

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

November 14, 2024 at 10:30 a.m.

1. [22-20813-E-7](#)
[BLF-4](#)

JAMES JONES
Peter Macaluso

**MOTION TO COMPROMISE
C O N T R O V E R S Y / A P P R O V E
SETTLEMENT AGREEMENT WITH
REGAL CAPITAL HOLDINGS, LLC AND
CAROLINE HEGARTY
10-1-24 [\[92\]](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 1, 2024. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Nikki Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Creditor Regal Capital Holdings, LLC ("RCH") and its principal, Caroline Hegarty involving claims surrounding the real property commonly known as 4418 Green Valley Rd., Fairfield, CA 94534 ("Property").

The claims and disputes to be resolved by the proposed settlement involve the State Court Lawsuit in the Superior Court of California, County of Solano, Case No. FCS058352. Debtor asserted various claims against RCH and Hegarty, including 1) that when RCH sold the Property to Debtor it failed to disclose known conditions and defects including that the Property was subject to termite infestation, mold infestation and other items and conditions; 2) that RCH and Hegarty improperly accounted for payments made on the loan and improperly commenced foreclosure proceedings against the Property; and 3) that RCH and Hegarty improperly valued the Property for taxing purposes and that Debtor and his spouse had offsets against the loan for payments Debtor made or asked RCH to make on its behalf for taxes. Mot. 2:1-7, Docket 92.

On August 19, 2022, Debtor and his spouse caused to be filed a *Lis Pendens* with the County Recorder of Solano County, California. Also on August 19, 2022, RCH filed a motion for relief from the automatic stay to pursue its interest in the Property. In its motion, RCH noted that Debtor owed RCH \$434,094.75 as of April 11, 2022, and its research revealed a tax lien on the Property of approximately \$45,000.00. The court granted that Motion on September 14, 2022. Order, Docket 42. The case was converted from one under Chapter 13 to one under Chapter 7 on January 5, 2023.

On May 7, 2023, on the eve of the foreclosure sale set for May 8, 2024, a fire occurred at the Property that destroyed the Property and rendered it completely unlivable. Mot. ¶ 9, Docket 92. On September 23, 2023, Debtor filed a mechanic's lien with the County Recorder of Solano County California. RCH asserts that the Mechanic's Lien is invalid and unenforceable as Debtor owned the Property when he allegedly did the work and cannot place a lien on his own property for improvements, that the lien or work performed was not and is not an obligation of RCH, the failure of the Debtor to timely file suit regarding the Mechanic's Lien, and that the lien was not properly perfected. *Id.* at ¶ 10.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit E in support of the Motion, Dckt. 96):

- A. RCH will pay the bankruptcy estate \$15,000.00 for the purchase of the estate's interest in the State Court Lawsuit Claims.
- B. The Settlement Order will reflect that the rights, liens and claims asserted pursuant to the Mechanic's Lien are property of the Estate of Debtor and have been released pursuant to this Agreement and that therefore the Mechanic's lien has been fully satisfied and does not encumber the Property and that any title company insuring the sale of the property can rely on the Settlement Order to affect this.
- C. The Settlement Order will provide that the State Court Lawsuit is resolved, that the *Lis Pendens* is expunged, and that all of the State Court Lawsuit Claims that were raised or could have been raised against RCH, its members, managers, employees, agents, attorneys and successors in interest, have been released and satisfied by the payment of RCH to the Trustee under this Agreement and that the State Court Lawsuit shall be immediately dismissed with prejudice. The Order will be filed in the State Court Lawsuit along with an Order of Dismissal of the State Court Lawsuit.

- D. RCH shall forthwith list and market the Property for sale. Trustee shall have no obligation in respect to sale or marketing of the Property and shall not by entering into this Agreement have any obligations to any third party who purchases the Property from RCH.
- E. RCH shall withdraw its proof of claim (Claim 4-1) within 10 days of an order approving this Agreement and granting a 9019 motion.

Mot. 3:22-4:9, Docket 92.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues probability of success on the Dispute is uncertain as the claims are factual in nature and the documents and evidence in connection with these claims, including the structure itself, have largely been destroyed by fire. RCH and Hegarty have denied any liability for the State Court Lawsuit Claims and contend, among other things, that the Property was advertised to the general public as in need of substantial repairs and was a “contractor's special” and was being sold at a price substantially below market value as a result. In Ms. Farris' business judgment, the likelihood of prevailing is uncertain and the Debtor's unwillingness to pay more to the estate than the \$15,000 RCH has offered to purchase the claims, confirms Ms. Farris' belief that the Purchase and Settlement Amount is a fair price.

