

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge  
Sacramento, California

October 24, 2024 at 11:30 a.m.

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**FOR THE DEAVER RELATED CASES, THE COURT HAS ORGANIZED THE MATTERS BY NATURE OF PROCEEDING RATHER THAN BY CASE GIVEN THE COMMONALITY OF ISSUES TO BE ADDRESSED FOR EACH MATTER IN THE THREE RELATED CASES**

1. [24-23905-E-12](#)      DEAVER RANCH, INC., A      STATUS CONFERENCE RE:  
[CAE-1](#)                      CALIFORNIA CORPORATION      VOLUNTARY PETITION  
8-30-24 [1]

Debtor's Atty: David Goodrich

Notes:

Set to be heard in conjunction with other matters on the calendar.

Operating Reports filed: 9/27/24, 10/17/24

[GG-2] Order granting motion to pay unsecured prepetition priority wage claims; to pay and an all payroll-related local, state, and federal withholding taxes; waiving fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h).

Trustee Report at 341 Meeting lodged 10/7/24

[CAE-1] Chapter 12 Status Report filed 10/17/24 [Dckt 103]

**The Status Conference is XXXXXXX**

**OCTOBER 24, 2024 STATUS CONFERENCE**

XXXXXXX

October 24, 2024 at 11:30 a.m.

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2. [24-23909-E-12](#)      **SHENANDOAH INVESTMENT**      **STATUS CONFERENCE RE:**  
[CAE-1](#)                      **PROPERTIES, INC. A**                      **VOLUNTARY PETITION**  
   **CALIFORNIA CORPORATION**                      **8-30-24 [1]**

Debtor's Atty: David M. Goodrich

Notes:

Operating Reports filed: 9/27/24

[GG-2] Debtor's Emergency Motion for Order Authorizing Maintenance of Existing Bank Account for the Sole Purpose of Accepting Electronic Deposits filed 9/3/24 [Dckt 16]; Interim Order filed 9/4/24 [Dckt 33]; Order granting filed 9/20/24 [Dckt 50]

Stipulation Between AGWest Farm Credit, PCA and Debtor and Debtor-In-Possession Shenandoah Investment Properties, Inc. Re Use of Cash Collateral and Grant of Adequate Protection filed 9/25/24 [Dckt 52]

Trustee Report at 341 Meeting lodged 10/7/24

[CAE-1] Chapter 12 Status Report filed 10/17/24 [Dckt 99]

**The Status Conference is XXXXXXX**

**OCTOBER 24, 2024 STATUS CONFERENCE**

XXXXXXX

3. [24-23923-E-12](#)      **KENNETH/MARY DEAVER**  
[CAE-1](#)

**STATUS CONFERENCE RE:**  
**VOLUNTARY PETITION**  
**8-30-24 [1]**

Debtors' Atty: Martha A. Warriner; Andy C. Warshaw

Notes:

Trustee Report at 341 Meeting: 10/7/24

[DMW-1] Application of Debtor and Debtor In Possession to Employ Dimarco Warshaw, APLC, as General Bankruptcy Counsel Effective as of the Petition Date filed 9/3/24 [Dckt 9]; Order granting filed 9/25/24 [Dckt 61]

[DMW-2] Motion for Order Prohibiting Utility Providers from (a) Altering, Refusing or Discontinuing Service; (b) Deeming Utilities Adequately Assured of Future Performance, and (c) Establishing Procedures for Resolving Requests for Additional Adequate Protection filed 9/5/24 [Dckt 24]; Order granting filed 10/7/24 [Dckt 79]

[DMW-3] Debtors' Motion for Order Authorizing Debtors to Maintain Existing Bank Account for the Sole Purpose of Accepting Electronic Deposits filed 9/5/24 [Dckt 21]; Order granting filed 10/7/24 [Dckt 80]

[CAE-1] Debtors' Initial Status Report filed 10/17/24 [Dckt 82]

DMW -4, DMW-5, DMW-6: reviewed below

[DMW-7] Application of Debtors and Debtors in Possession to Employ California Outdoor Properties, Inc. As Real Estate Broker to Sell Real Property Effective as of the Date of This Application filed 10/17/24 [Dckt 85], set for hearing 11/14/24 at 10:30 a.m.

**The Status Conference is XXXXXXX**

**OCTOBER 24, 2024 STATUS CONFERENCE**

XXXXXXX

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s attorney, Chapter 12 Trustee, attorneys of record, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 3, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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, -----  
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**The Motion for Approval of Compromise is denied.**

Deaver Ranch, Inc. , 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 the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here, identified by the paragraph number in the Stipulation (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 74):

1. Cash Collateral Use. AgWest consents to Deaver Ranch’s further use of cash collateral (“Cash Collateral”), subject to the Agreement and pursuant to the Budget.

2. Term; Extensions. Upon approval of the Agreement by the Court, Deaver Ranch is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.

3. DIP Account. Deaver Ranch shall collect and deposit all Cash Collateral into a debtor-in-possession account (“DIP Account”).

4. Budget. Deaver Ranch may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.

5. Replacement Liens. As a grant of adequate protection, Deaver Ranch grants AgWest valid, enforceable, and perfected replacement liens (“Replacement Liens”) on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor’s pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Deaver Ranch shall owe AgWest not less than \$500.00 per month, as set forth in the Emergency Motion for Cash Collateral (“Adequate Protection Payments”), commencing on October 1, 2024. Payment of Adequate Protection Payments accrued shall be paid on or before December 14, 2024.

7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments.

8. Reporting. Deaver Ranch shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Deaver Ranch shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan

Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest's Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Deaver Ranch shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or *Pari Passu* Liens. Deaver Ranch shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or *pari passu* with AgWest's security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Deaver Ranch shall permit access to (a) Deaver Ranch's books, records, and assets, (b) the personnel of Deaver Ranch who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add "all creditors." It adds a further provision stating that no other creditors may seek to challenge AgWest's lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 74, and see Motion, 4:22-6:23, Docket 71. Mr. Deaver submits his Declaration in support. Docket 73. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 3, Docket 73.

## **CREDITOR PRUDENTIAL'S OPPOSITION**

Creditor the Prudential Insurance Company of America ("Prudential") filed an Opposition on October 21, 2024. Docket 108. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession's real and personal property. Prudential only subordinated its

lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:10-21.

2. The proposed compromise violates Prudential's lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:15-6:21.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 7:25-28.
4. Prudential objects to this Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 8:1-11.
5. In paragraph 10, Debtor and Ag West, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:12-9:14.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:15-10:4.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 10:9-14.
8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest's liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 10:25-11:11.
9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:12-18.
10. There is no reason for limited relief from the automatic stay for AgWest to "record" any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 11:19-22.

11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 11:23-27.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 12:18-27.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

## 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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products



thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 7:15-22, Docket 74. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

At the hearing, **XXXXXXX**

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is not in the best interest of the creditors and the Estate. The Motion is denied.

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 Deaver Ranch, Inc. , 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 **XXXXXXX** .

5. [24-23909-E-12](#)  
[GG-6](#)

SHENANDOAH INVESTMENT  
PROPERTIES, INC. A  
CALIFORNIA CORPORATION  
David Goodrich

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
AGWEST FARM CREDIT, PCA  
10-3-24 [70]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s attorney, Chapter 12 Trustee, attorneys of record, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 3, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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 ~~denied~~.**

Shenandoah Investment Properties, Inc., 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 the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 74):

1. Cash Collateral Use. AgWest consents to Shenandoah Investment Properties' further use of cash collateral ("Cash Collateral"), subject to the Agreement and pursuant to the Budget.
2. Term; Extensions. Upon approval of the Agreement by the Court, Shenandoah Investment Properties is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.
3. DIP Account. Shenandoah Investment Properties shall collect and deposit all Cash Collateral into a debtor-in-possession account ("DIP Account").
4. Budget. Shenandoah Investment Properties may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.
5. Replacement Liens. As a grant of adequate protection, Shenandoah Investment Properties grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, any and all of Shenandoah Investment Properties' rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor's pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Shenandoah Investment Properties shall owe AgWest not less than \$500.00 per month, as set forth in the Emergency Motion for Cash Collateral ("Adequate Protection Payments"), commencing on October 1, 2024. Payment of Adequate Protection Payments accrued shall be paid on or before December 14, 2024.
7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments.
8. Reporting. Shenandoah Investment Properties shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item

comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Shenandoah Investment Properties shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest's Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Shenandoah Investment Properties shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or *Pari Passu* Liens. Shenandoah Investment Properties shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or *pari passu* with AgWest's security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Shenandoah Investment Properties shall permit access to (a) Deaver Ranch's books, records, and assets, (b) the personnel of Deaver Ranch who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add "all creditors." It adds a further provision stating that no other creditors may seek to challenge AgWest's lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 74, and see Motion, 4:21-6:22, Docket 70. Mr. Deaver submits his Declaration in support. Docket 72. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 3, Docket 72.

## CREDITOR PRUDENTIAL'S OPPOSITION

Creditor the Prudential Insurance Company of America ("Prudential") filed an Opposition on October 21, 2024. Docket 104. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession's real and personal property. Prudential only subordinated its lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:11-21.
2. The proposed compromise violates Prudential's lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:12-7:12.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 7:16-19.
4. Prudential objects to Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 7:20-8:2.
5. In paragraph 10, Debtor and AgWest, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:3-9:5.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:6-23.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 9:28-10:15.
8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest's liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 10:16-11:2.
9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:3-9.

