc. #61.

Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes and fees. McNamara Decl. ¶28, Doc. #42; Ex. 16, Doc. #44.

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Players Common to Bankruptcy Proceedings and State Court Action

In the State Court Action, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud unsophisticated investors that, broadly stated, involves the sale of unqualified securities, undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club. Complaint, Ex. 4, Doc. #43; Hansen Bankr. Decl. ¶ 6, Doc. #6.

Maney, majority equity holder in both HPM Mgmt. and HPM Holdings, is a named defendant in the State Court Action. Maney is the central figure of the State's case, and the allegations against Maney are generally that Maney controls all of the named Securities Defendants and Maney used the Securities Defendants to violate California law and commit securities fraud. Complaint, Ex. 4, Doc. #43.

The State's complaint also named Silver Saddle Development and Silver Saddle Ranch. Complaint, Ex. 4, Doc. #43. HPM Holdings is the lessor pursuant to two unwritten real property leases of unspecified terms through which Silver Saddle Ranch rents the Residences. HPM Holdings Am. Schedules A/B, Doc. #81, and Schedule G, Doc. #31; Hansen MTD Decl. ¶ 8, Doc. #61. Pursuant to the unwritten lease agreements, Silver Saddle Ranch is responsible for all maintenance, insurance, and property taxes for the Residences. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #61. Silver Saddle Ranch also is responsible for paying franchise fees for both HPM Holdings and HPM Mgmt. and must pay the property taxes for the Vacant Land. Hansen Bankr. Decl. ¶ 5, Doc. #6; Hansen MTD Decl. ¶ 8, Doc. #61. In 2010, HPM Holdings pledged the Residences as security for the obligations of Silver Saddle Ranch and MCQ Corporation to Accelerated Assets LLC. Hansen MTD Decl. ¶ 9, Doc. #61. HPM Holdings scheduled Silver Saddle Ranch as a codebtor to debt owed to the Kern County Treasurer and to Accelerated Assets LLC. Schedule H, Doc. #32.

In addition to the equity interests stated above, Hansen is the manager of HPM Mgmt., which in turn is the sole general partner of HPM Holdings. Hansen MTD Decl. ¶ 1, Doc. #61; HPM Holdings List of Equity Security Holders, Doc. #27. Hansen is not a named defendant in the State Court Action. Hansen MTD Decl. ¶ 14, Doc. #61. Hansen has assisted in preparing financial reports and tax returns for HPM Holdings, HPM Mgmt., Silver Saddle Ranch, Silver Saddle Development and MCQ Corporation. Hansen MTD Decl. ¶ 10, Doc. #61. For this work, Hansen was paid a "minimum salary" to support Hansen's health insurance coverage. Hansen MTD Decl. ¶ 10, Doc. #61. Hansen states that his services were unrelated to the sale of Galileo Project investments and terminated more than two years ago. Hansen MTD Decl. ¶ 10, Doc. #61.

Child, in addition to the equity interests stated above, was previously the manager of HPM Mgmt., though both Child and Hansen state that Hansen has always been responsible for day-to-day managerial duties of HPM Mgmt. Decl. of Justin S. Child in Opposition to Motion to Dismiss ("Child Decl.") ¶ 1, Doc. #63; Hansen MTD Decl. ¶ 3, Doc. #61. Child was employed by Silver Saddle Ranch until approximately 2008 or 2009. Child Decl. ¶ 4, Doc. #63. Silver Saddle Development is indebted to Child in the amount of \$1,000,000 for a promissory note ("Note") that consolidated debts owed to Child by Silver Saddle Ranch and MCQ Corporation. Child Decl. ¶ 4, Doc. #63. Payments on the Note continued to be funded through Silver Saddle Ranch's and/or Silver Saddle Development's payroll system after Child retired approximately thirteen years ago. Child Decl. ¶ 4, Doc. #63. Child claims that the Note, based on monies Child loaned, is unrelated to the sale of Galileo Project investments giving rise to the State Court Action. Child Decl. ¶ 4, Doc. #63.

Both Child and Hansen state that "[a]lthough Thomas Maney also holds equity interests in each of [HPM Holdings] and [HPM Mgmt.] . . . he is neither a general partner of [HPM Holdings], nor a manager of [HPM Mgmt.], nor an officer

or director of either [HPM Holdings] or [HPM Mgmt.]." Child Decl. ¶ 3, Doc. #63; Hansen MTD Decl. ¶ 3, Doc. #61.