Therefore, to resolve the Dispute, difficult factual and legal issues would have to be litigated. It is difficult to predict the manner in which these issues will resolve and there is no certainty of prevailing.

Mot. 4:28-5:10, Docket 92.

Difficulties in Collection

Under the circumstances of this case, without the Sale and Compromise, Ms. Farris would need to hire special litigation counsel to continue litigating the State Court Lawsuit Claims and, in Ms. Farris' business judgment, the likelihood of prevailing is uncertain. Even if successful, the litigation of the adversary proceeding would consume much if not all of the amounts recovered.

Id. at 2:11-15.

Expense, Inconvenience, and Delay of Continued Litigation

As described above, success on the Dispute is not certain. Moreover, the administrative expenses of litigation over the Dispute could be large, and those expenses could consume a significant portion, if not all, of any potential benefit to the estate even if Ms. Farris were ultimately to prevail. On the other hand, the Sale and Compromise allows Ms. Farris to recover \$15,000.00 for the bankruptcy estate. Therefore, the Sale and Compromise avoids expense, inconvenience, and delay.

Id. at 5:16-21.

Paramount Interest of Creditors

The proposed Sale and Compromise allows Ms. Farris to collect \$15,000.00 for the bankruptcy estate without the expense, uncertainty, or delay of costly litigation. Thus, the proposed compromise results in significant savings in time and administrative expense by avoiding further litigation. Based on the complexity of the issues presented, the settlement and sale approaches a fair resolution of the case without any attendant uncertainty.

Id. at 5:22-27.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Trustee is able to recover \$15,000 for the Estate without the need to prosecute uncertain and expensive litigation. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Nikki Farris, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Creditor Regal Capital Holdings, LLC (“RCH”) and its principal, Caroline Hegarty, is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit E in support of the Motion, Dckt. 96. The essential terms of the Compromise are as follows:

- A. RCH will pay the bankruptcy estate \$15,000.00 for the purchase of the estate's interest in the State Court Lawsuit Claims.
- B. The Settlement Order will reflect that the rights, liens and claims asserted pursuant to the Mechanic's Lien are property of the Estate of Debtor and have been released pursuant to this Agreement and that therefore the Mechanic's lien has been fully satisfied and does not encumber the Property and that any title company insuring the sale of the property can rely on the Settlement Order to affect this.
- C. The Settlement Order will provide that the State Court Lawsuit is resolved, that the Lis Pendens is expunged, and that all of the State Court Lawsuit Claims that were raised or could have been raised against RCH, its members, managers, employees, agents, attorneys and successors in interest, have been released and satisfied by the payment of RCH to the Trustee under this Agreement and that the State Court Lawsuit shall be immediately dismissed with prejudice. The Order will be filed in the State Court Lawsuit along with an Order of Dismissal of the State Court Lawsuit.
- D. RCH shall forthwith list and market the Property for sale. Trustee shall have no obligation in respect to sale or marketing of the Property and shall not by entering into this Agreement have any obligations to any third party who purchases the Property from RCH.
- E. RCH shall withdraw its proof of claim (Claim 4-1) within 10 days of an order approving this Agreement and granting a 9019 motion.

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

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 18, 2024. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 to Employ is granted.

Kenneth Henry Deaver and Mary Jean Deaver ("Debtor in Possession") seeks to employ California Outdoor Properties, Inc. ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to sell three parcels of real property as follows:

- (1) 19940 Shenandoah School Road, Plymouth, CA 95669 ("Property #1), a 41.87-acre parcel with vineyards and 2 modular homes;
- (2) 19944 Shenandoah School Road, Plymouth, CA 95669 ("Property #2), 40 acres with vineyards and 6-8 acres of pasture;
- (3) 11850 Shenandoah School Road, Plymouth, CA 95669 ("Property #3), 10 acres of raw land.

Debtor in Possession argues that Broker's appointment and retention is necessary to sell these properties and realize a benefit for creditors and the bankruptcy Estate.

Ed Perry, a licensed real estate broker in good standing with California Outdoor Properties, Inc., testifies that he will market and sell the properties. Ed Perry testifies 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. Decl. ¶ 5, Docket 87.