10. There is no reason for limited relief from the automatic stay for AgWest to “record” any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 11:10-13.
11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 11:14-18.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 12:8-17.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

## 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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 7:20-28, Docket 74. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

At the hearing, **XXXXXXX**

~~————— Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is not in the best interest of the creditors and the Estate. The Motion is denied.~~

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 Shenandoah Investment Properties, Inc., 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 denied.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on October 3, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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 denied.**

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver, (“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 the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 71):

1. Cash Collateral Use. AgWest consents to Debtor in Possession’s further use of cash collateral (“Cash Collateral”), subject to the Agreement and pursuant to the Budget.



2. Term; Extensions. Upon approval of the Agreement by the Court, Debtor in Possession is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.

3. DIP Account. Debtor in Possession shall collect and deposit all Cash Collateral into a debtor-in-possession account, other than funds from Amador Flower Farm, which will have its own Debtor in Possession account (“DIP Account”).

4. Budget. Debtor in Possession may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.

5. Replacement Liens. As a grant of adequate protection, Debtor in Possession grants AgWest valid, enforceable, and perfected replacement liens (“Replacement Liens”) on, and security interests in, any and all of Debtor in Possession’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor’s pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Debtor in Possession shall owe AgWest not less than \$250.00 per month, as set forth in the Emergency Motion for Cash Collateral (“Adequate Protection Payments”), commencing on October 1, 2024. Payment of Adequate Protection Payments accrued shall be paid on or before December 13, 2024.

7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments.

8. Reporting. Debtor in Possession shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Debtor in Possession shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest's Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Debtor in Possession shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or Pari Passu Liens. Debtor in Possession shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or pari passu with AgWest's security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Debtor in Possession shall permit access to (a) Debtor in Possession's books, records, and assets, (b) the personnel of Debtor in Possession who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add "all creditors." It adds a further provision stating that no other creditors may seek to challenge AgWest's lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 71. Mr. Deaver submits his Declaration in support. Docket 71. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 6, Docket 71.

## **CREDITOR PRUDENTIAL'S OPPOSITION**

Creditor the Prudential Insurance Company of America (“Prudential”) filed an Opposition on October 21, 2024. Docket 90. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession’s real and personal property. Prudential only subordinated its lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:10-20.
2. The proposed compromise violates Prudential’s lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:23-8:1.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 8:5-8..
4. Prudential objects to Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 8:9-19.
5. In paragraph 10, Debtor and AgWest, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:20-9:26.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:27-10:17.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 10:22-11:9.
8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest’s liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 11:10-24.
9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:25-12:3.

10. There is no reason for limited relief from the automatic stay for AgWest to “record” any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 12:4-7.
11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 12:8-12.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 13:3-12.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

## 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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 10:4-15, Docket 71. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

At the hearing, **XXXXXXX**

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is not in the best interest of the creditors and the Estate. The Motion is denied.

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 Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver, (“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 denied.

7. [24-23905-E-12](#)      **DEAVER RANCH, INC., A**      **CONTINUED MOTION TO USE CASH**  
[GG-1](#)                      **CALIFORNIA CORPORATION**      **COLLATERAL**  
David Goodrich                      9-3-24 [5]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

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

**The Motion for Authority to Use Cash Collateral is XXXXXX.**

**October 24, 2024 Hearing**

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 58. Nothing new has been filed under this Docket Control Number, although Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 71. At the hearing, XXXXXX

**REVIEW OF THE MOTION**

Deaver Ranch, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession is a California certified sustainable vineyard located in Amador County, California. Debtor in Possession owns the vines which produce wine grapes. In addition to the vines, the Debtor owns cows and sheep that are used primarily for weed control. The land on which the vineyard is

situated is owned by the Debtor in Possession's principals, Kenneth Deaver and Mary Jean Deaver. Debtor in Possession also owns various motor vehicles, equipment and tools.

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

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

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

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

## **APPLICABLE LAW**

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

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

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

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

## **SEPTEMBER 25, 2024 HEARINGS (10:00 a.m. and 2:30 p.m.)**

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court's review of the Docket on September 24, 2024, no stipulation has been filed with the court.

A stipulation for the use of cash collateral has been reached with AgWest, documented, and is being filed on September 25, 2024. The terms were reviewed on the record. In paragraph 7, a super priority unsecured claim is provided for AgWest for the adequate protection payments to be made under the Stipulation.

Upon review of the Stipulation, the court and Parties concluded that a separate Motion to Approve a Compromise/Settlement between the Debtor in Possession and AgWest needs to be filed in light of the terms of the Stipulation.



The Parties agreed to further extending the Interim Order authorizing the use of Cash Collateral, and pursuant thereto authorize the payment of the salaries and the rents to the principals of the Debtor.

The hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Time).

**Counsel for the Debtor in Possession and/or Counsel for AgWest shall prepare an order consistent with the above Ruling, and lodge the proposed order with the court.**

8. [24-23909-E-12](#)      **SHENANDOAH INVESTMENT**      **CONTINUED MOTION TO USE CASH**  
[GG-1](#)                      **PROPERTIES, INC. A**                      **COLLATERAL**  
                                    **CALIFORNIA CORPORATION**              **9-3-24 [10]**  
                                    **David Goodrich**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 32.

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

**The Motion for Authority to Use Cash Collateral is XXXXXX.**

**October 24, 2024 Hearing**

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 57. Nothing new has been filed under this Docket Control Number, although Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 70.

At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

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

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 13. The first budget is a proposed year budget, and the second budget is a proposed 13-week budget. The budgets propose adequate protection payments of \$1,000 per month to the Small Business Administration (“SBA”) and \$500 a month to AgWest Farm Credit (“AgWest”). *Id.* SBA’s lien is estimated to be in the amount of \$773,614 and AgWest’s lien is estimated to be in the amount of \$1,200,000. Mot. 4:20-28, Docket 10. The budgets account for general operating expenses of the business, including paying employees, for insurance and permits, and utilities.

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

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

*Id.* at ¶ 9.

### **APPLICABLE LAW**

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

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

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

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

**SEPTEMBER 25, 2024 HEARINGS (10:00 a.m. and 2:30 p.m.)**

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court’s review of the Docket on September 24, 2024, no stipulation has been filed with the court.

A stipulation for the use of cash collateral has been reached with AgWest, documented, and is being filed on September 25, 2024. The terms were reviewed on the record. In paragraph 7, a super priority unsecured claim is provided for AgWest for the adequate protection payments to be made under the Stipulation.

Upon review of the Stipulation, the court and Parties concluded that a separate Motion to Approve a Compromise/Settlement between the Debtor in Possession and AgWest needs to be filed in light of the terms of the Stipulation.

The Parties agreed to further extending the Interim Order authorizing the use of Cash Collateral, and pursuant thereto authorize the payment of the salaries and the rents to the principals of the Debtor.

The hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Time).

**Counsel for the Debtor in Possession and/or Counsel for AgWest shall prepare an order consistent with the above Ruling, and lodge the proposed order with the court.**

9.	<a href="#"><u>24-23923-E-12</u></a> <a href="#"><u>DMW-4</u></a>	<b>KENNETH/MARY DEAVER</b> <b>Martha Warriner</b>	<b>CONTINUED MOTION TO USE CASH COLLATERAL</b> <b>9-8-24 [37]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, Chapter 12 Trustee, other parties in interest, and Office of the United States Trustee on September 9, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

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

**The Motion for Authority to Use Cash Collateral is ~~XXXXXX~~.**

**October 24, 2024 Hearing**

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 81. Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 69. The Motion seeks to confirm the Stipulation found at Docket 66.

At the hearing, ~~XXXXXX~~

**REVIEW OF THE MOTION**

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

**REAL PROPERTY**

<b>Lienholder</b>	<b>Collateral/Real Property Address</b>	<b>Estimated Parcel Value</b>	<b>Loan Balance</b>	<b>Payment Terms</b>
<b>Prudential Bank &amp; Trust FSB</b>	a) 21643 Shenandoah School Road, Plymouth, CA 95669 Amador County (88 acres w/vineyards and residence)	\$2,000,000	\$4,256,115 (secured by multiple properties)	\$155,000 semi-annually
	b) 19940 Shenandoah School Road, Pleasant Grove, CA 95668 (41.87 acres w/vineyards and 2 modular homes)	\$1,050,000		
	c) 21424 Shenandoah School Road, Pleasant Grove, CA 95668 (108.3 acres w/vineyards, house, barn and pasture)	\$1,900,000		
	d) 19944 Shenandoah School Road, Plymouth, CA 95669 (40 acres w/vineyards and 6-8 acres of pasture)	\$875,000		
	e) 11850 Shenandoah Road, Plymouth, CA 95669 (raw land)	\$350,000		

<b>Stonetree</b>	17705 State Hwy. 49, Plymouth, CA 95669 (9.69 acres leased to Ace Hardware, StoreStorage Unit, and Shenandoah Vet Clinic); owned jointly with Gerry Ninnis, who is making payments and receiving rental income	\$3,250,000	\$2,500,000	
<b>Totals:</b>		\$9,425,000	\$6,756,115	

Decl. 5:8-25, Docket 39.

**PERSONAL PROPERTY**

<b>Lienholder</b>	<b>Priority</b>	<b>Collateral</b>	<b>Loan Balance</b>	<b>Debtors and Codebtors</b>
<b>Prudential Insurance Company</b>	1  UCC File Number: 187638891768 entered on 03/19/2018	All personal property located on or used in operation of real property, including crops, equipment, water rights and intangibles	\$4,256,115	Deaver Ranch Inc.  Kenneth Deaver Mary Jean Deaver  Shenandoah Investment Properties, Inc.
<b>United States of America, Acting Through the Farm Service Agency – Stockton, CA</b>	2  UCC File Number: 187675962061 entered on 10/15/2018	Includes crops, livestock, equipment, proceeds, intangibles	Unknown	Kenneth Deaver  Deaver Ranch  Amador Flower Farms  Shenandoah Investment Propertis [sic] Inc.
<b>NXGEN Capital</b>	3  UCC File Number: 207774231457 entered on 04/21/2020	Accounts, goods, work in progress, etc., and general intangibles	Unknown. Debtors believe this UCC secured a loan Kapitus that has been paid in full	Amador Flower Farm  Deaver Vineyards  Kenneth Deaver  Shenandoah Investment Properties, Inc.

