UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 24, 2024 at 10:30 a.m.

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1. 24-23304-E-7 NICHOLAS CASEY-BRACKETT
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-9-24 [18]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on September 9, 2024. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Nicholas Carl Casey-Brackett ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on November 6, 2024. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 10, 2024. Docket 23. Debtor states he was unable to miss work, so he could not attend the prior meeting. Debtor requests the case go forward and indicates he would attend on November 6, 2024.

DISCUSSION

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

However, Debtor has explained his absence and desire to attend the next meeting.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including January 5, 2025.

2.	**24-24023-E-11** **BPC-1**	**NEXT HILL ENTERPRISES, LLC** **Richard Jare**	**MOTION FOR AN ORDER DESIGNATING CHAPTER 11 CASE AS A SINGLE ASSET REAL ESTATE CASE** **9-26-24 [19]**

THE COURT WILL CALL THE STATUS CONFERENCE IN THIS CASE, ORIGINALLY TO BE HEARD AT 11:30 A.M., TO BE HEARD IN CONJUNCTION WITH THIS MOTION.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, attorneys of record, other parties in interest, parties requesting special notice, and Office of the United States Trustee on September 26, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for an Order Designating Case as a Single Asset Real Estate Case is denied.

David Pick Family Partnership, L.P. ("Movant") moves this court for an Order designating the case as a single asset real estate case pursuant to 11 U.S.C. § 101(51B). As such, Movant requests the court find that the requirements of 11 U.S.C. § 362(d)(3) apply in this case. Movant pleads in the Motion:

> Five requirements must be met to qualify as a "single asset real estate case" under 11 U.S.C. § 101(51B). Lender satisfies each requirement. First, the Debtor is not a family farmer as the Debtor's only assets are two undeveloped real property parcels, which the Debtor has marketed for real estate development purposes. Second, the two parcels are a "single project." The Debtor contends that this is not a "single asset real estate" case because the Debtor purchased its parcels at different times and the parcels are not truly adjoining. However, the two parcels are adjacent to each other

> and share a common boundary. Third, the parcels are not residential real property since the parcels are undeveloped. Fourth, the Debtor has no income and a sale of the parcels would generate the only income of the Debtor. Fifth, the Debtor is not involved in any substantial business other than the operation of real property because the Debtor merely holds the parcels for potential development and sale. For each of these reasons, the Debtor is a "single asset real estate" debtor.

Mot. 2:11-22, Docket 19. In Movant's Memorandum in Support, Movant cites to cases out of the Central District of California and Collier's Treatise on Bankruptcy to support the argument that the adjoining properties in this case are a single project for purposes of Section 101(51B). Mem. 10:12-12:10, Docket 23.

> Congress provides in 11 U.S.C. § 362(d)(3) [emphasis added] that:
>
> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
> . . .
> (3) with respect to a **stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate**, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period**) or 30 days after the court determines that the debtor is subject to this paragraph**, whichever is later—
>
> (A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
>
> (B) the debtor has commenced monthly payments that—
>
> (i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
>
> (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate;

The adjoining properties are two parcels of real property, one commonly known as 425 Pleasant Valley Road, Diamond Springs, CA, APN: 054-371-019-000 ("Parcel 1"), and the other also identified as 425 Pleasant Valley Road, Diamond Springs, CA, APN: 054-361-009 ("Parcel 2," collectively "Properties"). On Schedule A/B Debtor lists the two parcels with the same 425 Pleasant Valley Road address. Sch. A/B, ¶¶ 55.1, 55.2; Dckt. 1 at 8-9.

Debtor in Possession's Opposition

Debtor in Possession Next Hill Enterprises, LLC ("Debtor in Possession") filed an Opposition on October 10, 2024. Docket 28. Debtor in Possession states:

1. Payam Sanatkar is the managing partner of Next Hill Enterprises, LLC and his declaration filed herewith supports the contentions in this opposition. *Id.* at ¶ 1.