CREDITOR'S RESPONSE

Creditor the Prudential Insurance company of America ("Prudential") filed a limited objection to the Motion. Docket 110. Prudential states:

- A. Clarify whether the compensation will be 6% or 7%. The Motion requests 6%, but the declaration of Mary Deaver states the commission is 7%, not 6%. Prudential argues in favor of a 6% commission. Opp'n 1:24-2:4, Docket 110.
- B. The list price for Property #2 is likely too high and should be reduced. *Id.* at ¶ 2.
- C. The list price for Property #3 is likely too high and should be reduced. *Id.* at ¶ 3.

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.

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.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker 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 California Outdoor Properties, Inc. as Broker for the Chapter 12 Estate.

The court notes that Debtor in Possession has improperly provided the court with a copy of the employment agreement attached as an exhibit to the Declaration. Docket 88. Filing Exhibits and Declarations together 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).

At the hearing, **XXXXXXX**

The court approves employment on the terms and conditions set forth in the Listing Agreement filed as attached an Exhibit to the Declaration, Dckt. 88. 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 Kenneth Henry 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 to Employ is granted, January 13, 2024, and Debtor in Possession is authorized to employ California Outdoor Properties, inc. as Broker for Debtor in Possession on the terms and conditions as set forth in the Listing Agreement filed as attached an Exhibit to the Declaration, Dckt. 88.

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 Broker 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.

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 and all creditors and parties in interest on October 31, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by Nikki B. Farris (“the Chapter 7 Trustee”) requests that the court authorize her to abandon property commonly known as 18272 Red Dog Rd, Grass Valley, CA 5945, including all entitlements issued by Nevada County to conduct mining activities that are appurtenant to the Mining Property (“Property”). The Property is not subject to any liens; however, Debtor stated in its voluntary petition that the Mining Property “pose[d] a threat of imminent and identifiable hazard to public health or safety” in that “[t]he mine site is in need of repairs of sluices and other violations cited by Nevada County.” Mot. 2:6-8, Docket 14.

Trustee investigated the conditions of the Property, including by meeting with representatives of Nevada County to determine if there was time for the property to be sold such that a potential buyer could be put in place to remediate the Property. Trustee was unable to find any reasonable methods to conduct the sale given the nature of the problems surrounding the Property.

The court finds that the Property is burdensome to the Estate in its unsafe condition, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Nikki B. Farris (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 18272 Red Dog Rd, Grass Valley, CA 5945, including all entitlements issued by Nevada County to conduct mining activities that are appurtenant to the Mining Property, is abandoned to Blue Lead Gold Mining, LLC by this order, with no further act of the Chapter 7 Trustee required.

Item #5 thru 6

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 not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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

The Motion to Employ is ~~granted~~.

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held and opposition should be filed at least seven days prior to the hearing. There is no language in our Local Rules that permits Notice less than 28 days with opposition to be submitted less than fourteen days prior to the hearing. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l). At the hearing, **XXXXXXX**

THE MOTION

Town and Country Event Center, LLC (“Debtor in Possession”) seeks to employ the Farsad Law Office, P.C. (“Counsel”) pursuant to Bankruptcy Code Sections 327, 329 and 1107. Debtor in Possession seeks the employment of Counsel for general representation throughout the case.

Nancy Weng, an attorney at Farsad Law Office, P.C., testifies as to her experience and capabilities in representing Debtor in Possession. Decl., Docket 21. Ms. Weng testifies she 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 ¶ 7. Arasto Farsad, another attorney at the firm, testifies similarly at Docket 23.

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.

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.

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 Farsad Law Office, P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement filed as an Exhibit, Dckt. 22. 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 Town and Country Event Center, LLC (“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 October 7, 2024, and Debtor in Possession is authorized to employ Farsad Law Office, P.C. as Counsel for Debtor in Possession on the terms and conditions as set forth in the Letter of Engagement filed as an Exhibit, Dckt. 22.

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.

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, 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 29, 2024. By the court’s calculation, 16 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.

No opposition was stated at the hearing.

<p>The Motion for Joint Administration is granted.</p>

Town and Country Event Center, LLC (“Debtor in Possession”) moves this court for an Order granting joint administration of this case with the related bankruptcy case of Town and Country West, LLC, case no. 24-24493 (collectively, “Cases”), pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015. Debtor in Possession proposes Town and Country West, LLC be the lead case.