<b>AgWest Farm Credit, PCA</b>	4  UCC File Number: U210040219527 with an initial lien financing statement entered on 09/21/2020	Farm products, crops, livestock, equipment, inventory, general intangibles, etc.	\$1,200,000	Amador Flower Farm  Deaver Ranch Inc.  Kenneth Henry Deaver Mary Jean Deaver  Shenandoah Investment Properties Inc.  The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012
<b>Farm Credit West, PCA – Tulare, CA</b>	5  UCC File Number U200020600411 recorded on 09/21/2020	Existing and after-acquired goods, crops livestock, offspring, equipment, accounts, etc.	\$0	Amador Flower Farm  Deaver Ranch, Inc.  Mary Jean Deaver  Shenandoah Investment Properties, Inc.  The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012
<b>C T Corporation System as Representative</b>	6  UCC File Number: U220240228730 Recorded on 11/01/2022	Accounts, contract rights, chattel paper, general intangibles, etc.	\$50,000.00	Amador Affordable Housing  Amador Affordable Housing Inc.  Deaver Ranch  Deaver Ranch Inc.  Kenneth Deaver  Dever [sic] Vineyards  Rancho Del Oro Park LP  Shenandoah Investment Properties, Inc.

<b>CT Corporation System as Representative</b>	7 UCC File Number: U220240859435 recorded on 11/01/2022	All assets owned or hereafter acquired, including accounts and general intangibles	Unknown	Deaver Ranch Inc  Shenandoah Investment Properties Inc
<b>Corporation Service Company, as Representative for Prosperum Capital Partners LLC</b>	8 UCC File Number U240037112828 recorded on 04/29/2024	Accounts, AR, etc., and general intangibles	\$32,000	Deaver Vineyards  Kenneth Deaver  Shenandoah Investment Properties

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

### Proposed Use of Cash Collateral Budgets

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

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



Ex. 1, Docket 40.

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

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

Case Number 2024-23905 Date 9/18/2024 9:16:55 AM

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

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

**APPLICABLE LAW**

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

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

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

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period through and including October 14, 2024. The court does not pre-judge and authorize the use of any

monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral from the Collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

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

The hearing is continued and the final hearing on this Motion shall be conducted at 10:30 a.m. on October 3, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before three days after the entry of the order granting this relief. Oppositions, if any, shall be filed and served on or before September 24, 2024, and Replies presented orally at the hearing.

### **October 3, 2024 Hearing**

The court set the final hearing on this Motion for October 3, 2024, having granted the Motion on an interim basis. The court set the deadline of September 24, 2024 for parties in interest to file any oppositions. Order, Docket 54. On September 24, 2024, creditor AgWest Farm Credit, PCA (“AgWest”) filed a Response on September 24, 2024. Docket 55. AgWest states:

1. The parties are actively working on a consensual cash collateral stipulation to submit to the Court. AgWest hopes to submit the stipulation to the Court prior to the next hearing date. Resp. 2:8-9, Docket 55.
2. Flower Farm is and always has been a separate entity. Debtors, however, want to claim Flower Farm is a sole proprietorship so that they can have it fall under the auspices of this case, with its assets protected by the automatic stay, meanwhile stripping the cash of the entity to pay the Debtors’ personal expenses to the detriment of Flower Farm’s creditors. *Id.* at 2:15-19. Trying to modify the rights and obligation of the flower farm under this current case is improper.

AgWest submits the declaration of Darian Moreno in support of their Response. Docket 57. Mr. Moreno authenticates the attached Exhibits. The Exhibits submitted in support of the Response are three “Certificates of General Partnership to Borrow or Lease.” Exhibits. 1-3, Docket 56. These Exhibits show Debtor in Possession has represented Amador Flower Farm as a General Partnership, not a sole proprietorship.

Exhibit 1 is a Certificate dated September 17, 2020, and is signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. Dckt. 56 at 4-5. Exhibit 2 is a Certificate of Partnership dated March 23, 2022, that this signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. *Id.* at 7-8. Exhibit 3 is a Certificate of Partnership dated October 16, 2023, that is signed by Ken Deaver and Mary Jean Deaver as partners of the Amador Flower Farm partnership. *Id.* at 17-18. The signatures are made using the DocuSign program.

On Schedule A/B Flower Farm is not listed as a partnership in which Debtor has an interest. Dckt. 1 at 16. Schedule A/B does list Amador Flower Farm as a sole proprietorship run by Debtor. *Id.* at 19. On the Statement of Financial Affairs, ¶ 27, Debtor states that Amador Flower Farm is a sole proprietorship that Debtor has operated from “1990 - current.” *Id.* at 58-59.

On September 24, 2024, Debtor in Possession submitted a Supplemental Pleading. Debtor in Possession states that they are in negotiations with AgWest for a cash collateral budget and believe they are close to an agreement. Docket 59.

At the hearing, counsel for the Debtor in Possession reported that this is being further investigated with Creditor and the financial professionals to determine if there are issues to be addressed.

It is reported that a stipulation with AgWest to use the cash collateral has been reached. The terms are the same as the Stipulation in the two related Bankruptcy Cases; Deaver Ranch, Inc. (24-23905) and Shenandoah Investment Properties, Inc. (24-23909).

The Debtor in Possession will file a Motion for Approval of a Compromise to address various terms in the Stipulation that go beyond the normal adequate protection, and set the hearing on the Motion for 11:30 a.m. on October 24, 2024.

The Motion for Authority to Use Cash Collateral is granted on a further interim basis, and the use is authorized through and including October 31, 2024.

The continued hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Day and Time), to be conducted in conjunction with other related proceedings.

**Counsel for the Debtor in Possession shall prepare and lodge with the court a proposed order consistent with the above Ruling and setting the continued hearing for 11:30 a.m. on October 24, 2024.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Employ is granted.**

Deaver Ranch, Inc. ("Debtor in Possession") seeks to employ Golden Goodrich LLP ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327 and 330. Debtor in Possession seeks the employment of Counsel to be its general insolvency bankruptcy counsel.

Debtor in Possession originally sought for an order modifying fee application procedures, but that request was ultimately withdrawn by Debtor in Possession. *See* Mot. 6:5-7:8, Docket 43; Reply 10:8-12, Docket 93. As such, the remaining issue before the court today is Counsel's employment as Debtor in Possession's general insolvency bankruptcy counsel.

Debtor in Possession argues that Counsel's appointment and retention is necessary to advise Debtor in Possession, assist in preparing necessary documents throughout the case, assist in negotiations with creditors, and otherwise generally represent Debtor in Possession throughout the case. Mot. 4:6-5:11, Docket 43.

David M. Goodrich, an attorney at the firm, testifies that,

The Firm will: (a) advise the Debtor with respect to the requirements and provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, U.S. Trustee Guidelines, and other applicable requirements which may affect

the Debtor; (b) assist the Debtor in preparing and filing Schedules and Statement of Financial Affairs, complying with and fulfilling U.S. Trustee requirements, complying with and fulfilling the requirements of the Chapter 12 Trustee, complying with and fulfilling the requirements of the Bankruptcy Code and, in particular, the requirements of Chapter 12, and preparing other pleadings and documents as may be required after the initiation of a Chapter 12 case; (c) represent the Debtor at the § 341(a) meeting of creditors, and any continuances thereof; (d) assist the Debtor in identifying and obtaining Court approval of the employment of a business appraiser and an accountant; (e) assist the Debtor in negotiations with creditors and other parties-in-interest, including the use of cash collateral, the alteration of any pre and post-petition lien rights or claims, the valuation of collateral securing creditor liens, chapter 12 plan treatment, and assisting the Debtor with inventory demands requested by secured creditors; (f) assist the Debtor in the preparation and formulation of a Chapter 12 plan and confirmation of such a plan; (g) advise the Debtor concerning the rights and remedies of the estate and of the Debtor in regard to adversary proceedings which may be removed to, or initiated in, the Bankruptcy Court, and assist the Debtor, if appropriate, in retaining special counsel to litigate such adversary proceedings; (h) prepare all motions, applications, answers, orders, reports, and papers on behalf of the Debtor that are necessary to the administration of the Case; (i) represent the Debtor in any proceeding or hearing in the Bankruptcy Court in any action where the rights of the estate or the Debtor may be litigated, or affected; and (j) otherwise provide those services to the Debtor as are generally provided by general insolvency counsel to a debtor and debtor-in-possession in a Chapter 12 case.

Decl. ¶ 2, Docket 48. Mr. Goodrich further testifies that he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 12. Debtor in Possession also submits the Declaration of Kenneth Deaver, the president of Debtor in Possession, who reiterates what Mr. Goodrich stated in his Declaration. Decl., Docket 45.

## **CREDITOR PRUDENTIAL'S OPPOSITION**

Creditor the Prudential Insurance Company of America ("Prudential") filed an Opposition on October 10, 2024. Docket 87. Prudential states:

1. According to the definition of "disinterested person" in 11 U.S.C. § 101(14), Debtor in Possession cannot be represented by Counsel where Counsel also represents the debtor in possession in the related case, Shenandoah Investment Properties, Inc. ("Shenandoah").
2. Furthermore, under the California Rules of Professional Conduct, Rule 1.7 precludes the representation of concurrent clients, who are potentially adverse to each other, without informed written consent (as defined therein) and compliance with Rule 1.7(d). *Id.* at 2:15-17.
3. A conflict exists here as Debtor in Possession has and continues to sell part of its wine grape crops to Shenandoah, meaning Debtor in Possession is a

creditor of Shenandoah, which creates the appearance of or an actual conflict. *Id.* at 2:24-27.