2. Payam Sanatkar disputes that Debtor in Possession is the maker of the Note filed as Movant's Exhibits at 1, and Mr. Sanatkar is "not ready to agree that Next Hill Enterprises, LLC is the 'maker' of the modification of note which is Exhibit 3 filed by Movant." *Id.* at 2:10-12.

The "Borrower," the Maker, of the Note filed as Exhibit 1, is Joyce Berger as Trustee of the Joyce Berger Family Trust. Exhibit 1; Dckt. 22. The Note is dated "September ___, 2015." *Id*. at 4.

3. Mr. Sanatkar authenticates the Note filed as an exhibit with the Opposition, and Mr. Sanatkar believes the Note does not require monthly payments but merely outlines that more interest gets tack on if monthly payments are not made. *Id.* at ¶ 4.

4. The two parcels owned by Next Hill Enterprises, LLC are not truly contiguous. There is a private road noted as George's lane in the book of maps which other parcels in the community have access to. *Id.* at ¶ 5.

5. "Payam Sanatkar states that Prior to filing this case, Richard Jare observed that the 1 acre parcel is WORTH MORE by itself separately than as a project with the 4 acre parcel. There is probably no reason why the 1+ acres lot should not be worth more separate as we think a conditional zoning use as a single family home site or multi family might actually be the highest use. We are looking again at the values as SEPARATE being potentially higher than combined as one project. This it is NOT YET a single project." *Id.* at ¶ 7.

Mr. Sanatkar's declaration in support at Docket 29 is mostly a restatement of what is said in the Opposition.

The All-Inclusive Note filed as an exhibit at Docket 30 clearly states monthly payments shall be made, applied first toward interest and then the remainder on principal.

Movant's Reply

Movant filed a Reply to the Opposition on October 17, 2024. Docket 33. Movant states:

1. Although the Properties are separated by a road, the road is their common boundary, and they are adjacent parcels. The close proximity satisfies the single project requirement of 11 U.S.C. § 101(51B). *Id.* at 2:16-26.

2. Debtor in Possession's other argument that Debtor in Possession is considering selling the Properties separately, as they would generate a higher return sold separately, is speculation and does not carry any evidentiary weight. Regardless, Debtor in Possession took affirmative steps before the case to acquire and market the Properties as part of a coordinated residential development scheme. *Id.* at 2:24-3:5.

3. The Note requires monthly payments, so Debtor in Possession's interpretation of the note is incorrect. *Id.* at 3:6-15.

4. The Note is not defective in any way. *Id.* at 6:13-21.

DISCUSSION

A single asset real estate case is defined in the Code as:

> The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

11 U.S.C. § 101(51B).

Evidence presented in support of the Motion is the Declaration of Sophia Ortiz. Dckt. 21. This testimony provides a history of the loan transaction. It also includes the following testimony:

> 13. I am informed and believe that pursuant to a Grant Deed dated April 28, 2022 (the "April Grant Deed") that was recorded on April 29, 2022 in the El Dorado County Recorder's Office bearing Instrument No. 2022-0019799, the Debtor acquired a second undeveloped parcel with an assessor's parcel number of 054-361-009 ("Parcel 2", together with Parcel 1, the"Properties") from John La Grou and Cynthia La Grou, as trustees of the La Grou Family Trust dated December 12, 1999 (the "La Grou's"). A true and correct copy of the April Grant Deed is filed concurrently herewith as Exhibit 7.

Declaration, ¶ 13; Dckt. 21. This testimony appears to establish that in 2022 the Debtor obtained Parcel 2. However, the person "testifying" under penalty admits that she has no personal knowledge, but just believes it. Further, that she is merely repeating something that she has read, obviously hearsay testimony. This Exhibit 7 is not authenticated by a witness or as otherwise required by Federal Rules of Evidence 901, 902

Accepting Exhibit 7 presented by Movant, acquisition of Parcel 2 was separate from the acquisition of Parcel 1, which was obtained from the Berger Trust in April 2022.