Receiver Has Standing

The HPM Entities contend that Receiver's motion must be dismissed because Receiver is not a party in interest and thus lacks legal standing to bring the motion. Doc. #67. The HPM Entities argument focuses on whether Receiver is a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Section 1112(b) of the Bankruptcy Code states that a motion to dismiss a chapter 11 case under this subsection must be brought "on request of a party in interest." 11 U.S.C. § 1112(b)(1).

Section 1109(b) provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). The statutory "list is illustrative, and not exhaustive." Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC), 803 F.3d 450, 457 (9th Cir. 2015). The Ninth Circuit has "observed that the party-in-interest standard has 'generally been construed broadly,' and that '[c]ourts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings so as to require representation.'" Tower Park, 803 F.3d at 457 (quoting Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 884 (9th Cir. 2012)).

However, "an entity 'that may suffer collateral damage' but does not have a legally protected interest does not have standing under § 1109(b). Such interests are 'too remote to entitle the entity to intervene in a bankruptcy case.'" Id. (quoting In re C.P. Hall Co., 750 F.3d 659, 661 (7th Cir. 2014)).

Some courts have found pre-petition receivers to lack standing as a party in interest. In In re Rimsat, Ltd., 193 B.R. 499 (Bankr. N.D. Ind. 1996), cited by the HPM Entities, the bankruptcy court found the pre-petition receiver lacked standing as a party in interest because the receiver had not been relieved of the obligation to comply with the turnover requirements of 11 U.S.C. § 543. Rimsat, 193 B.R. at 502. The Rimsat court indicated that, had the receiver been excused from compliance with § 543, "the excused custodian would be a party in interest." Id. at 502 n.2, 503. Additionally, the Rimsat bankruptcy court determined that even if the receiver were a party in interest under § 1109(b), the receiver did not have any interests protected by § 1112(b), again, because the receiver had not attempted to be excused from the obligations of § 543(a) and (b) and had thus lost any protectable interest he may have had as a pre-petition receiver. Id. at 503.

Other courts have acknowledged that "[w]here the petition has been filed to allegedly end-run [a nonbankruptcy court's] liquidation order, the Receiver has a sufficient interest to qualify him as a real party in interest with standing for purposes of" motions brought under § 1112(b) and § 305(a). In re Ofty Corp., 44 B.R. 479, 482 (Bankr. D. Del. 1984); accord El Torero Licores v. Raile (In re El Torero Licores), No. SACV 13-08875-VAP, 2013 WL 6834609, 2013 U.S. Dist. LEXIS 179953 *1 (C.D. Cal. Dec. 20, 2013). This is true where the pre-petition receiver was appointed to liquidate the debtor's assets and the filing of the bankruptcy petition stayed the receiver's ability to carry out this function and put the debtor under the same control as when the receiver was first appointed. Ofty, 44 B.R. at 481-82.

Unlike in Rimsat, Receiver has moved for an order excusing turnover under § 543. Doc. #40. Moreover, the HPM Entities and Receiver have stipulated to defer Receiver's obligations under § 543 until this court rules on this motion and Receiver's motion to excuse turnover. Doc. #25; Order, Doc. #37. Because Receiver currently is excused from turnover under § 543 by the filing of his motion as well as the stipulation of the parties, the court determines that Receiver has standing to pursue this motion.

The facts presented in this case are strikingly similar to those in Ofty. As in Ofty, Receiver alleges that this bankruptcy was filed solely so the HPM Entities could avoid the consequences of an unfavorable state court proceeding. The HPM Entities agree, having repeatedly stated that the HPM Entities intend to use the protections of the Bankruptcy Code "so that proceeds of [the sale of the Vacant Land] inure to [HPM Holding]'s stakeholders, rather than to the constituents of the receivership estate in the State Court Action." Hansen Bankr. Decl. ¶ 12, Doc. #6. The Receivership Order requires Receiver, in the event that an entity designated as a Receivership Defendant files bankruptcy, to continue to collect any rents and other income and make disbursements to preserve and protect the assets while Receiver awaits a decision from the State as to whether it intends to seek relief from the requirement to turnover assets to the debtor in possession. The State has objected to any turnover and requested Receiver remain in possession and preserve the assets in issue. McNamara Decl. ¶¶ 11-12, Doc. #42. As in Ofty, the filing of this bankruptcy case has stayed Receiver's ability to carry out his duties and subjects Receiver to competing, inconsistent obligations.