4. The Schedules also show that, contrary the testimony of Mr. Deaver in support of this Motion that Shenandoah is not a "creditor" of the Debtor, the Schedules of Debtor executed under oath, at Schedule E, in fact reflects that SIP is also a creditor of the Debtor for an unpaid obligation for a "grape lease" in the amount of \$9,000. *Id.* at 3:12-15.
5. Moreover, all related debtors are parties to the loan transaction with Prudential, so each of them are joint and severally liable for Prudential's claim, giving rise to future potential conflicts. *Id.* at 3:20-26.
6. The Application's purported determination of lien priority is irrelevant and incorrect.
7. The proposed monthly payment procedure is not appropriate in this case.

Prudential submits a Request for Judicial Notice at Docket 88 in support of the Opposition, requesting the court take judicial notice of the Exhibits filed at Docket 89.

#### **CREDITOR AGWEST'S OPPOSITION**

Creditor AgWest Farm Credit, PCA ("AgWest") objects to the portion of this Motion requesting an alternative fee schedule. Docket 91.

#### **DEBTOR IN POSSESSION'S REPLY**

Debtor in Possession filed a Reply to the Oppositions on October 17, 2024. Docket 93. Debtor in Possession states:

1. Prudential is mistaken about a debtor-creditor relationship between Shenandoah and Debtor in Possession. Debtor in Possession's Schedules actually state a debt is owed to Debtor in Possession by Shenandoah Farmhouse, not Shenandoah. *Id.* at 2:11-21.
2. However, when this Motion was filed, Counsel was unaware that there may be a debtor-creditor relationship between Shenandoah and Deaver Ranch. After the § 341(a) meeting, the Firm confirmed with Mr. Deaver that a pre-petition debt is owed by Shenandoah to Deaver Ranch. As such, the Firm supplements its Application to disclose the existence of a potential conflict between the estates of Shenandoah and Deaver Ranch for the debt owed by Shenandoah to Deaver Ranch. *Id.* at 2:22-3:4.
3. So long as the post-petition relationship between Shenandoah and Deaver Ranch is consistent with the ordinary terms of their pre-petition business relationship, excluding the pre-petition debt that has not been satisfied, no conflict exists. *Id.* at 3:7-10.

4. Debtor in Possession and Shenandoah's obligation on Prudential's claim will not create an indemnity or contribution claim against the two estates while the two estates are reorganizing; any such claim would come after the bankruptcy cases have ended. *Id.* at 3:20-4:4.
5. Counsel remains disinterested pursuant to 11 U.S.C. § 327(e) and 11 U.S.C. § 101(14)(A).
6. Counsel does not hold and adverse interest.
7. The Chapter 12 Trustee retains the power to object to claims, which alleviates most, if not all, of the issues that may arise between the Deaver Ranch and Shenandoah estates.
8. Debtor in Possession and Shenandoah may seek substantive consolidation moving forward, should the court deny this Motion.
9. Debtor in Possession and Shenandoah will seek to employ conflicts counsel to resolve any potential adverse interests issues.
10. The principals have provided Counsel with informed written consent to represent both Shenandoah and Debtor in Possession, a requirement of California Rules of Professional Conduct, Rule 1.7.
11. Counsel withdraws its request for monthly payment procedures.

Debtor in Possession submits a supplemental declaration of Mr. Deaver in support of the Reply, authenticating the facts alleged in the Reply. Docket 96. Mr. Deaver confirms that he and Ms. Deaver have provided Counsel with written consent to proceed as general counsel in both Shenandoah and this case. *Id.* at ¶ 9.

Debtor in Possession also files an Opposition to Prudential's request for judicial notice, stating the documents Prudential seeks judicial notice of are not properly subject to judicial notice under Rule 201 of the Federal Rules of Evidence. Docket 98. Debtor in Possession only consents that the filing dates of the pleadings submitted as Exhibits (at Docket 89) should be taken under judicial notice.

### **Evidentiary Objections to Request for Judicial Notice**

The Debtor in Possession makes the following evidentiary objections to the exhibits for which Judicial Notice has been requested:

Exhibit 1. Deed of Trust Recorded March 19, 2018.

It is asserted that a Deed of Trust is not a document subject to judicial notice, but must be properly authenticated. It is further asserted that the exhibit is hearsay. Fed. R. Evid. 802. This court has held on prior occasions that the County Reorder's Records are not an adjudicative fact which is generally known within the court's jurisdiction. Rather, it is a Public Record which can be authenticated pursuant to



Federal Rules of Evidence 902, or by a witness with personal knowledge concerning the document and the acquisition thereof.

**XXXXXXX**

Exhibit 2. Copy of the Court's Record in the Deaver Ranch, Inc. Case, No. 24-23905.

This is a copy of the Voluntary Petition, Schedules and Statement of Affairs of Debtor Deaver Ranch filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court).

**XXXXXXX**

Exhibit 3 Copy of the Court's Record in the Shenandoah Investment Properties, Inc. Case, No. 24-23909.

This is a copy of the Voluntary Petition, Schedules and Statement of Affairs of Debtor Shenandoah Investment Properties, Inc. filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court).

**XXXXXXX**

Exhibit 4 Copy of the Court's Record in the Kenneth Deaver and Mary J. Deaver Case, No. 24-23923.

This is a copy of the Voluntary Petition, Schedules and Statement of Affairs of Debtors Kenneth Deaver and Mary J. Deaver filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court).

**XXXXXXX**

Exhibit 5 Declaration of Kenneth Deaver filed in Kenneth Deaver and Mary Deaver Case, No. 24-23923.

This is a copy of the Declaration of Kenneth Deaver filed in support of the Motion to Approve Cash Collateral Compromise in the Kenneth Deaver and Mary J. Deaver filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court). For this Declaration, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

Exhibit 6 Declaration of Kenneth Deaver filed in Shenandoah Investment Properties, Inc. Case, No. 24-23909.

This is a copy of the Declaration of Kenneth Deaver filed in support of the Emergency Motion For Order Authorizing the Use of Cash Collateral in the Shenandoah Investment Properties, Inc. Case filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court). For this Declaration, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

Exhibit 7 Declaration of Kenneth Deaver filed in Deaver Ranch, Inc., No. 24-23905.

This is a copy of the Declaration of Kenneth Deaver filed in support of the Emergency Motion For Order Authorizing the Use of Cash Collateral in the Deaver Ranch, Inc. Case filed with this court. Debtor in Possession is correct that the court's own record is not something that it needs to take judicial notice of. It is the court's own records. However, various cases have used the phrase "judicial notice" when a court has a document presented from its own filed (or even those of another court). For this Declaration, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

Request for Judicial Notice 8 [no exhibit provided] All pleadings and papers filed in the Deaver Ranch, Inc. Case, No. 24-23905.

The Objection is that general incorporation of these documents could includes various facts that are not undisputedly verifiable. As with the other court records, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

Request for Judicial Notice 9 [no exhibit provided] All pleadings and papers filed in the Shenandoah Investment Properties, Inc. Case, No. 24-23909.

The Objection is that general incorporation of these documents could includes various facts that are not undisputedly verifiable. As with the other court records, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

Request for Judicial Notice 9 [no exhibit provided] All pleadings and papers filed in the Kenneth Deaver and Mary J. Deaver Case, No. 24-23923.

The Objection is that general incorporation of these documents could includes various facts that are not undisputedly verifiable. As with the other court records, the court does not treat it as testimony being given in this Case, but evidence of what is being stated in the related case.

**XXXXXXX**

## **DISCUSSION**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person. A disinterested person is defined by 11 U.S.C. § 101(14), which states:

The term “disinterested person” means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

California Rules of Professional Conduct, Rule 1.7, imposes on counsel the requirement to obtain written consent from each client when representation is directly adverse to the separate clients, or when there is a significant risk that the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

### **Representation of Multiple Debtors in Possession**

This situation does cause the court pause, with the Applicant seeking to represent the Debtor in Possession, the fiduciary of this Bankruptcy Estate in this Case, and then the Debtor in Possession in the related Shenandoah Investment Properties, Inc. Case. As set forth in these cases these two Debtors pre-petition did business with each other and now the Debtors in Possession post-petition will be doing business with each other.

The principals of the two Debtors, who are now the Responsible Representative for the two Debtors in Possession have separate counsel representing them as the Responsible Representatives.

At the hearing, ~~XXXXXXX~~

~~Here, the court finds that Debtor in Possession and Counsel have sufficiently shown representation of Shenandoah and Debtor in Possession will not result in a conflict, and Counsel is sufficiently disinterested to represent both estates. Shenandoah has a relatively insignificant, general unsecured claim against Debtor in Possession, which has been properly reported to the court in these pleadings. Moreover, the principals for Debtor in Possession have given written consent for Counsel to represent both Debtor in Possession and Shenandoah, thus alleviating potential concerns of an adverse relationship.~~

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Golden Goodrich LLP as Counsel for the Debtor in Possession on the terms and conditions set forth in the Legal Services Agreement filed as Exhibit 1, Dckt. 46. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

~~The Motion to Employ filed by Deaver Ranch, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Employ is granted, effective August 30, 2024, and Debtor in Possession is authorized to employ Golden Goodrich LLP as Counsel for Debtor in Possession on the terms and conditions as set forth in the Legal Services Agreement filed as Exhibit 1, Dckt. 46.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

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

~~IT IS FURTHER ORDERED~~ that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

11. [24-23909-E-12](#)  
[GG-4](#)

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

**MOTION TO EMPLOY DAVID M.  
GOODRICH AS ATTORNEY(S) AND/OR  
MOTION APPROVAL OF MODIFIED FEE  
APPLICATION PROCEDURES**  
9-19-24 [\[40\]](#)

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

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Local Rule 9014-1(f)(1) Motion—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, parties requesting special notice, and Office of the United States Trustee on September 19, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Employ is granted.**

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) seeks to employ Golden Goodrich LLP (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327 and 330. Debtor in Possession seeks the employment of Counsel to be its general insolvency bankruptcy counsel.