Exhibit 4 filed by Movant is a copy of the Deed of Trust securing its claim. Dckt. 20 at 21. The property encumbered by the Deed of Trust is 425 Pleasant Valley Road, Diamond Springs, California, with the following APN - 054-371-019. *Id*. at 23. This is Parcel 1, which is the only parcel that Movant asserts is subject to its lien.

The court is presented with facts and legal argument that permit the court to make a finding that the case is a single asset real estate case. The court is not provided with any law whatsoever on the significance of the authenticity of the notes secured by deeds of trust in the Properties. Debtor in Possession cites to no law whatsoever in its Opposition in support of its arguments. Contesting the authenticity of the notes underlying obligations secured by the Property is not a meritorious defense to Movant's Motion. Such disputes must be dealt with by a separate noticed motion or objection should Debtor in Possession wish to contest the authenticity of the notes. Moreover, the all-inclusive Note filed as an Exhibit at Docket 30 appears to "wrap" the obligations of prior notes, and it is not contested Debtor in Possession was the maker of that Note.

What the court is presented with is the discussion of whether Parcel 1 and Parcel 2, the only assets in this case, are a single property or project for purposes of 11 U.S.C. § 101(51B). Debtor in Possession argues the they are not because the Properties are separated by a road, and because Debtor in Possession is considering selling the parcels separately. There seems to be no disagreement as to the other requirements of 11 U.S.C. § 101(51B); namely, that the Properties are not real property with fewer than four residential units, the Properties generate substantially all of the gross income of Debtor in Possession, Debtor in Possession is not a family farmer, and there is no other substantial business being conducted by Debtor in Possession on the Properties other than operating the Properties. Therefore, the court's focus is on whether Parcel 1 and Parcel 2 are a single property or project.

Collier's Treatise on Bankruptcy states on the subject:

> The definition of "single asset real estate" is also limited to a single property or project. To be a single project, two or more properties must be linked together in some fashion in a common plan or scheme involving their use. Thus, a court found that two parcels constituted single asset real estate where the debtor planned to develop both parcels for single-family homes and sought regulatory approvals for the two parcels on a unified basis, even though the debtor planned to develop one parcel before the other one. However, mere common ownership of two parcels is not sufficient. For example, where a debtor owned two parcels of real estate and had no plans to combine the parcels in any way, and one parcel was rented to a tenant and the other was not, the court held that they did not constitute a single property or project. Similarly, a court held that a debtor's real estate did not constitute a single property or project within the meaning of section 101(51B) because the debtor owned 200,000 acres of timberland locate in nine different watersheds, each regulated by a different regulatory authority.

2 COLLIER ON BANKRUPTCY ¶ 101.51B. Case law in this Circuit has developed such that a set of parcels of property may be considered a single property, and to make such a determination, a court should consider the following factors: "(1) the use of the properties; (2) the circumstances surrounding the acquisition of the properties, including the time of the acquisition and the funds used to acquire the properties; (3) the location of the properties and proximity of the properties to one another; and (4) any plans for future development, sale or abandonment of the properties." *In re Hassan Imports Partnership*, 466 B.R. 492, 507 (Bankr. C.D. Cal. 2012).

Here, factors (1) through (3) work to support a finding that the case should be designated as a single asset real estate case. The evidence shows Debtor in Possession acquired the Properties in 2022,

acquiring Parcel 1 in March of 2022, and acquiring Parcel 2 in April of 2022. Decl. ¶¶ 9, 13. Acquiring the Properties close in time could suggest the Properties were planned to be part of a single project.

The evidence also shows that Debtor had entered into contracts to sell the Properties to buyer Daniel Mueller and John Cardoza of Century 21 Select Real Estate, Inc. *Id.* at ¶ 14. Such a sale could show that the buyer intended to use the Properties as part of a single project. Finally, it is not disputed that the Properties are adjacent, although being separated by a public road. Debtor in Possession has not offered any evidence to show how a public road severs the proximity of the Properties such that they cannot be considered a single project.