Accordingly, the court finds that Receiver has standing as a party in interest under 11 U.S.C. §§ 1109(b) and 1112(b).

Dismissal under § 1112(b): Bad Faith Filing

A. Applicable Legal Standard

Receiver argues that the HPM Bankruptcies should be dismissed for cause under 11 U.S.C. § 1112(b) because they were not filed in good faith. Doc. #40. "Dismissal for a lack of good faith in filing is a matter for the bankruptcy court's discretion." In re Stolrow's, Inc., 84 B.R. 167, 170 (B.A.P. 9th Cir. 1988). A bankruptcy court "may consider any factors which evidence an intent to abuse the judicial process and the purposes of" reorganization. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th Cir. 2013) (quoting Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988)).

If a motion to dismiss is based on bad faith, "[t]he moving party has the initial burden of making a prima facie case to support its allegations of bad faith." In re Avalon Hotel Partners, LLC, 302 B.R. 377, 384 (Bankr. D. Or. 2003). "Once such a showing has been made, the burden shifts to the debtor to establish that its chapter 11 case was filed in good faith." Id.; accord Marshall, 721 F.3d at 1048.

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. for Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7 or appointment of a trustee, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to

use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

In determining whether to dismiss a bankruptcy case for not being filed in good faith, the bankruptcy court may, in theory consider an unlimited number of facts. In practice, courts regularly turn to a variety of tailor-made lists, and both the HPM Entities and Receiver recite a number of factors typically present when a bankruptcy court determines that a bankruptcy petition is not filed in good faith. The court has considered these recited factors and relies on the following factors that evince an intent to abuse the judicial process and the purposes of reorganization:

- (6) The debtor has few unsecured creditors and few assets;
- (7) The few assets that the debtor has are the subject of ongoing state court litigation that is not going favorably for the debtor;
- (8) The debtor filed bankruptcy to protect its assets from unfavorable state court decisions before exhausting state court options;
- (9) There is no possibility of an effective reorganization within a reasonable time without awaiting the conclusion of the state court litigation; and
- (10) The state court litigation is not a dispute contemplated by the Bankruptcy Code or other authority to be resolved in bankruptcy court.

See Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828 (9th Cir. 1994); Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'ship), 30 F.3d 734, 738 (6th Cir. 1994); St. Paul Self Storage Ltd. P'ship v. Port Auth. (In re St. Paul Self Storage Ltd. P'ship), 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995); In re Mense, 509 B.R. 269, 279 (Bankr. C.D. Cal. 2014).

B. Receiver's Initial Prima Facie Showing of Bad Faith

The court finds that Receiver has met his initial burden of making a prima facie showing that the HPM Bankruptcies were filed in bad faith. Based on evidence submitted by Receiver in support of the Motion, Receiver was appointed in the State Court Action on October 30, 2019. In the State Court Action, commenced by the State on September 9, 2019, the State identifies numerous named and unnamed defendants who have allegedly participated in a scheme to defraud unsophisticated investors that, broadly stated, involved the sale of unqualified securities and undeveloped desert land in Kern County, California, and membership in the Silver Saddle Ranch & Club.

The Receivership Order allowed Receiver to identify nonparty entities as Receivership Defendants and, upon so doing, required Receiver to promptly notify the entity that it could challenge Receiver's determination by filing a motion in the State Court Action. Pursuant to the Receivership Order, on October 2, 2020, Receiver notified the HPM Entities of Receiver's determination that they each qualified as Receivership Defendants. On January 8, 2021, the HPM Entities, acting in concert through counsel, moved for an order to show cause challenging Receiver's determination in the State Court Action. Receiver responded and, on February 11, 2021, after considering argument, authority and evidence filed by the HPM Entities and Receiver, the state court determined that the HPM Entities were properly classified as Receivership Defendants.

After the determination of the HPM Entities as Receivership Defendants, on May 13, 2021, Receiver filed the Sale Motion, seeking state court approval to sell the Vacant Land, owned by HPM Holdings, to 69SV 8ME LLC for the purchase price of approximately \$4.1 million in accordance with the terms of a pre-receivership purchase option contract between 69SV 8ME LLC and HPM Holdings. The HPM Entities did not oppose the Sale Motion, and on June 11, 2021, the Sale Motion was granted in the State Court Action. On August 10, 2021, the sale closed and the HPM Entities timely appealed the Sale Order.