Debtor in Possession originally sought for an order modifying fee application procedures, but that request was ultimately withdrawn by Debtor in Possession. *See* Mot. 6:5-7:8, Docket 40; Reply 10:8-12, Docket 92. As such, the remaining issue before the court today is Counsel’s employment as Debtor in Possession’s general insolvency bankruptcy counsel.

Debtor in Possession argues that Counsel’s appointment and retention is necessary to advise Debtor in Possession, assist in preparing necessary documents throughout the case, assist in negotiations with creditors, and otherwise generally represent Debtor in Possession throughout the case. Mot. 4:6-5:11, Docket 40.

David M. Goodrich, an attorney at the firm, testifies that,

The Firm will: (a) advise the Debtor with respect to the requirements and provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, U.S. Trustee Guidelines, and other applicable requirements which may affect the Debtor; (b) assist the Debtor in preparing and filing Schedules and Statement of Financial Affairs, complying with and fulfilling U.S. Trustee requirements, complying with and fulfilling the requirements of the Chapter 12 Trustee, complying with and fulfilling the requirements of the Bankruptcy Code and, in particular, the requirements of Chapter 12, and preparing other pleadings and documents as may be required after the initiation of a Chapter 12 case; (c) represent the Debtor at the § 341(a) meeting of creditors, and any continuances thereof; (d) assist the Debtor in identifying and obtaining Court approval of the employment of a business appraiser and an accountant; (e) assist the Debtor in negotiations with creditors and other parties-in-interest, including the use of cash collateral, the alteration of any pre and post-petition lien rights or claims, the valuation of collateral securing creditor liens, chapter 12 plan treatment, and assisting the Debtor with inventory demands requested by secured creditors; (f) assist the Debtor in the preparation and formulation of a Chapter 12 plan and confirmation of such a plan; (g) advise the Debtor concerning the rights and remedies of the estate and of the Debtor in regard to adversary proceedings which may be removed to, or initiated in, the Bankruptcy Court, and assist the Debtor, if appropriate, in retaining special counsel to litigate such adversary proceedings; (h) prepare all motions, applications, answers, orders, reports, and papers on behalf of the Debtor that are necessary to the administration of the Case; (i) represent the Debtor in any proceeding or hearing in the Bankruptcy Court in any action where the rights of the estate or the Debtor may be litigated, or affected; and (j) otherwise provide those services to the Debtor as are generally provided by general insolvency counsel to a debtor and debtor-in-possession in a Chapter 12 case.

Decl. ¶ 2, Docket 45. Mr. Goodrich further testifies that he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 12. Debtor in Possession also submits the Declaration of Kenneth Deaver, the president of Debtor in Possession, who reiterates what Mr. Goodrich stated in his Declaration. Decl., Docket 44.

## **CREDITOR PRUDENTIAL’S OPPOSITION**

Creditor the Prudential Insurance Company of America (“Prudential”) filed an Opposition on October 10, 2024. Docket 86. Prudential states:

1. According to the definition of “disinterested person” in 11 U.S.C. § 101(14), Debtor in Possession cannot be represented by Counsel where

Counsel also represents the debtor in possession in the related case, Deaver Ranch, Inc. (“Deaver Ranch”).

2. Furthermore, under the California Rules of Professional Conduct, Rule 1.7 precludes the representation of concurrent clients, who are potentially adverse to each other, without informed written consent (as defined therein) and compliance with Rule 1.7(d). *Id.* at 2:15-17.
3. A conflict exists here as Deaver Ranch has and continues to sell part of its wine grape crops to Debtor in Possession, meaning Deaver Ranch is a creditor of Debtor in Possession, which creates the appearance of or an actual conflict. *Id.* at 2:25-3:2.
4. The Schedules also show that, contrary the testimony of Mr. Deaver in support of this Motion that Debtor in Possession is not a "creditor" of Deaver Ranch, the Schedules of Deaver Ranch executed under oath, at Schedule E, in fact reflects that Debtor in Possession is also a creditor of Deaver Ranch for an unpaid obligation for a “grape lease” in the amount of \$9,000. *Id.* at 3:13-16.
5. Moreover, all related debtors are parties to the loan transaction with Prudential, so each of them are joint and severally liable for Prudential’s claim, giving rise to future potential conflicts. *Id.* at 3:21-27.
6. The Application’s purported determination of lien priority is irrelevant and incorrect.
7. The proposed monthly payment procedure is not appropriate in this case.

Prudential submits a Request for Judicial Notice at Docket 87 in support of the Opposition, requesting the court take judicial notice of the Exhibits filed at Docket 88.

### **CREDITOR AGWEST’S OPPOSITION**

Creditor AgWest Farm Credit, PCA (“AgWest”) objects to the portion of this Motion requesting an alternative fee schedule. Docket 90.

### **DEBTOR IN POSSESSION’S REPLY**

Debtor in Possession filed a Reply to the Oppositions on October 17, 2024. Docket 92. Debtor in Possession states:

1. Prudential is mistaken about a debtor-creditor relationship between Debtor in Possession and Deaver Ranch. Deaver Ranch’s Schedules actually state a debt is owed to Deaver Ranch by Shenandoah Farmhouse, not Debtor in Possession. *Id.* at 2:11-21.

2. However, when this Motion was filed, Counsel was unaware that there may be a debtor-creditor relationship between Debtor in Possession and Deaver Ranch. After the § 341(a) meeting, the Firm confirmed with Mr. Deaver that a pre-petition debt is owed by Debtor in Possession to Deaver Ranch. As such, the Firm supplements its Application to disclose the existence of a potential conflict between the estates of Debtor in Possession and Deaver Ranch for the debt owed by Debtor in Possession to Deaver Ranch. *Id.* at 2:22-3:4.
3. So long as the post-petition relationship between Debtor in Possession and Deaver Ranch is consistent with the ordinary terms of their pre-petition business relationship, excluding the pre-petition debt that has not been satisfied, no conflict exists. *Id.* at 3:7-10.
4. Deaver Ranch and Debtor in Possession's obligation on Prudential's claim will not create an indemnity or contribution claim against the two estates while the two estates are reorganizing; any such claim would come after the bankruptcy cases have ended. *Id.* at 3:20-4:4.
5. Counsel remains disinterested pursuant to 11 U.S.C. § 327(e) and 11 U.S.C. § 101(14)(A).
6. Counsel does not hold and adverse interest.
7. The Chapter 12 Trustee retains the power to object to claims, which alleviates most, if not all, of the issues that may arise between the Deaver Ranch and Debtor in Possession estates.
8. Deaver Ranch and Debtor in Possession may seek substantive consolidation moving forward, should the court deny this Motion.
9. Deaver Ranch and Debtor in Possession will seek to employ conflicts counsel to resolve any potential adverse interests issues.
10. The principals have provided Counsel with informed written consent to represent both Debtor in Possession and Deaver Ranch, a requirement of California Rules of Professional Conduct, Rule 1.7.
11. Counsel withdraws its request for monthly payment procedures.

Debtor in Possession submits a supplemental declaration of Mr. Deaver in support of the Reply, authenticating the facts alleged in the Reply. Docket 94. Mr. Deaver confirms that he and Ms. Deaver have provided Counsel with written consent to proceed as general counsel in both Shenandoah and this case. *Id.* at ¶ 9.

Debtor in Possession also files an Opposition to Prudential's request for judicial notice, stating the documents Prudential seeks judicial notice of are not properly subject to judicial notice under Rule 201



of the Federal Rules of Evidence. Docket 97. Debtor in Possession only consents that the filing dates of the pleadings submitted as Exhibits (at Docket 89) should be taken under judicial notice.

## **DISCUSSION**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person. A disinterested person is defined by 11 U.S.C. § 101(14), which states:

The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

California Rules of Professional Conduct, Rule 1.7, imposes on counsel the requirement to obtain written consent from each client when representation is directly adverse to the separate clients, or when there is a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

### **Representation of Multiple Debtors in Possession**

This situation does cause the court pause, with the Applicant seeking to represent the Debtor in Possession, the fiduciary of this Bankruptcy Estate in this Case, and then the Debtor in Possession in the related Deaver Ranch, Inc. Case. As set forth in these cases these two Debtors pre-petition did business with each other and now the Debtors in Possession post-petition will be doing business with each other.

The principals of the two Debtors, who are now the Responsible Representative for the two Debtors in Possession have separate counsel representing them as the Debtors in Possession in their own Chapter 11 Case (24-23923).