Debtor in Possession argues joint administration is proper as each of the Debtors is wholly owned by Waqar Khan, the General Manager and Managing Member. Mot. 3:5-7, Docket 35. Debtor in Possession states joint administration will also save time and money and will avoid duplicative and potentially confusing filings by permitting counsel for all parties in interest to (a) use a single caption on the numerous documents that will be served and filed herein and (b) file papers in one case rather than in multiple cases. *Id.* at 3:11-14.

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 Cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. The assets of the Estates are closely intertwined, and the creditors are cross-collateralized with assets shared by the 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 Town and Country West, LLC, case no. 24-24493, 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 Town and Country Event Center, LLC (“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 Town and Country Event Center, LLC, case no. 24-24492, shall be jointly administered with the related bankruptcy case of Town and Country West, LLC, case no. 24-24493 (collectively, “Cases”). The following procedures are in place that govern the joint administration:

(1) Lead Bankruptcy Case for Joint Administration. *Town and Country West, LLC*, Case No. 24-24493, is designated as the lead case for purposes of for purposes of joint administration pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

(2) Filing of Pleadings and Other Documents After Order for Joint Administration. Except as specified in Paragraphs 6 and 9 below, all

pleadings in any of the cases shall be filed only in the *Town and Country West, LLC*, Case No. 24-24493, including the motions, applications, and any request for relief related to any of the Cases.

(3) Required Combined Caption. A combined caption identical to that used in this order and set forth below shall be used for all filings, and the filer shall check the appropriate box to indicate the Debtor or Debtors to which the filing pertains.

In Re:)
) Case No. 24-24493
TOWN & COUNTRY WEST, LLC,)
) Chapter 11
Debtor)
_____)
) Case No. 24-24492
TOWN & COUNTRY EVENT)
CENTER, LLC,) JOINTLY ADMINISTERED
)
Debtor)
_____)
Case(s) Affected)
)
<input type="checkbox"/> Affects All Two Debtor Cases)
)
<input type="checkbox"/> Affects Town & Country West, LLC)
)
<input type="checkbox"/> Affects Town & Country Event)
Center, LLC)
)

(4) Combined Notices. Combined notices to creditors and parties-in-interest shall be used for all filings.

(5) Consolidated List of Creditors Holding 20 Largest Unsecured Claims. The Debtors will file a consolidated list of the 20 largest creditors with unsecured claims within two weeks of approval of this Motion.

(6) Filing of Monthly Operating Reports. Each Debtor in Possession shall file separate Monthly Operating Reports, and such Monthly Operating Reports shall be filed by:

(a) *Town & Country West, LLC*, in Case No. 24-24493, and

(b) *Town & Country Event Center, LLC* in Case No. 24-24492.

(7) Notice of Joint Administration. 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 attached hereto as Addendum A. To the extent practical for the Clerk of the Court, on the Court's Docket for the *Town & Country Event Center, LLC* Case, creditors and parties-in-interest will be directed to the lead case, *Town & Country West, LLC*.

(8) Joint Scheduling of Hearings and Administrative Proceedings. All hearings shall be jointly scheduled for the Cases involved in the matter asserted, as well as the joint handling of other administrative matters involving these Cases.

(9) Separate Claims Registers, and Filings of Proofs of Claims or Interests. A separate Claims Register shall be maintained for each of the three Debtors Cases to avoid the confusion that may result if the claims registers were consolidated. Creditors and interest holders shall file:

(a) Proofs of claim or proofs of interest for *Town & Country West, LLC* shall be filed in Case No. 24-24493, and

(b) Proofs of claim or proofs of interest for *Town & Country Event Center, LLC* shall be filed in Case No. 24-24492.

(10) Continued Separateness of Bankruptcy Estates. Each Debtor in Possession will continue to operate, as they have in the past, as separate and distinct entities, and will continue to maintain separate books and records.

Item #7 thru 8

10-20-24 [\[13\]](#)

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 not Provided. Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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

The Motion to Employ is granted.
--

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held and opposition should be filed at least seven days prior to the hearing. There is no language in our Local Rules that permits Notice less than 28 days with opposition to be submitted less than fourteen days prior to the hearing. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l). At the hearing, **XXXXXXX**

THE MOTION

Town and Country West, LLC (“Debtor in Possession”) seeks to employ the Farsad Law Office, P.C. (“Counsel”) pursuant to Bankruptcy Code Sections 327, 329 and 1107. Debtor in Possession seeks the employment of Counsel for general representation throughout the case.