On August 11, 2021, HPM Holdings and HPM Mgmt. filed separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. HPM Mgmt. scheduled no unsecured claims and its sole asset is a 1% ownership interest in HPM Holdings. The only unsecured creditor of HPM Holdings is an attorney with a claim for \$419. The HPM Entities admit that the HPM Bankruptcies were filed so that the proceeds from the sale of the Vacant Land and the value of the Residences would inure to the HPM Entities' stakeholders, rather than to the constituents of the receivership estate in the State Court Action. Receiver states that, but for the HPM Bankruptcies, Receiver would move to sell the Residences in the State Court Action and would use the proceeds to pay in full the secured claim of Accelerated Assets LLC and all outstanding property taxes, the only other pre-petition secured debt scheduled by the HPM Entities.

Based on the above, the court finds Receiver has met his initial burden of making a prima facie showing that the HPM Bankruptcies were filed in bad faith.

C. The HPM Entities' Showing of Good Faith

At the hearing on September 29, 2021, counsel for the HPM Entities argued that the HPM Bankruptcies were filed in good faith because prosecuting the HPM Bankruptcies is the only way to protect the interests of the HPM Entities and the interests of Maney, Child and Hansen in the HPM Entities. Counsel for the HPM Entities asserted at the hearing that there were no mechanisms or procedures in the State Court Action for the HPM Entities and their equity security holders to protect their property interests.

However, the day before filing for bankruptcy, the HPM Entities appealed the Sale Order and that appeal remains pending. At the hearing, counsel for the HPM Entities acknowledged that while the HPM Entities are Receivership Defendants, the state court has not decided whether the property of the HPM Entities, as Receivership Defendants, should be used to pay alleged victims in the State Court Action, distributed to the HPM Entities' equity security holders, or a little of both. The HPM Entities concede that the State Court Action has not made any decision regarding the disposition of the assets of Receivership Defendants and neither the HPM Entities nor the equity security holders have even attempted to resolve these issues in the State Court Action. The HPM Bankruptcies were filed so that the decision of what to do with the property of the HPM Entities, as Receivership Defendants, would be made by the bankruptcy court, because, as counsel for the HPM Entities explained, the HPM Entities thought bankruptcy court would be a more favorable forum.

Additionally, the declarations of Child and Hansen filed in opposition to Receiver's motion emphasize the HPM Entities' position that the HPM Entities were not involved in the Galileo Project and are not named defendants in the State Court Action. Yet the state court determined the HPM Entities to be Receivership Defendants in February 2021 in response to an objection filed by the HPM Entities in the State Court Action. The declarations of Child and Hansen also state that, despite their personal connections to Securities Defendants, neither Child nor Hansen have any continued personal involvement with the businesses of the Securities Defendants (although payments from Silver

Saddle Development to Child may be ongoing). Neither declaration sets forth any additional facts, separate from the State Court Action, demonstrating that the HPM Bankruptcies were filed in good faith, that an effective reorganization is possible within a reasonable time, or that creditors (as distinguished from equity security holders) would benefit from bankruptcy protection.

In essence, the HPM Entities seek to demonstrate that Child and Hansen are not connected to Securities Defendants or the Galileo Project, but this does not demonstrate an absence of cause to dismiss the HPM Bankruptcies. The HPM Entities were determined to be Receivership Defendants in the State Court Action, and the HPM Entities are now attempting to use the Bankruptcy Code to avoid the consequences of that determination. While bankruptcy courts are empowered to avoid, modify, and discharge state judgments, pre-petition state judgments regarding identical issues raised in the bankruptcy proceedings are given full faith and credit in bankruptcy courts. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1079, 1084 (9th Cir. 2000).

It is undisputed that the HPM Entities are Receivership Defendants. It also is undisputed that the HPM Entities unsuccessfully opposed, though did not appeal, that designation in the State Court Action. This court does not presume to know what it may mean for the HPM Entities to be Receivership Defendants in the State Court Action. However, the filing of the HPM Bankruptcies does not change the status of the HPM Entities as Receivership Defendants, and the bankruptcy court is not the appropriate forum to decide unresolved issues in the State Court Action.

Based on the above, the court finds the HPM Entities have not met their burden of showing that the HPM Bankruptcies were filed in good faith, and cause exists to dismiss the HPM Bankruptcies.