At the hearing, **XXXXXXX**

~~Here, the court finds that Debtor in Possession and Counsel have sufficiently shown representation of Deaver Ranch and Debtor in Possession will not result in a conflict, and Counsel is sufficiently disinterested to represent both estates. Debtor in Possession has a relatively insignificant, general unsecured claim against Deaver Ranch, which has been properly reported to the court in these pleadings. Moreover, the principals for Debtor in Possession have given written consent for Counsel to represent both Debtor in Possession and Deaver Ranch, thus alleviating potential concerns of an adverse relationship.~~

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Golden Goodrich LLP as Counsel for the Debtor in Possession on the terms and conditions set forth in the Legal Services Agreement filed as Exhibit 1, Dckt. 43. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

The Motion to Employ filed by Shenandoah Investment Properties, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion to Employ is granted, effective August 30, 2024, and Debtor in Possession is authorized to employ Golden Goodrich LLP as Counsel for Debtor in Possession on the terms and conditions as set forth in the Legal Services Agreement filed as Exhibit 1, Dckt. 43.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

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

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted~~

~~only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~

12. [24-23905](#)-E-12      **DEAVER RANCH, INC., A**      **MOTION FOR JOINT ADMINISTRATION**  
[GG-5](#)      **CALIFORNIA CORPORATION**      **10-2-24 [62]**  
David Goodrich

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

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

-----

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, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 2, 2024. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion for Joint Administration 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 Joint Administration is granted.**

Deaver Ranch, Inc. (“Debtor in Possession”) moves this court for an Order granting joint administration of this case with the related bankruptcy cases of Shenandoah Investment Properties, Inc. (“SIP”), case no. 2:24-bk-23909, and Kenneth Henry Deaver and Mary Jean Deaver (“Deavers”), case no. 2:24-bk-23923 (collectively, “Cases”), pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015. Debtor in Possession proposes its case be the lead case.

Debtor in Possession argues joint administration is proper as it will allow the cases to move forward without having to review and separately respond to similar motions, filings and other pleadings that would otherwise be filed in the separate Cases. Mot. 2:20-27, Docket 62. Debtor in Possession states joint administration will potentially save Debtors’ estates significant administrative fees and costs, save the Court

numerous hours in setting and hearing matters, and in reviewing separate sets of virtually identical pleadings in the three Cases. *Id.* The proposed procedures for joint administration are:

- (1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed concurrently herewith as Exhibit 1. Each pleading or paper filed, however, shall indicate which of the Debtors is affected by or is a party to the subject filings;
- (2) The combining of notices to creditors and parties-in-interest;
- (3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;
- (4) The joint scheduling of hearings;
- (5) The joint handling of other administrative matters;
- (6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed concurrently herewith as Exhibit 2. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;
- (7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and
- (8) Each debtor will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.

Mot. 4:16-5:11, Docket 62.

## **DISCUSSION**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

- (a) **CASES INVOLVING SAME DEBTOR.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
- (b) **CASES INVOLVING TWO OR MORE RELATED DEBTORS.** If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An

order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Notably, “neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law.” 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Joint administration is the alternative to a substantive consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when “the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds.” 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

...

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

~~In this case, the court finds that joint administration of the three Cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. Many of the assets are closely intertwined among the estates in the three Cases, and many of the creditors are cross-collateralized with assets shared by the three cases. Such a close relationship will inevitably result in many same or similar motions filed on behalf of the Cases, and the court finds it is unnecessary to require the parties to sift through multiple versions of a same or similar Motion.~~

~~For these reasons, the Motion is granted and the Cases shall be jointly administered with the case of Deaver Ranch, Inc., being the lead case.~~

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 Joint Administration filed by Deaver Ranch, Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted pursuant to Fed. R. Bankr. P. 1015, and the case of Deaver Ranch, Inc., case no. 24-23905, shall be jointly administered with the related bankruptcy cases of Shenandoah Investment Properties, Inc. (“SIP”), case no. 2:24-bk-23909, and Kenneth Henry Deaver and Mary Jean Deaver (“Deavers”), case no. 2:24-bk-23923 (collectively, “Cases”). The following procedures are in place that govern the joint administration:

~~(1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed as Exhibit 1, Docket 65. Each pleading or paper filed, however, shall indicate which of the Debtors is affected by or is a party to the subject filings;~~

~~(2) The combining of notices to creditors and parties-in-interest;~~

~~(3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;~~

~~(4) The joint scheduling of hearings;~~

~~(5) The joint handling of other administrative matters;~~

~~(6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed~~

~~concurrently herewith as Exhibit 2, Docket 65. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;~~

~~(7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and~~

~~(8) Each debtor will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.~~

13. [24-23909-E-12](#)  
[GG-5](#)

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

**MOTION FOR JOINT ADMINISTRATION  
10-2-24 [61]**

**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, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 2, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Joint Administration 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 Joint Administration is granted.**

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) moves this court for an Order granting joint administration of this case with the related bankruptcy cases of Deaver Ranch, Inc. (“Deaver Ranch”), case no. 2:24-bk-23905, and Kenneth Henry Deaver and Mary Jean Deaver (“Deavers”), case no. 2:24-bk-23923-bk-23923 (collectively, “Cases”), pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015. Debtor in Possession proposes Deaver Ranch case be the lead case.

Debtor in Possession argues joint administration is proper as it will allow the cases to move forward without having to review and separately respond to similar motions, filings and other pleadings that would otherwise be filed in the separate Cases. Mot. 2:21-28, Docket 61. Debtor in Possession states joint administration will potentially save Debtors’ estates significant administrative fees and costs, save the Court numerous hours in setting and hearing matters, and in reviewing separate sets of virtually identical pleadings in the three Cases. *Id.* The proposed procedures for joint administration are:

- (1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed concurrently herewith as Exhibit 1. Each pleading or paper filed, however, shall indicate which of the Debtors is affected by or is a party to the subject filings;
- (2) The combining of notices to creditors and parties-in-interest;
- (3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;
- (4) The joint scheduling of hearings;
- (5) The joint handling of other administrative matters;
- (6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed concurrently herewith as Exhibit 2. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;
- (7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and
- (8) The Debtors will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.

Mot. 4:17-5:12, Docket 61.

## **DISCUSSION**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:



(a) **CASES INVOLVING SAME DEBTOR.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.

(b) **CASES INVOLVING TWO OR MORE RELATED DEBTORS.** If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) **EXPEDITING AND PROTECTIVE ORDERS.** When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Notably, “neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law.” 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Joint administration is the alternative to a substantive consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when “the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds.” 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

(a) **ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED.** If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) **RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.** Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) **APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.**

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

...

(d) **POTENTIAL CONFLICTS OF INTEREST.** On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) **SEPARATE ACCOUNTS.** The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

~~————— In this case, the court finds that joint administration of the three Cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. Many of the assets are closely intertwined among the estates in the three Cases, and many of the creditors are cross-collateralized with assets shared by the three cases. Such a close relationship will inevitably result in many same or similar motions filed on behalf of the Cases, and the court finds it is unnecessary to require the parties to sift through multiple versions of a same or similar Motion. ———~~

~~————— For these reasons, the Motion is granted and the Cases shall be jointly administered with the case of Deaver Ranch, Inc., being the lead case. ———~~

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

**IT IS ORDERED** that the Motion is ~~granted pursuant to Fed. R. Bankr. P. 1015, and the case of Deaver Ranch, Inc., case no. 24-23905, shall be jointly administered with the related bankruptcy cases of Shenandoah Investment Properties, Inc., case no. 2:24-bk-23909, and Kenneth Henry Deaver and Mary Jean Deaver (“Deavers”), case no. 2:24-bk-23923 (collectively, “Cases”).~~ The following procedures are in place that govern the joint administration:

~~————— (1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed as Exhibit 1, Docket 63. Each pleading or paper filed; however, shall indicate which of the Debtors is affected by or is a party to the subject filings;~~

- ~~\_\_\_\_\_ (2) The combining of notices to creditors and parties-in-interest;~~
- ~~\_\_\_\_\_ (3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;~~
- ~~\_\_\_\_\_ (4) The joint scheduling of hearings;~~
- ~~\_\_\_\_\_ (5) The joint handling of other administrative matters;~~
- ~~\_\_\_\_\_ (6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed concurrently herewith as Exhibit 2, Docket 63. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;~~
- ~~\_\_\_\_\_ (7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and~~
- ~~\_\_\_\_\_ (8) Each debtor will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.~~

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on October 2, 2024. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion for Joint Administration 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 Joint Administration is granted.**

**PLEADINGS FILED AS ONE DOCUMENT**

Movant filed the Motion and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

**THE MOTION**

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an Order granting joint administration of this case with the related bankruptcy cases of Deaver Ranch, Inc., case number 2024-23905 (“Lead Case”) and Shenandoah Investment Properties, Inc. (“SIP”), case no. 2:24-bk-23909, (together, “Cases”), pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015. Debtor in Possession proposes Deaver Ranch case be the lead case.

Debtor in Possession argues joint administration is proper as it will allow the cases to move forward without having to review and separately respond to similar motions, filings and other pleadings that would otherwise be filed in the separate Cases. Mot. 2:19-25, Docket 62. Debtor in Possession states joint administration will potentially save Debtors’ estates significant administrative fees and costs, save the Court numerous hours in setting and hearing matters, and in reviewing separate sets of virtually identical pleadings in the three Cases. *Id.* The proposed procedures for joint administration are:

- (1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed concurrently herewith as Exhibit 1. Each pleading or paper filed, however, shall indicate which of the Debtors is affected by or is a party to the subject filings;
- (2) The combining of notices to creditors and parties-in-interest;
- (3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;
- (4) The joint scheduling of hearings;
- (5) The joint handling of other administrative matters;
- (6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed concurrently herewith as Exhibit 2. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;
- (7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and
- (8) Each Debtor will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.

Mot. 4:11-5:4, Docket 62.

## **DISCUSSION**

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

(a) **CASES INVOLVING SAME DEBTOR.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.

(b) **CASES INVOLVING TWO OR MORE RELATED DEBTORS.** If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).

(c) **EXPEDITING AND PROTECTIVE ORDERS.** When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Notably, “neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law.” 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Joint administration is the alternative to a substantive consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when “the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds.” 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

(a) **ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED.** If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) **RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE.** Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(c) **APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.**

(1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

...