Nancy Weng, an attorney at Farsad Law Office, P.C., testifies as to her experience and capabilities in representing Debtor in Possession. Decl., Docket 15. Ms. Weng testifies she 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 ¶ 7. Arasto Farsad, another attorney at the firm, testifies similarly at Docket 16.

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.

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.

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 Farsad Law Office, P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement filed as an Exhibit, Dckt. 17. 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 Town and Country West, LLC (“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 October 7, 2024, and Debtor in Possession is authorized to employ Farsad Law Office, P.C. as Counsel for Debtor in Possession on the terms and conditions as set forth in the Letter of Engagement filed as an Exhibit, Dckt. 17.

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.

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, 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 29, 2024. By the court’s calculation, 16 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.

No opposition was stated at the hearing.

<p>The Motion for Joint Administration is granted.</p>

Town and Country West, LLC (“Debtor in Possession”) moves this court for an Order granting joint administration of this case with the related bankruptcy case of Town and Country Event Center, LLC, case no. 24-24492 (collectively, “Cases”), pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015. Debtor in Possession proposes Town and Country West, LLC be the lead case.

Debtor in Possession argues joint administration is proper as each of the Debtors is wholly owned by Waqar Khan, the General Manager and Managing Member. Mot. 3:5-7, Docket 29. Debtor in Possession states joint administration will also save time and money and will avoid duplicative and potentially confusing filings by permitting counsel for all parties in interest to (a) use a single caption on the numerous documents that will be served and filed herein and (b) file papers in one case rather than in multiple cases. *Id.* at 3:11-14.

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 Cases is appropriate and in the best interests of the related debtors as well as creditors of the estates. The assets of the Estates are closely intertwined, and the creditors are cross-collateralized with assets shared by the 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 Town and Country West, LLC, case no. 24-24493, 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 Town and Country West, LLC (“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 Town and Country Event Center, LLC, case no. 24-24492, shall be jointly administered with the related bankruptcy case of Town and Country West, LLC, case no. 24-24493 (collectively, “Cases”). The following procedures are in place that govern the joint administration:

(1) Lead Bankruptcy Case for Joint Administration. *Town and Country West, LLC*, Case No. 24-24493, is designated as the lead case for purposes of for purposes of joint administration pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

(2) Filing of Pleadings and Other Documents After Order for Joint Administration. Except as specified in Paragraphs 6 and 9 below, all

pleadings in any of the cases shall be filed only in the *Town and Country West, LLC*, Case No. 24-24493, including the motions, applications, and any request for relief related to any of the Cases.

(3) Required Combined Caption. A combined caption identical to that used in this order and set forth below shall be used for all filings, and the filer shall check the appropriate box to indicate the Debtor or Debtors to which the filing pertains.

In Re:)
) Case No. 24-24493
TOWN & COUNTRY WEST, LLC,)
) Chapter 11
Debtor)
_____)
) Case No. 24-24492
TOWN & COUNTRY EVENT)
CENTER, LLC,) JOINTLY ADMINISTERED
)
Debtor)
_____)
Case(s) Affected)
)
<input type="checkbox"/> Affects All Two Debtor Cases)
)
<input type="checkbox"/> Affects Town & Country West, LLC)
)
<input type="checkbox"/> Affects Town & Country Event)
Center, LLC)
)

(4) Combined Notices. Combined notices to creditors and parties-in-interest shall be used for all filings.

(5) Consolidated List of Creditors Holding 20 Largest Unsecured Claims. The Debtors will file a consolidated list of the 20 largest creditors with unsecured claims within two weeks of approval of this Motion.

(6) Filing of Monthly Operating Reports. Each Debtor in Possession shall file separate Monthly Operating Reports, and such Monthly Operating Reports shall be filed by:

(a) *Town & Country West, LLC*, in Case No. 24-24493, and

(b) *Town & Country Event Center, LLC* in Case No. 24-24492.

(7) Notice of Joint Administration. 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 attached hereto as Addendum A. To the extent practical for the Clerk of the Court, on the Court's Docket for the *Town & Country Event Center, LLC* Case, creditors and parties-in-interest will be directed to the lead case, *Town & Country West, LLC*.