D. Other Factors Support Dismissal

Other factors also weigh in favor of dismissal. Combined, the HPM Entities have scheduled assets worth just shy of \$5 million, unsecured liabilities of less than \$500 and secured liabilities of less than \$35,000. Of the scheduled assets, the Vacant Land (or proceeds therefrom) is valued at \$4,155,188.47, and the Residences are valued at a combined \$648,000. There are no employees for either entity. HPM Mgmt. has only one asset, its 1% ownership interest in HPM Holdings. HPM Holdings has more than one asset, but those assets may be subject to the receivership estate. The primary asset, the Vacant Land, was sold by Receiver in the State Court Action. Receiver intends to sell the Residences, the sale of which would pay all secured liabilities in full. There are no significant assets that have not been incorporated into the State Court Action. Whatever the number of assets, these bankruptcy cases are essentially two-party disputes, Receiver against the HPM Entities, that will be better resolved outside of the bankruptcy court's jurisdiction. Resolution outside of the bankruptcy court's jurisdiction, in fact, is already happening in the context of the ongoing State Court Action and related appeals.

The HPM Entities have no possibility of effectively reorganizing within a reasonable time before the conclusion of the rights of the HPM Entities as Receivership Defendants in the State Court Action. To the extent a plan of reorganization is possible, the HPM Entities claim that they will have no ability to fund a reorganization without turnover by Receiver. But even turnover by Receiver will not necessarily enable the HPM Entities to fund a reorganization. This point was illuminated at the hearing on September 29 when counsel for the HPM Entities acknowledged that requiring Receiver to turnover the Residences and the proceeds from the sale of the Vacant Land would not authorize the HPM Entities to actually use those assets to fund a plan.

Assuming all property was in the custody of the HPM Entities, Receiver's claim in the property would still need to be resolved, and that resolution would occur in the State Court Action.

Taking all the circumstances into consideration, it is evident from the record before this court that the HPM Bankruptcies were filed to prevent Receiver from complying with the Sale Order, to renew unsuccessful state court arguments pertaining to the HPM Entities' status as Receivership Defendants, to prevent sale proceeds from being distributed in the manner required by the State Court Action, as well as to forum shop and have the bankruptcy court decide issues pending in the State Court Action before the state court could rule against the HPM Entities. Accordingly, the court determines that both HPM Bankruptcies were filed in bad faith and there is cause for dismissal under 11 U.S.C. § 1112(b).

Dismissal is in the best interest of creditors and the estate. There are no creditors with claims secured by the Vacant Land that would be in a better position if the proceeds from the sale of the Vacant Land went to the HPM Entities rather than Receiver. The Kern County Tax Commissioner will be paid from the sale proceeds no matter who ultimately claims the pot. Additionally, dismissing the HPM Bankruptcies to permit Receiver to continue under the authority of the State Court Action will likely result in the full satisfaction of Accelerated Assets' secured claim against the Residences and the payment in full of all outstanding property taxes, thus satisfying all secured claims against the HPM Entities.

Accordingly, Receiver's motion to dismiss under 11 U.S.C. § 1112(b) will be granted. Both HPM Bankruptcies will be dismissed.

Dismissal under § 305(a)(1)

Even if dismissal is not warranted under § 1112(b), the court determines that dismissal under § 305(a) would be appropriate.

Section 305(a) of the Bankruptcy Code allows the court to dismiss or suspend bankruptcy proceedings if "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1).

In the Ninth Circuit, dismissal under § 305(a)(1) most frequently arises in involuntary cases. See Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc.), 370 B.R. 236, 252 (B.A.P. 9th Cir. 2007) (stating that § 305(a)(1) is "intended to deal with involuntary petitioners who . . . improperly seek to impose the consequences of bankruptcy on an unwilling debtor"); Marciano v. Fahs (In re Marciano), 459 B.R. 27, 49-50 (B.A.P. 9th Cir. 2011) (holding the two-step process for dismissal under § 1112(b) "is appropriate in the context of deciding a § 305(a) motion with respect to a pending Involuntary Petition"). Courts have also held that dismissal under § 305(a) is not confined to involuntary cases, see In re Honolulu Affordable Hous. Partners, LLC, No. 15-00146, 2015 Bankr. LEXIS 1558 *1 (Bankr. D. Haw. May 7, 2015), In re Law Offices of T. Robert Hill, P.C., No. 17-10597, 2017 Bankr. LEXIS 4321 *1 (Bankr. W.D. Tenn. June 20, 2017), and the HPM Entities do not argue that § 305(a) is inapplicable to this proceeding. Therefore, the court will address the § 305(a) arguments of the parties.