(d) **POTENTIAL CONFLICTS OF INTEREST.** On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

(e) **SEPARATE ACCOUNTS.** The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

~~In this case, the court finds that joint administration of the three Cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. Many of the assets are closely intertwined among the estates in the three Cases, and many of the creditors are cross-collateralized with assets shared by the three cases. Such a close relationship will inevitably result in many same or similar motions filed on behalf of the Cases, and the court finds it is unnecessary to require the parties to sift through multiple versions of a same or similar Motion.~~

~~For these reasons, the Motion is granted and the Cases shall be jointly administered with the case of Deaver Ranch, Inc., being the lead case.~~

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 Joint Administration filed by Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted pursuant to Fed. R. Bankr. P. 1015, and the case of Deaver Ranch, Inc., case no. 24-23905, shall be jointly administered with the related bankruptcy cases of Shenandoah Investment Properties, Inc., case no. 2:24-bk-23909, and Kenneth Henry Deaver and Mary Jean Deaver (“Deavers”), case no. 2:24-bk-23923 (collectively, “Cases”). The following procedures are in place that govern the joint administration:

(1) The use of a single docket (In re Deaver Ranch, Inc., Case No. 2:24-bk-23905) for administrative matters, including the filing, lodging, and docketing of pleadings and orders, and parties in interest shall be directed to use the caption filed as Exhibit 1, Docket 62. Each pleading or paper filed, however, shall indicate which of the Debtors is affected by or is a party to the subject filings;

- (2) The combining of notices to creditors and parties-in-interest;
- (3) The Debtors will file a consolidated list of the 20 largest creditors within two weeks of approval of this Motion;
- (4) The joint scheduling of hearings;
- (5) The joint handling of other administrative matters;
- (6) Notice of the joint administration of the estates will be separately filed and docketed in each of the Cases in the form of the proposed notice filed concurrently herewith as Exhibit 2, Docket 62. On all other Court dockets for the related Cases, creditors and parties-in-interest will be directed to the Debtor's docket to locate all pleadings filed subsequent to the date on which the Court enters an order authorizing the joint administration of the Cases;
- (7) Each debtor shall maintain its own claims register to avoid the confusion that may result if the claims registers were consolidated; and
- (8) Each debtor will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.

15. [24-24023-E-11](#)  
[CAE-1](#)

**NEXT HILL ENTERPRISES,  
LLC**

**STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
9-9-24 [1]**

Debtor's Atty: Richard L. Jare

Notes:

Operating Reports filed: 10/15/24, 10/17/24

Trustee Report at 341 Meeting lodged: 10/18/24

[RJ-1] *Ex Parte* Application to Approve Employment of Attorney filed 9/9/24 [Dckt 5]; Order granting filed 10/2/24 [Dckt 26]

[BPC-1] Motion of David Pick Family Partnership, L.P. for an Order Designating Chapter 11 Case as a Single Asset Real Estate Case filed 9/26/24 [Dckt 19]; set for hearing 10/24/24 at 10:30 a.m.

**The Status Conference is ~~XXXXXXX~~**

**OCTOBER 24, 2024 STATUS CONFERENCE**



This voluntary Chapter 11 Case was filed by Next Hill Enterprises, LLC on September 9, 2024, and the Debtor is serving as the Debtor in Possession. The Schedules show that 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.

The Monthly Operating Report for September 2024 has been filed by the Debtor in Possession. Dckt. 35. It states that the was \$0.00 cash balance at the start of the month and that \$25 was received in September 2024. Further, that there were no disbursements.

At the Status Conference, **XXXXXXX**

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

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

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

Sufficient Notice Provided. The court set the hearing for October 3, 2024. Dckt. 11. The court served the U.S. Trustee, Chapter 13 Trustee, and creditors.

The Motion was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B).**

### October 24, 2024 Hearing

The court continued the hearing to allow Debtor to supplement the record and show why extension of the automatic stay is warranted in this case pursuant to 11 U.S.C. § 362(c)(3)(B). On October 22, 2024, Debtor filed with the court Schedules, a Chapter 13 Plan, and a supplemental Motion to Extend the stay. Dockets 20-24. The Plan was not filed on the Eastern District's Official Plan Form, Form EDC. 003-080.

The Plan proposes 60 monthly payments of \$20 per month. The Plan's nonstandard provisions explain Debtor is challenging the validity of the claim of PHH / Western Progressive LLC / Bank of New York Mellon. Plan at 9, Docket 22.

In the Motion to Extend the Stay, Debtor goes into theories challenging the validity of the note secured by a deed of trust in Debtor's real property commonly known as 3961 Nugget Lane, Placerville, Ca 95667. Such theories are not relevant to this Motion.

Of relevance to this Motion, Debtor has filed Schedules and a Plan, giving the court grounds to find the case has been filed in good faith and can proceed pursuant to 11 U.S.C. § 362(c)(3)(B).

At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

On September 27, 2024, Debtor Kenneth Gene Wilkinson commenced this voluntary Chapter 13 Bankruptcy Case (“Current Bankruptcy Case”). On September 27, 2024, the Debtor also filed a pleading titled: “Motion to Stay Foreclosure Proceedings, Void Potential Sale, and Challenge Creditor's Standing.” Dckt 10. The court summarizes the Motion as follows:

1. The Debtor’s prior bankruptcy case, 24-22193 (“Prior Bankruptcy Case”) was dismissed by the court on September 16, 2024. Motion, ¶ 1; Dckt. 10.
2. PHH Mortgage Corporation and Western Progressive LLC claim to hold a security interest in the Debtor’s primary residence. *Id.*; ¶ 3.
3. The Creditors have initiated foreclosure proceeding against the residence property, which was scheduled for September 26, 2024. *Id.*, ¶ 4.
4. The Debtor requests that:
  - a. Any foreclosure sale be undone; and
  - b. Any foreclosure sale be until a civil case, identified as 24-CV-01416-TLN-AC (an action in the District Court for the Eastern District of California) has been properly adjudicated. *Id.*; ¶ 5.
5. The District Court Action challenges the validity of any alleged mortgage of Creditor upon which the foreclosure of Debtor’s residence is based. *Id.*
6. While the prior bankruptcy case was dismissed, the automatic stay would not be lifted until the District Court Action is fully adjudicated. *Id.*; ¶ 6.
7. The Debtor intends to seek a temporary restraining order in the District Court Action. *Id.*; ¶ 7.
8. The automatic stay arising in the Current Bankruptcy Case should remain in full force and effect until “this case is fully adjudicated and closed.” *Id.*; ¶ 8.
9. Debtor has filed a Motion to Vacate the order dismissing Debtor’s Prior Bankruptcy Case. *Id.*; ¶ 12.
10. Debtor challenges the standing of the Creditors to foreclose on the residence. Debtor also asserts that the Creditors have materially breached the contract which they allege to exist. *Id.*; ¶ 15.

11. Debtor requests that if a foreclosure sale occurred, that the court order that any such purported sale is void *ab initio* based on the automatic stay, the lack of standing, and the absence of a valid, enforceable contract. *Id.*; ¶ 17.
12. Debtor requests an expedited hearing on this Motion. *Id.*; ¶ 20.

### **Review of Prior and Current Bankruptcy Cases, Automatic Stay, and Requirements of Fed. R. Bankr. P. 7001**

Debtor's Prior Bankruptcy Case was filed on May 21, 2024, and dismissed on September 16, 2024. 24-22193; Order Dismissing, Dckt. 48. On September 27, 2024, the Hon. Fredrick E. Clement, the Bankruptcy Judge to whom the Prior Bankruptcy Case is assigned entered an Order Denying Motion to Vacate Dismissal of the Prior Bankruptcy Case. *Id.*; Dckt. 53.

The court's record show that before the Prior Bankruptcy Case, the most recent bankruptcy case filed by Debtor that was pending and dismissed is Chapter 13 Case 18-21452 which was dismissed on April 2, 2018.

#### 11 U.S.C. § 362(a) Automatic Stay

Congress provides in 11 U.S.C. § 362(a) that an automatic stay (injunction) goes into effect that protects the debtor with respect to certain act and protects the bankruptcy estate (which includes the property of the bankruptcy estate). Congress provides certain exceptions to the automatic stay, with ones that relate to multiple filings of bankruptcy cases by a debtor stated in 11 U.S.C. § 362(c)(3), if there was a prior bankruptcy case that was pending and dismissed within one year of the case then before the court being filed, and 11 U.S.C. § 362(c)(4) if there were two or more prior bankruptcy cases that had been pending and dismissed within one year of the bankruptcy case then before the court being filed.

Here, Debtor has one bankruptcy case, 24-22193, that was pending and dismissed on September 16, 2024, which was within the one-year period preceding the filing of the Current Bankruptcy Case now before the court that was filed on September 27, 2024.<sup>FN.1</sup> As provided in 11 U.S.C. § 362(c)(3)(A):

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) —

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case; . . . .

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FN. 1. The court has only checked the records for cases filed in the Eastern District of California, using the name of the Debtor. If cases were filed in other Districts or under other names by the Debtors, and those cases were pending and dismissed during the one-year period prior to the filing of this current Bankruptcy Case, they will be included in the 11 U.S.C. § 362(c)(3)(A) calculation.

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In 11 U.S.C. § 362(c)(3)(A), Congress provides for the termination of the automatic stay, as to the debtor, thirty-days after the filing of the bankruptcy case filed after the prior dismissed bankruptcy case. As this court has addressed in prior rulings (though not all judges agree and there is no controlling appellate rulings on this point), 11 U.S.C. § 362(c)(3)(A) provides for termination of the automatic stay as to the debtor, but does not terminate the stay as to the bankruptcy estate and the property of the bankruptcy estate.

Congress provides in 11 U.S.C. § 362(c)(3)(B) for the court to extend the automatic stay as to the debtor, and not have it terminate 30 days after the filing of the bankruptcy case, which states:

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; . . . .