(8) Joint Scheduling of Hearings and Administrative Proceedings. All hearings shall be jointly scheduled for the Cases involved in the matter asserted, as well as the joint handling of other administrative matters involving these Cases.

(9) Separate Claims Registers, and Filings of Proofs of Claims or Interests. A separate Claims Register shall be maintained for each of the three Debtors Cases to avoid the confusion that may result if the claims registers were consolidated. Creditors and interest holders shall file:

(a) Proofs of claim or proofs of interest for *Town & Country West, LLC* shall be filed in Case No. 24-24493, and

(b) Proofs of claim or proofs of interest for *Town & Country Event Center, LLC* shall be filed in Case No. 24-24492.

(10) Continued Separateness of Bankruptcy Estates. Each Debtor in Possession 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.

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’s Attorney, Chapter 12 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on October 11, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is granted.

Hill & Morris through Cindy Lee Hill (“Movant”), counsel of record for GEH Farms and Greg Hawes (“Creditors”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant states the following:

- A. Since the court confirmed the Plan in this case, a dispute has arisen between Creditors and Movant. Mot. 2:5-6, Docket 247.
- B. Counsel cannot effectively represent Debtor due to the conflict, having asked Creditors to sign substitution of counsel when Creditors failed to make a payment, which Creditors have not signed. *Id.* at 2:7-23.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client. . .

(f) breaches an agreement or obligation to the member as to expenses or fees.

CAL. R. PROF'L CONDUCT 3-700(c)(1)(f).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Creditors have not paid the agreed upon fees. Decl. ¶ 5, Docket 249. Movant states she notified Creditors of her intent to withdraw if the fees were not paid, and Creditors did not respond to Movant's request. *Id.*

Therefore, under California Rule of Professional Conduct 3-700(c)(1)(f), Creditors' failure to pay fees is cause to grant permissive withdrawal. The court grants the Motion.

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 Withdraw as Attorney filed by Hill & Morris through Cindy Lee Hill ("Movant"), counsel of record for GEH Farms and Greg Hawes ("Creditors"), 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 Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for GEH Farms and Greg Hawes.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on November 5, 2024. By the court’s calculation, 9 days’ notice was provided. The Court set the Motion for hearing on shortened time. Docket 13.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
-----.

The Motion to Compel Abandonment is granted.

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

The Motion filed by Josue Tomas Israel Miramontes and Catalina Miramontes (“Debtor”) requests the court to order Nikki B. Farris (“the Chapter 7 Trustee”) to abandon Debtor’s interest in a sole proprietorship known as Catalina Miramontes Family Childcare Home, doing business as Lindo Dia Daycare, specifically described in Schedule C as a Daycare license through State of CA/Solano County in the amount of \$100, and Highchairs, 2 cribs, kids' table and chairs, play structures, toy, books, arts and crafts supplies in the amount of \$5,000 (“Property”). Schedule C at 21, Docket 1. The Property is fully exempt under the applicable state law statutes. *Id.*

The Chapter 7 Trustee filed a nonopposition on November 6, 2024.

The court finds that Property is fully exempt, and retaining the Property would burdensome to the Estate. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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 Compel Abandonment filed by Josue Tomas Israel Miramontes and Catalina Miramontes (“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 to Compel Abandonment is granted, and the Property identified as Debtor’s interest in a sole proprietorship known as Catalina Miramontes Family Childcare Home, doing business as Lindo Dia Daycare, specifically described in Schedule C as a Daycare license through State of CA/Solano County in the amount of \$100, and Highchairs, 2 cribs, kids' table and chairs, play structures, toy, books, arts and crafts supplies in the amount of \$5,000, is abandoned by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”) to Josue Tomas Israel Miramontes and Catalina Miramontes by this order, with no further act of the Trustee required.

FINAL RULINGS

10. [24-21710-E-11](#)
[KAS-1](#)

SWANSTON OAK, LLC
Karl Schweikert

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
10-4-24 [\[131\]](#)

Final Ruling: No appearance at the November 14, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2024. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).