"Dismissal under § 305(a)(1) is appropriate 'only in the situation where the court finds that both creditors and the debtor would be better served by a dismissal.'" Marciano, 459 B.R. at 46 (quoting Eastman v. Eastman (In re Eastman), 188 B.R. 621, 624 (9th Cir. 1995)). As with the motion to dismiss under § 1112(b), both Receiver and the HPM Entities recite and apply various

factors that courts frequently apply. The parties recite the following seven factors set forth in Marciano:

- (8) the economy and efficiency of administration;
- (9) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (10) whether federal proceedings are necessary to reach a just and equitable solution;
- (11) whether there is an alternative means of achieving an equitable distribution of assets;
- (12) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (13) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (14) the purpose for which bankruptcy jurisdiction has been sought.

Marciano, 459 B.R. at 44-45. "While a court may afford more weight to any factor it deems most relevant, many courts have held that the first factor, the economy and efficiency of administration, is the paramount concern when determining if abstention under § 305(a) is appropriate." Law Offices of T. Robert Hill, P.C., 2017 Bankr. LEXIS 4621 at *9.

The economy and efficiency of administration favor dismissal of this case. The HPM Entities do not seek to avoid the sale of the Vacant Land; they only seek to retain the net proceeds from the sale. The HPM Entities have stated repeatedly that chapter 11 protection was sought so that net proceeds from the sale of the Vacant Land as well as the net value of the Residences are distributed among HPM Entities' equity holders, including Maney, rather than to the receivership estate. The dispute over the validity of the sale of Vacant Land by Receiver is ongoing in the State Court Action, as the HPM Entities have appealed the Sale Order and that appeal remains pending. The State Court Action alleges violations of state corporate law against numerous Securities Defendants on behalf of many individual investors. Decisions impacting the HPM Entities would be more efficiently resolved by the state court that has expertise and jurisdiction over all parties in the State Court Action. Additionally, the State Court Action likely would need to be resolved in full to settle competing interests in the assets of the bankruptcy estates of the HPM Entities. Dismissal favors economy and efficiency of administration for creditors and the HPM Entities.

In addition, there already is a pending proceeding, the State Court Action, that has been pending in state court for two years. Seven months ago, the HPM Entities were designated Receivership Defendants after challenging that designation in accord with procedures set forth in the Receivership Order. The state court has the subject matter expertise to resolve the state law allegations in the State Court Action, to determine the scope of the receivership estate created in the State Court Action, and to consider appropriate remedies. The HPM Entities have appealed the state court Sale Order, and the California courts of appeal can properly determine the appeals already filed by the HPM Entities. No final determination of the distribution of the assets of Receivership Defendants has been made in the State Court

Action. Accordingly, the proceedings in the State Court Action are still available for an interested party to try to protect the interests of the HPM Entities, State, Receiver, HPM Entities' creditors, Maney, Child and Hansen in the assets of the HPM Entities.

Finally, federal proceedings are not required to reach a just and equitable resolution of the issues that the HPM Entities assert are the reasons for filing the HPM Bankruptcies. It would be a waste of resources and a damper on efficient administration for all parties to continue with the HPM Bankruptcies. Based on the record before the court, dismissing the HPM Bankruptcies would be less expensive for all parties, and all parties would be better served by resolving outstanding issues through the State Court Action.

Conclusion

Accordingly, the motion to dismiss pursuant to § 1112(b) is GRANTED. Were the court not dismissing this case pursuant to § 1112(b), it would be dismissed pursuant to § 305(a).

9. [21-11970](#)-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**
[GMK-2](#)

CONTINUED MOTION TO EMPLOY GARY M. KAPLAN AS ATTORNEY(S)
9-3-2021 [\[52\]](#)

HIGH PLAINS MESA HOLDINGS, LP/MV
GARY KAPLAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

If the debtor's bankruptcy case is dismissed pursuant to matter #5 on this calendar, this motion will be DENIED AS MOOT.

10. [21-11971](#)-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
[GMK-2](#)

CONTINUED MOTION TO EMPLOY GARY M. KAPLAN AS ATTORNEY(S)
9-3-2021 [\[46\]](#)

HIGH PLAINS MESA MANAGEMENT, LLC/MV
GARY KAPLAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

If the debtor's bankruptcy case is dismissed pursuant to matter #8 on this calendar, this motion will be DENIED AS MOOT.