Conversely, the court is presented with a situation where the Debtor obtained two parcels of property from different sellers. The two parcels are next to each other. Movant includes as Exhibit 8 screen shots of a LoopNet website with what is represented to be factual information about the two Parcels and a picture of them. While Sophia Ortiz "authenticates Exhibit 8 as something she found on the internet, she does not provide information as to who actually obtained the information and whose information the court is hearing being said in Exhibit 8.

Regarding factor (4), Debtor in Possession provides some evidence that there has been a conversation around selling the Properties separately, and therefore the set of properties should not be thought of as a single project. Such evidence is ephemeral as there are no supporting documents showing such negotiations or potential prospects of any sales

Continuing with the review of the Payam Sanatkar Declaration filed in opposition to the Motion, Mr. Sanatkar testifies that the Debtor in Possession's attorney has opined that the two Parcels are worth more separately than as one project. No basis for such counsel being an expert is given, nor is any testimony by such counsel provided. Dec., ¶ 7; Dckt. 29.

Mr. Sanatkar then further testifies that "This is NOT YET a single project." *Id*. This indicates that there could well be the plan to make it a "Single Project."

Here, the only assets of the Debtor, and now the Bankruptcy Estate, are the two Parcels, which Debtor schedules as having a value of $1,320,000. As shown on Schedule A/B the Debtor, and now the Bankruptcy Estate are devoid of any other assets - not even two nickels to rub together. Dckt. 1 at 7-10.

Looking at the Statement of Financial Affairs, Part 1, filed by Debtor, it states that there no gross revenue from the operation of the Debtor's business. Dckt. 1 at 20.

Denial of Motion

The court decides this Motion using the evidence presented by the Parties and the applicable law. Here, as noted above, Movant comes forward with unauthenticated exhibits and a witness who seeks to provide a portion of her testimony on "information and belief." See Fed. R. Evid. 602, personal knowledge of the matter required for testimony. Movant's argument focuses on the contention that since the two parcels could possibly be jointly developed as one project, then this must be a single asset real estate case.

From the Debtor in Possession side, little if anything is offered with respect to any business operations of the Debtor or the Debtor in Possession. As the Schedules show, the Debtor was, and now the

Bankruptcy Estate is dirt rich and other asset devoid. There is no ongoing business operation for the Bankruptcy Estate to continue.

Looking at Schedule D filed by the Debtor, the two assets of this Bankruptcy Estate are encumbered by the following secured claims:

	APN 054-371-019-000	APN 054-361-009	
Schedule A Value	$1,150,000	$170,000	
Secured Claims			
El Dorado County Tax Collector	($19,000)	($2,000)	El Dorado County Tax Collector
El Dorado Irrigation District	($350)	($150)	El Dorado Irrigation District
David Pick Family Partnership, LP	($454,722)	($79,000)	John and Cyntia LaGrou, Trustees
Joyce Burger, Trustee	($2,000)		
3409 Arden Partners, LLC	($275,000)		

In reviewing the Declaration of Payam Sanatkar, the managing member of the Debtor and a Responsible Representative of the Debtor in Possession, there is little testimony of any business operations or "project(s)" by the Debtor or being advanced by the Debtor in Possession. In paragraph 2 of his Declaration, Mr. Sanatkar attacks the listing information offered by Movant, stating that the listing price by the Debtor's agent was "Not authorized." Dckt. 29.

In paragraph 3 of his Declaration, Mr. Sanatkar makes what appears to be a legal argument over who is the "maker" of the promissory note filed as Exhibit 1 by Movant, denying that it was the Debtor. *Id*. Looking at Exhibit 1 (Dckt. 22), there is no reference to Debtor in the Note that is dated September 2015. The "Borrower" is Joyce Berger, as Trustee. It is unclear at to the relevance of Mr. Sanatkar's legal argument.