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

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

Swanston Oak, LLC (“Debtor in Possession”) moves this court to convert its won case from one under Chapter 11 to one under Chapter 7. Movant asserts that the case should be converted as Debtor in Possession is unable to sell any of the parcels of real property of the Estate, Debtor in Possession being informed that the MLS listing for the properties had been replaced by a notice they were already scheduled to be sold at a foreclosure auction. Mot. ¶ 6, Docket 131. There are no prospects for a reorganization.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and

the estate.”” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

Here, the court finds there is cause to convert the case to one under Chapter 7. As Debtor in Possession has indicated, the items of real property of the Bankruptcy Estate are headed to foreclosure with this court granting relief from the automatic stay on October 25, 2024. Dockets 148-154. There are no reasonable prospects for a reorganization with assets of the Estate headed to foreclosure.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Convert the Chapter 11 case filed by Swanston Oak, LLC (“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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

Final Ruling: No appearance at the November 14, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on October 30, 2024. The court computes that 15 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338 due on October 15, 2024.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Item #4 on 11:30 calendar

Final Ruling: No appearance at the November 14, 2024 hearing is required.

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, Chapter 12 Trustee, Creditor, equity security holders, and Office of the United States Trustee on October 31, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 hearing on the Motion to Value Collateral and Secured Claim of HD Owner, LLC ("Creditor") is continued to December 19, 2024 at 10:30 a.m.

The Motion to Value filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Debtor in Possession") to value the secured claim of HD Owner, LLC ("Creditor") is accompanied by the Declaration of Douglas C. Kurz, a licensed agricultural real estate appraiser. Declaration, Docket 195. Debtor in Possession is the owner of the following parcels of real property:

- A. Exhibit "1" Subject Property 943 Center Avenue, Gridley, CA 95948 – Primary Residence/Shop/Land: 3 Parcels; Primary Residence, Shop, Thresher Planted: Walnuts, Peaches and Kiwis APN 024-130-019, 024-130-020; 024-130-021. Value: \$907,000.00.
- B. Exhibit "2" Subject Property 1076 Cox Lane APN 027-220-072-000 Lot Sq. Ft. 2,797,423 or 64.22 Acres; Pasture ("Cox Lane Appraisal"). At Lone Tree, Palermo Road and Cox Land and Railway Tracks 64.22 Acres Planted: Pistachios. Value: \$674,000.00.
- C. Exhibit "3" Subject Property Pcl 21 Center Avenue APN 024-130-021-000 9.78 Acres; Pasture; See the Pcl 21 Center Avenue appraisal ("21 Center Appraisal") attached as Exhibit "3" to the Exhibits Pleading filed

concurrently hereto and incorporated herein by reference. Value: \$219,000.00.

- D. Exhibit “4” Subject Property Pcl 19 Center Street APN 024-130-019-00 8.94 acres; See the Pcl 19 Center Street appraisal (“19 Center Appraisal”) is attached as Exhibit “4” to the Exhibits Pleading filed concurrently hereto and incorporated herein by reference. Value: \$200,000.00.
- E. Exhibit “5” Subject property Pcl 37 & 38 Broadway APN 010-180-038-000 and 010-180- 038-000 40 acres; See the Pcl 37 & 38 Broadway appraisal (“37 & 38 Broadway Appraisal”) is attached as Exhibit “5” to the Exhibits Pleading filed concurrently hereto and incorporated herein by reference. Value: \$477,00.00.

(collectively, “Properties”). Debtor seeks to value the Properties at a fair market value of \$2,477,000.00 as of the petition filing date based on Mr. Kurz’ professional real estate appraisals. Mr. Kurz testifies he has 35 years’ experience appraising agriculture land and has provided detailed appraisals for each of the parcels of property. *See Exhibits, Dockets 196-200.*

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor’s secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor’s secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

Proof of Claim 16-2 Filed by Creditor

Creditor filed Amended Proof of Claim 16-2 on October 31, 2024. In it Creditor asserts a claim for (\$3,935,598.74), and asserts that the properties securing its claims (real pursuant to deeds of trust and personal property pursuant to a UCC-1) have a value of \$3,930,000.00. Thus, Creditor asserts it has a secured claim of (\$3,930,000.00).

DISCUSSION

Debtor in Possession has presented the court with clear and persuasive evidence to support their valuation. With no contradictory evidence in the record, the court finds Creditor's secured claim is determined to be in the amount of \$2,477,000.00, the value of the collateral, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion to Value Collateral and Secured Claim filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("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 hearing on the Motion to Value Collateral and Secured Claim of HD Owner, LLC ("Creditor") is continued to December 19, 2024 at 10:30 a.m.