It may be that the Debtor, having been told about the Bankruptcy Code providing for a limitation on the automatic stay when successive cases are filed, believed that there was no stay in this case filed after the one prior case, 22-22193, had been pending and dismissed in the one-year period prior to the commencement of this Current Bankruptcy Case.<sup>1</sup>

Enforcement of Adversary Proceeding, and  
Adjudication of Contract Disputes and Determination of  
Interests in Property

In the Motion, Debtor seeks to enforce the stay and have the court determine that actions taken in violation thereof are void. The automatic stay, and violations thereof, can be enforced through the bankruptcy case law and motion practice, those proceedings being in the nature of contempt proceedings. 3 Collier on Bankruptcy P 362.12; see 11 U.S.C. § 362(k).

However, in the Motion Debtor seeks to have the court determine the extent and validity of any interest that Creditors may have in the residence, determine that there is no such interest, and to enjoin further attempted foreclosure efforts. Federal Rule of Bankruptcy Procedure 7001(2) requires that actions to determine the extent, validity, priority, of a lien or interest in property must be sought by adversary proceeding.

**SETTING INITIAL HEARING ON MOTION**

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<sup>1</sup> When two or more prior bankruptcy cases were pending and dismissed within one-year of the filing of the current bankruptcy case before the court, then no automatic stay goes into effect in the then current case before the bankruptcy court. 11 U.S.C. § 362(c)(4)(A). However, Congress authorizes the court to impose the automatic stay in the then current bankruptcy case as provided in 11 U.S.C. § 362(c)(4)(B), (C).

Debtor in prosecuting this Current Bankruptcy Case has filed a pleading requesting relief, which may or may not be necessary, may not be clearly stated, and does not appear to have been served on all parties in interest in this Current Bankruptcy Case.

It appears that there may be some action that Debtor may want to take in connection with the Current Bankruptcy Case (including possible 11 U.S.C. § 362(c)(3)(B) extension of the stay as to the Debtor), which are not clearly requested in the Motion.

Under the facts and circumstances of this Motion, the court sets an expedited Initial Hearing on the Motion. The appearance of Debtor at the hearing is necessary for the Debtor to address for the court the prosecution of this Bankruptcy Case, the Motion, what relief will be sought, and how Debtor will proceed.

### **OCTOBER 3, 2024 HEARING**

At the hearing, the Debtor Kenneth, the Debtor, appeared with his son Kelly Wilkinson appeared. Kelly Wilkinson addressed the court directly concerning his father's bankruptcy case and the pending action in the District Court. The court addressed with both the Debtor and Kelly Wilkinson the inability of the son to appear and "represent" the Debtor, even if the son has a power of attorney. The court summarily discussed how a person with a power of attorney appears in an action, and how that person must be represented by counsel.

The court afforded Kelly Wilkinson to express for his father, the Debtor, what they thought could be accomplished in the Bankruptcy Case and how it fit with the ongoing litigation in the District Court. The court gave great leeway to allow both Kelly Wilkinson (who spoke most of the time) and Debtor to address the court at this initial hearing.

Kelly Wilkinson provided a detailed summary of the legal theories as to why they thought the attempts to foreclose on the Debtor's property was invalid. How they believed that the note secured by the property was actually property of the late spouse/mother, the person who borrowed the money and signed the note.

The court made it clear that the issues concerning the litigation with the alleged creditors was a proceeding in the District Court and that those issues would be litigated in the District Court. For the Bankruptcy Court proceedings, the Debtor will have to comply with the Bankruptcy Laws, prosecute his case, and advance these proceedings. The court made it clear that merely filing bankruptcy, obtaining the automatic stay, and then let the bankruptcy case sit while there is litigation in another court is not proper.

Though most of the relief requested in the Motion is beyond the scope of the Motion, it can be read to request that the court extend the automatic stay, as to the Debtor, as provided in 11 U.S.C. § 362(c)(3)(B).

The court continues the hearing to 11:30 a.m. on October 24, 2024, to afford the Debtor a hearing on the Motion within thirty days of the filing of this Bankruptcy Case. Debtor shall file and serve a supplemental motion setting forth the grounds and request for relief pursuant to 11 U.S.C. § 362(c)(3)(B), and the supporting evidence, other pleadings, and notice of hearing, on or before October 9, 2024.

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

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

The Motion to Extend the Automatic Stay filed by Kenneth Gene Wilkinson (“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 Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

17. [24-21092-E-12](#)  
[DCJ-4](#)

**RHETT BURGESS**  
**David Johnston**

**CONTINUED MOTION TO CONFIRM  
CHAPTER 12 PLAN  
7-25-24 [43]**

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

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Local Rule 9014-1(f)(1) Motion—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, parties requesting special notice, and Office of the United States Trustee on July 25, 2024. By the court’s calculation, more than 70 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days’ notice for opposition).

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

**The Motion to Confirm the Plan is ~~XXXXXX~~.**

Rhett Sterling Burgess (“Debtor in Possession”) filed their Motion to Confirm Plan on July 25, 2024. Docket 43. The following parties all launched Oppositions to the initial Motion: Lilian G. Tsang, the Chapter 12 Trustee (“Trustee”). Docket 60.

The Plan was filed on July 25, 2024. Docket 45. The parties requested multiple extensions on this hearing, which the court granted. Orders, Docket 49, 58.

## Summary of the Second Amended Plan Filed on July 25, 2024 (Docket 45)

The court provides the following summary of significant terms of the proposed Plan. This summary is not a complete statement of all terms of the proposed Plan. The Plan provides as follows:

1. The only administrative claims in Class 1 are Debtor in Possession's counsel's fees and the Chapter 12 Trustee's compensation, estimated to be \$24,614. Plan 2:23-3:3, Docket 45.
2. The only priority claim in Class 2 is the Franchise Tax Board, whose community claim is expected to be approximately \$4,500. *Id.* at 3:4-8.
3. There are two secured claims, one of Wells Fargo in the amount of \$30,070 in Class 3, and one of Deere in the amount of \$44,721 in Class 4. *Id.* at 3:9-17.
4. Class 5 is claims of various landlords for arrears, estimated to be in the amount of \$30,000. *Id.* at 3:18-24.
5. The general unsecured claims in Class 6 amount to \$5,850. *Id.* at 3:25-4:1.
6. The Plan calls for a single payment of \$146,136, which is expected to pay all claims in full, including interest. The payment will come from Debtor in Possession's Bank of Stockton account containing proceeds of the sale of community real property and proceeds from the sale of almonds grown by the Debtor in 2023. The two trustees are the attorneys involved in the dissolution of marriage action. (The balance on July 25, 2024 is \$770,229.)

## TRUSTEE'S OPPOSITION

On October 10, 2024, Trustee filed an Opposition to the Plan. Docket 60. Trustee's main objection to the Plan is she cannot assess its feasibility, being unable to confirm Debtor has access to the funds in the bank account. Trustee states:

Debtor's counsel has indicated that negotiations are on-going with the ex-spouse's attorney for the turnover of funds. However, the status of these negotiations is unknown, and it is also unclear whether Debtor is able to access funds that he claims to be his. The lump sum payment anticipated in the Plan requires that submission of \$146,136 plus any additional funds needed for full repayment of creditors plus interest rate of 5.01% prior to the Effective Date of the Plan. Without further clarification and confirmation that the funds are forthcoming and ready to be remitted to the Trustee, the Trustee cannot assess whether the plan complies with 11 U.S.C. § 1225(a)(1) and (a)(6) and therefore, cannot recommend its confirmation.

*Id.* at 2:13-21.



## APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states “[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.” The term “family farmer with regular annual income” is defined in 11 U.S.C. § 101(19) as a “family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.” The term “family farmer” is defined under 11 U.S.C. § 101(18) as an:

[I]ndividual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment;

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a

5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; and

(5) subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F.3d 1209, 1220 at n. 5 (9th Cir. 1994) (“The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate’s creditors.”).

## **DISCUSSION**

Here, the court finds that the Debtor in Possession is an eligible debtor under Chapter 12. No party in interest has contested this fact and the court finds it clear from the evidence that Debtor in Possession fulfills the definitions of “family farmer” and “family farmer with regular income” as prescribed by 11 U.S.C. §§ 109(f), 101(18) &(19).

However, if the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor’s projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor’s projected disposable income for such period.

(2) For purposes of this subsection, “disposable income” means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor’s business.

Trustee objects on the basis of whether the funds are readily available to be paid in accordance with the Plan upon confirmation. Debtor in Possession has not submitted any pleading or evidence to rebut Trustee's objection, or otherwise made a showing that the Plan complies with 11 U.S.C. § 1225(b). At the hearing, **XXXXXXX**

~~The court finds that the Plan complies with 11 U.S.C. §§ 1225 & 1222. Upon review of the proposed Chapter 12 Plan, the evidence in the form of the declarations of Debtor in Possession and the arguments of counsel relating thereto, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1225:~~

- ~~A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;~~
- ~~B. Any fee, charge, or amount required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;~~
- ~~C. The Plan has been proposed in good faith and not by any means forbidden by law;~~
- ~~D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;~~
- ~~E. With respect to each allowed secured claim provided for by the Plan=~~
  - ~~1. The holder of such claim has accepted the Plan;~~
  - ~~2. The~~
    - ~~a. Plan provides that the holder of such claim retain the lien securing such claim; and~~
    - ~~b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or~~
  - ~~3. Debtor surrenders the property securing such claim to such holder;~~
- ~~F. Debtor will be able to make all payments under the Plan and will be able to comply with the Plan; and~~
- ~~G. Debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing~~

~~of the petition if Debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.~~

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 Confirm the Chapter 12 Plan filed by Rhett Sterling Burgess (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, Debtor in Possession’s Chapter 12 Plan filed on July 25, 2024, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, and transmit the proposed order to Lilian G. Tsang (“Chapter 12 Trustee”) for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.~~