In paragraph 4 of the Declaration, Mr. Sanatkar states that he authenticates, but only "to the extent appropriate" an unsigned all inclusive note that is filed with the Opposition as Exhibit Unnumbered (Dckt. 39). Dckt. 29. The unsigned note identifies Debtor as the "Maker," and "Berger Family Trust dated March 16, 1999 and University Capital Management, Inc." as the "Payee." Then in this paragraph, Mr. Sanatkar incorporates in and discloses Debtor in Possession's counsel opinion that this unsigned note does not require monthly payments.

At the end of the day, the Debtor appears to have been the buyer of two different parcels of land from two different sellers. These parcels are near each other, but no credible evidence has been shown that they are part of a "project" that was generating any gross income for the Debtor, or now the Bankruptcy Estate.

Rather, the Debtor appears to have been "projectless" during the years leading up to the filing of this Bankruptcy Case. The Debtor appears to have merely purchased and held several parcels of property.

The court concludes that this Debtor and this Bankruptcy Case are not a "single asset real estate" case as defined under the Bankruptcy Code. Rather, it is a situation where the Debtor owns multiple parcels of real estate that it was not proceeding to develop. Debtor did try to sell one or more of the properties.

The Motion is denied.

Prosecution of Case

At this juncture the court notes that both Movant and the Debtor in Possession have been wanting in their compliance with the Federal Rules of Evidence and presenting the court with relevant evidence. It may be that this is actually a "simple" Chapter 11 orderly liquidation in which an dirt right and other asset devoid Bankruptcy Estate is able to preserve equity in the properties. Or it may be that there is a reorganization that does not require the liquidation of all or a significant portion of the Estate's limited assets.

It may be that the Responsible Representative of the Debtor in Possession cannot do the tasks required to confirm a Chapter 11 Plan and prosecute this case. Congress provides for such a situation, whether by the appointment of a trustee or prosecution of a plan by creditors.

The Chapter 11 Status Conference is set to be conducted at 11:30 a.m. on October 24, 2024. A review of the Docket for this Bankruptcy Case on October 23, 2024, indicates that no Status Report has been filed by the Debtor in Possession, which was required to be filed at least fourteen days before the Status Conference. Order Re Chapter 11 Status Conference; Dckt. 11.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for an Order Designating Case as a Single Asset Real Estate Case filed by David Pick Family Partnership, L.P. ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to denied.

3.	**24-23425-E-7**	**JOSEPH BALDWIN AND NADINE KERR** **Kristy Hernandez**	**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS** **9-11-24 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Joseph Glen Baldwin and Nadine Cecilia Kerr ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on November 6, 2024. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 19, 2024. Docket 18. Debtor's attorney details the conversation she had with the Chapter 7 Trustee, informing the Trustee that her client, Debtor Joseph Glen Baldwin, is incarcerated and requires a certain amount of time to approve a zoom meeting with his prison to attend the 341 Meeting. The continued meeting is to be held on November 6, 2024, and is ample time, so Debtor will appear.

DISCUSSION

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

However, Debtor has explained his absence and desire to attend the next meeting. At the hearing, xxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice
>
> **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including January 5, 2025.

4. 24-22846-E-11 ISMOIL KASIMOV
David Foyil

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-4-24 [91]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and other parties in interest as stated on the Certificate of Service on October 6, 2024. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $34 due on September 20, 2024.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $34.

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

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

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

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

5.	**24-20265-E-12** **RCW-11**	**HARDAVE/SUKHBINDER DULAI** **Ryan Wood**	**MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH AGWEST FARM CREDIT, PCA** **10-3-24 [174]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record, creditors that have filed claims, and Office of the United States Trustee on October 3, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Approval of Compromise is granted.

Hardave Singh Dulai and Sukhbinder Kaur Dulai, the Debtor in Possession, ("Movant") requests that the court approve a compromise with AgWest Farm Credit, PCA ("AgWest"). The claims and disputes

to be resolved by the proposed settlement involve settling AgWest's claim, POC 8-1, with a lump sum payment of $20,000 to be made within three days of the court approving this compromise.