1. [20-12310](#)-A-7 **IN RE: JOYCE FEASTER**
[JES-1](#)

CONTINUED MOTION TO COMPEL
7-16-2021 [\[35\]](#)

JAMES SALVEN/MV

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to November 17, 2021 at 1:30 p.m.

ORDER: The court will issue an order.

In the statement of financial affairs filed by the debtor with her bankruptcy petition, the debtor did not indicate whether she was married. Doc. #1. At the August 25, 2021 hearing on this matter, the chapter 7 trustee ("Trustee") stated on the record that if the debtor is not married, the motion to compel will be withdrawn. On September 3, 2021, the debtor filed an amended statement of financial affairs ("Amended SOFA") stating that she is not married. Doc. #44. However, there is nothing on the docket showing that the Amended SOFA was served on Trustee.

Because it is unclear whether Trustee has reviewed the Amended SOFA, the hearing on the motion to compel is continued to November 17, 2021 at 1:30 p.m. to permit Trustee time to review the Amended SOFA and, if appropriate, withdraw the motion to compel. Not later than November 10, 2021, Trustee shall file and serve a status report updating the court as to the status of this matter, unless the motion to compel is withdrawn prior to that date.

2. [21-10848](#)-A-7 **IN RE: DONALD RUSSELL**
[RH-3](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, TRUSTEES ATTORNEY(S)
9-22-2021 [\[43\]](#)

DAVID JENKINS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Robert Hawkins ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from June 21, 2021 through September 6, 2021. Doc. #43. Movant provided legal services valued at \$3,280, and requests compensation for that amount. Doc. #43. Movant requests reimbursement for expenses in the amount of \$59.05. Doc. #43.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) obtaining approval of a settlement agreement; (2) researching claims and issues related to the settlement agreement; and (3) communicating and consulting with Trustee. Doc. ##43, 45. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$3,280 and reimbursement for expenses in the amount of \$59.05. Trustee is authorized to make a combined payment of \$3,339.05, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [21-11556-A-7](#) **IN RE: ANGEL TISCARENO**
[DRJ-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
9-20-2021 [\[12\]](#)

ANGEL TISCARENO/MV
DAVID JENKINS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Angel Tiscareno ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 9014 to avoid the judicial lien of Capital One Bank (USA) N.A. ("Creditor") on the residential real property commonly referred to as 15970 E. Annandale Ave., Sanger, CA 93657 (the "Property"). Doc. #12; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(iii). Id. at 90. In this case, there are no consensual encumbrances on the Property. Doc. #14; Schedule D, Doc. #1. Debtor holds a 50% ownership interest in the Property. Doc. #14. For purposes of § 522(f), Debtor's interest in the Property is valued at \$494,500.

Debtor filed the bankruptcy petition on June 17, 2021. A judgment was entered against Angel Tiscareno in the amount of \$4,855.36 in favor of Creditor on July 24, 2009. Ex. A, Doc. #15. The abstract of judgment was recorded pre-petition in Fresno County on November 3, 2015. Ex. A, Doc. #15. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #14.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

The Property is encumbered by a senior judgment lien in favor of Bureaus Investment Group Portfolio No 15 in the amount of \$5,124.74 recorded in Fresno County on October 13, 2015. Ex. B, Doc. #15. The Property also is encumbered by senior state tax liens totaling \$28,558.33 and senior federal tax liens totaling \$800,354.31. Ex. B, Doc. #15; Decl., Doc. #14. Debtor claimed an exemption of \$300,000.00 in the Property under California Code of Civil

Procedure § 704.730. Schedule C, Doc. #1. Debtor's interest in the Property is valued at \$494,500.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,855.36
Total amount of all other liens on the Property (excluding junior judicial liens)	+	834,037.38
Amount of Debtor's claim of exemption in the Property	+	300,000.00
		\$1,138,892.74
Value of Debtor's interest in the Property absent liens	-	494,500
Amount Creditor's lien impairs Debtor's exemption		\$644,392.74

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

4. [21-11556-A-7](#) **IN RE: ANGEL TISCARENO**
[DRJ-2](#)

MOTION TO AVOID LIEN OF BUREAUS INVESTMENT GROUP PORTFOLIO NO. 15 LLC
9-20-2021 [\[17\]](#)

ANGEL TISCARENO/MV
DAVID JENKINS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Angel Tiscareno ("Debtor"), the debtor in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 9014 to avoid the judicial lien of Bureaus Investment Group Portfolio No. 15 ("Creditor") on the residential real property commonly referred to as 15970 E. Annandale Ave., Sanger, CA 93657 (the "Property"). Doc. #17; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(ii). Id. at 90. In this case, there are no consensual encumbrances on the Property. Doc. #19; Schedule D, Doc. #1. Debtor holds a 50% ownership interest in the Property. Doc. #19. For purposes of § 522(f), Debtor's interest in the Property is valued at \$494,500.