Movant and AgWest have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 177):

A. The proposed settlement agreement, attached to the Declaration of Debtors in Support and Exhibit "1" of the separately filed Exhibits Pleading and incorporated herein by reference ("Settlement Agreement"), provides a total alleged indebtedness owed to AgWest of $41,044.21, resulting from a pre-petition lease agreement with AgWest.

B. The collateral that is subject of the pre-petition lease agreement, Claim No. 8 and Settlement Agreement with AgWest is as follows ("Collateral"):

a. Flory/480W/Walnut Harvester

b. Jessie/Reservoir Belt Cart

c. KCI/Elevator Belt

d. Weiss McNair/JD329/ Sweeper

C. Debtors offered and AgWest accepted a one-time lump payment totaling $20,000.00 with a 1099-C to be issued for the unpaid balance of Claim No. 8. The lump sum payment must be paid within three (3) days of approval of the Settlement Agreement.

At the hearing, the Debtor in Possession addressed the question as to the source of the $20,000.00 to pay the Settlement, stating, xxxxxxx

D. The Settlement Agreement also includes a mutual release for the Debtors and AgWest.

E. Claim No. 8, if this compromise is approved, will be withdrawn or ordered to be $0.00 as part of this Motion.

Mot. 1:22-2:10, Docket 174.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues this factor weighs in favor of the Settlement Agreement. While the Debtors contend that the amount owed is less, litigating and proving various fees or cost are not reasonable is time consuming and not in the best interest of the estate or AgWest. Mot. 3:25-27, Docket 174.

Difficulties in Collection

Movant argues this factor is neutral. Debtors would timely surrender the Collateral if the Settlement Agreement is not approved and AgWest would then incur further expenses and fee auctioning or selling the Collateral. *Id.* at 4:6-8.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor supports the Settlement Agreement. While the litigation is not particularly complex, the Debtors and AgWest would incur a fair amount of expense litigating the dispute over the total indebtedness owed to AgWesst. The Debtors would have to litigate what portions of Claim No. 8 are valid and necessary, which would be inconvenient and time consuming. *Id.* at 4:10-13.

Paramount Interest of Creditors

Movant argues this factor heavily weighs in favor of the Settlement Agreement. The Debtors believe that the Settlement Agreement is in the best interest of the estate because the Settlement Agreement avoids the need for litigation and provides continued use of the Collateral for an efficient harvest of crops. Debtors believe this will benefit the estate and will help to fund the Chapter 12 Plan for the benefit of creditors. *Id.* at 4:16-20.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Debtor in Possession would avoid costly litigation while being able to continue using collateral that was subject to AgWest's lien, thereby generating a return for creditors of the Estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai, the Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and AgWest Farm Credit, PCA ("AgWest") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 177). The essential terms of the Settlement Agreement are:
>
> A. The proposed settlement agreement, attached to the Declaration of Debtors in Support and Exhibit "1" of the separately filed Exhibits Pleading and incorporated herein by reference ("Settlement Agreement"), provides a total alleged indebtedness owed to AgWest of $41,044.21, resulting from a pre-petition lease agreement with AgWest.
>
> B. The collateral that is subject of the pre-petition lease agreement, Claim No. 8 and Settlement Agreement with AgWest is as follows ("Collateral"):
>
> a. Flory/480W/Walnut Harvester
>
> b. Jessie/Reservoir Belt Cart
>
> c. KCI/Elevator Belt
>
> d. Weiss McNair/JD329/ Sweeper
>
> C. Debtors offered and AgWest accepted a one-time lump payment totaling $20,000.00 with a 1099-C to be issued for the unpaid balance of Claim No. 8. The lump sum payment must be paid within three (3) days of approval of the Settlement Agreement.

D. The Settlement Agreement also includes a mutual release for the Debtors and AgWest.

E. Claim No. 8, if this compromise is approved, will be withdrawn or ordered to be $0.00 as part of this Motion.

6. 21-23778-E-7 GMR-2 | **CAREN SPAULDING** **Jeffrey Ogilvie** | **MOTION FOR ADMINISTRATIVE EXPENSES** **9-16-24 [55]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2024. By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted and the Trustee is authorized to pay such expense.

The Chapter 7 Trustee, Geoffrey Richards, ("Movant") requests payment of administrative expenses to the Internal Revenue Service ("IRS") in the amount of $6,000.00 and to the Franchise Tax Board ("FTB") in the amount of $3,000.00. Movant states he has hired a certified public accountant to prepare income tax returns on behalf of the Bankruptcy Estate to comply with state and federal authorities, and that estimated income taxes for the first and final tax year ended July 31, 2024 totaling $6,000.00 is due and

payable to the IRS and $3,000.000 is due and payable to the FTB by November 15, 2024. Mot. 2:12-16, Docket 55.

DISCUSSION

Section 503(b)(1)(B) of the Bankruptcy Code states:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—
>
> (1)
>
> (B) any tax—
>
> (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
>
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case. . .

Movant having demonstrated that the tax liability expenses were incurred pursuant to 11 U.S.C. § 503(b)(1)(B), and therefore are permitted to be paid as administrative expenses. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses to the IRS in the amount of $6,000.00 and to the FTB in the amount of $3,000.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by The Chapter 7 Trustee, Geoffrey Richards, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee, Geoffrey Richards, is authorized to pay administrative expenses to the Internal Revenue Service ("IRS") in the amount of $6,000.00 and to the Franchise Tax Board ("FTB") in the amount of $3,000.00 resulting for the first and final tax year ended July 31, 2024, pursuant to 11 U.S.C. § 503(b)(1)(B).

FINAL RULINGS

7. 24-24016-E-7 AMANDA ASH
Steven Wolvek

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-23-24 [14]

Final Ruling: No appearance at the October 24, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 25, 2024. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $338 due on September 7, 2024.

The Order to Show Cause is discharged, and the Bankruptcy Case shall proceed in this Court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured. September 24, 2024 Clerks Docket Entry Report and Statement.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions are issued pursuant thereto, and the Bankruptcy Case shall proceed in this Court.

8. 24-24133-E-7 DELWOOD LINZY
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-30-24 [15]

Final Ruling: No appearance at the October 24, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on October 2, 2024. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $338 due on September 16, 2024.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

9. 24-21363-E-12 JEDIAH HOFFMAN AMENDED MOTION TO SELL
NCK-4 Noel Knight 9-10-24 [120]
DEBTOR DISMISSED: 09/20/24

Final Ruling: No appearance at the October 24, 2024 hearing is required.

The case having previously been dismissed, the Motion to Sell is denied as moot without prejudice. Order, Docket 132.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on September 20, 2024

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot without prejudice, the case having been dismissed.

10. 24-22667-E-7 MJP-1 | **THU HUYNH AND HONG VUONG** | **MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC**
Michael Primus | **9-19-24 [17]**

Final Ruling: No appearance at the October 24, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against property of the debtor, Thu Yen Huynh and Hong Duy Vuong ("Debtor") commonly known as 2901 Highgate Lane, Tracy, California 95377 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,524.99. Exhibit A, Dckt. 19. An abstract of judgment was recorded with San Joaquin County on June 12, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $600,000 as of the petition date. Schedule A at 10, Docket 1. The unavoidable consensual liens that total $232,888 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 21, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $348,370.00 on Schedule C. Schedule C at 17, Docket 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Thu Yen Huynh and Hong Duy Vuong ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, LLC, California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2022-10810, recorded on June 12, 2024, Document No. 2024-048236, with the San Joaquin County Recorder, against the real property commonly known as 2901 Highgate Lane, Tracy, California 95377, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.