Debtor filed the bankruptcy petition on June 17, 2021. A judgment was entered against Angel Tiscareno AKA Yolanda Tisareno DBA Tiscareno Quarter Horse in the amount of \$5,124.74 in favor of Creditor on October 12, 2011. Ex. A, Doc. #20. The abstract of judgment was recorded pre-petition in Fresno County on October 13, 2015. Ex. A, Doc. #20. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #19.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

The more junior judgment lien has already been avoided in order of reverse priority in matter number 3, above. The Property also is encumbered by senior state tax liens totaling \$28,558.33 and senior federal tax liens totaling \$800,354.31. Ex. B, Doc. #20; Decl., Doc. #19. Debtor claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor's interest in the Property is valued at \$494,500.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$5,124.74
Total amount of all other liens on the Property (excluding junior judicial liens)	+	828,912.64
Amount of Debtor's claim of exemption in the Property	+	300,000.00
		\$1,134,037.38
Value of Debtor's interest in the Property absent liens	-	494,500
Amount Creditor's lien impairs Debtor's exemption		\$639,537.38

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien.

Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. [21-11860](#)-A-7 **IN RE: KATHERINE MAKOWSKI**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
9-17-2021 [\[24\]](#)

KATHERINE MAKOWSKI/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Katherine A. Makowski ("Debtor"), the chapter 7 debtor in this case, moves the court to order the trustee to abandon property of the estate known as the single-family residence located at 831 S. Whitney Street, Visalia, CA 93277 (the "Property"). Doc. #24.¹ Debtor asserts that there is no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #26. No opposition has been filed in response to this motion.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a

¹ In the motion, the debtor identifies the Property as 831 South Whitney **Lane**, Visalia, CA 93277. Doc. ##24, 26, 27. However, the debtor's schedules identify real property located at 831 S. Whitney **Street**, Visalia, CA 93277. Schedules A/B & C, Doc. #1. Because the court believes the use of South Whitney **Lane** rather than South Whitney **Street** to be a typographical error, the court approves the motion using the 831 S. Whitney Street, Visalia, CA 93277 address. However, the proposed order shall identify the Property using the correct street address, whether that is 831 S. Whitney Street or 831 S. Whitney Lane.

motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Mot., Doc. #24. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor scheduled a 50% interest in the Property valued at \$300,000.00. Doc. #26. The Property is encumbered by a mortgage totaling \$246,764. Schedule D, Doc. #1; Decl. of Katherine Makowski, Doc. #26. Under California Civil Procedure Code § 704.730, Debtor claimed a \$300,000.00 exemption in the Property. Schedule C, Doc. #1; Decl., Doc. #26. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.

6. [21-11967](#)-A-7 **IN RE: MANUEL/VERONICA ZAMORA**
[TCS-1](#)

MOTION TO AVOID LIEN OF NOBEL FEDERAL CREDIT UNION
9-17-2021 [\[13\]](#)

VERONICA ZAMORA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Manuel R. Zamora and Veronica Zamora (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 9014 to avoid the judicial lien of Noble Federal Credit Union f/k/a Fresno County Federal Credit Union ("Creditor") on their residential real property commonly referred to as 3203 Monviso Lane, Clovis, CA 93619 (the "Property"). Doc. #13; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on August 10, 2021. A judgment was entered against Manuel R. Zamora in the amount of \$7,491.71 in favor of Creditor on March 1, 2019. Ex. C, Doc. #16. The abstract of judgment was recorded pre-petition in Fresno County on May 14, 2019. Ex. C, Doc. #16. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #15. The Property also is encumbered by a lien in favor of LoanCare/Cit Bank in the amount \$191,894.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$204,306.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$396,200.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,491.71
Total amount of all other liens on the Property (excluding junior judicial liens)	+	191,894.00
Amount of Debtors' claim of exemption in the Property	+	204,306.00
		\$403,691.71
Value of Debtors' interest in the Property absent liens	-	396,200.00
Amount Creditor's lien impairs Debtors' exemption		\$7,491.71

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.