

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

November 21, 2024 at 2:00 p.m.

1. [24-90618-E-11](#)
[FWP-1](#)

JEFFERY ARAMBEL
Chris Kuhner

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-7-24 [\[14\]](#)

FOCUS MANAGEMENT GROUP USA,
INC. VS.

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, creditors holding the twenty largest unsecured claims, creditors and parties in interest, and Office of the United States Trustee on November 7, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Relief from the Automatic Stay is granted, the court confirming the automatic stay in case no. 24-90618 does not affect Movant's actions regarding property of the Estate in case no. 18-90029.

Movant Focus Management Group USA, Inc. ("Plan Administrator") requests this court grant relief from stay in this Chapter 11 Case filed by Debtor Jeffery Arambel, Case 24-90618 (the "Current

November 21, 2024 at 2:00 p.m.

- Page 1 of 39 -

Chapter 11 Case”), out of an abundance of caution, to allow the Plan Administrator to move forward with the administration of the estate in Debtor Jeffrey Arambel’s prior related Chapter 11 Case, 18-90029, (“2018 Bankruptcy Case”), in which there is a confirmed Plan that is in the process of being performed. That Plan includes pending sales of real property.

Movant is the Plan Administrator of the 2018 Bankruptcy Case and makes this Motion in order to ensure that any sales of property of the Bankruptcy Estate in the 2018 Bankruptcy case will not violate the automatic stay in this case. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1). This instant case (no. 24-90618) was filed on October 17, 2024, while Debtor Jeffery Edward Arambel’s (“Debtor”) 2018 Bankruptcy Case is still open and ongoing with Plan Administrator having taken on the responsibility of administering the assets of that Estate.

In the Motion, two of the properties for which there are pending sales are identified as the Murphy Ranch, Murphy Range Land, and the Westley Lot. Motion, ¶ 3; Dckt. 14.

The Plan Administrator directs the court and parties in interest to Paragraph 7.2.2 of the Confirmed Chapter 11 Plan in the 2018 Bankruptcy Case which provides that property of the Bankruptcy Estate in the 2018 Bankruptcy Case will not revert in the Debtor until there is the entry of a Final Decree in the 2018 Bankruptcy Case. However, no final decree has been entered in the 2018 Bankruptcy Case. *Id.*; p. 4:19-26. A review of the Docket for the 2018 Bankruptcy Case, 18-90029, shows that no Final Decree has been entered in the 1018 Bankruptcy Case.

In addition to asserting that the automatic stay in the Current Chapter 11 Case does not apply to the property in the 2018 Bankruptcy Case, Movant requests relief from the stay for cause 11 U.S.C. § 362(d)(1) to the extent that it would be asserted that the automatic stay did apply.

Review of Bankruptcy Schedules

A review of Debtor’s Schedules A/B disclose that the three real properties identified in the Motion as being sold pursuant to the Confirmed Chapter 11 Plan in the 2018 Bankruptcy Case are not properties listed by the Debtor for which he asserts having an interest. Dckt. 1 at 15-19. There do not appear to be any personal property interests that relate to the 2018 Bankruptcy Case Confirmed Chapter 11 Plan and the properties being administered therein. *Id.* at 20-24.

APPLICABLE LAW

The court knows of nothing in the Bankruptcy Code or Fed. R. Bankr. P. that either permits or prohibits two simultaneous pending voluntary bankruptcy cases concerning the exact same Debtor. *See In re Giles*, 641 B.R. 255, 258 (S.D. Fla. 2022). In lieu of a statutory framework on the subject, Bankruptcy courts have developed case law on what is called the “single estate rule.” *Id.* at p. 259; *In re Grimes*, 117 B.R. 531, 536 (B.A.P. 9th Cir. 1990) (holding that “a debtor who has been granted a discharge under one chapter under Title 11 may file a subsequent petition under another chapter even though the first case remains open, as long as the debtor meets the requirements for filing the second petition.”). The single estate rule establishes that when property is already a part of one bankruptcy estate, a second, simultaneous case involving the same debtor would violate the single estate rule because property of the first estate cannot also be property of the second bankruptcy estate. However, the single estate rule is not implicated if a Chapter 11 confirmed Plan had been substantially consummated in the first case. *Grimes*, 117 B.R. at 536.

Even still, property of one bankruptcy estate may not be property of a second bankruptcy estate as that would violate the single estate rule.

Here, Plan Administrator seeks to administer assets of the 2018 Bankruptcy Case. Assets of the 2018 Bankruptcy Case Estate must necessarily be excluded from the assets of the instant case Estate to comply with the single estate rule.

Relief From Stay For Cause

In addition to the above analysis, the court also considers the request for relief pursuant to 11 U.S.C. § 362(d)(1) for cause. Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The Movant is obligated pursuant to the Confirmed Chapter 11 Plan and the order of this court confirming that Plan to proceed with the liquidation of property of the Estate in the 2018 Bankruptcy Case. Whatever interest that the Debtor may have, is only such that would revert in him only after the Final Decree is entered - which will not be until the Movant, as Plan Administrator, completes the performance of the Plan.

To the extent that the automatic stay would apply to any property in or the execution of the Confirmed Chapter 11 Plan in the 2018 Bankruptcy Case, cause exists to terminate and vacate the automatic stay as to the Movant and the 2018 Bankruptcy Case Estate and property to be administered under the Confirmed Chapter 11 Plan therein.

Waiver of the 14 Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

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

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

The Motion for Relief from the Automatic Stay filed by Focus Management Group USA, Inc. ("Plan Administrator") 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, the court confirming the automatic stay in case no. 24-90618 does not affect Movant's actions with property of the Bankruptcy Estate in case no. 18-90029 and performance of the Confirmed Chapter 11 Plan in that Case, including actions taken regarding approximately +/- 946.6 acres of land, bearing Assessor's Parcel Nos. 021-009-002, 021-010-002, 021-010-015 to 021, 021-010-026 to 028, 021-010-036, 021-010-038 ("Murphy Ranch"), and vacant land in Stanislaus County, California, containing approximately +/- 0.8 acres of land, bearing Assessor's Parcel No. 021-013-004 ("Westley Lot").

IT IS FURTHER ORDERED, to the extent that automatic stay in case no. 24-90618 would be violated by actions taken by Plan Administrator with regard to property of the Estate in case no. 18-90029, the court finds there is cause for relief from the stay pursuant to 11 U.S.C. § 362(d)(1) to allow Plan Administrator to effectively administrate the property of the Estate in case no. 18-90029 in accordance with the confirmed Chapter 11 Plan in that case at Docket 860, as modified in the Order confirming at Docket 970.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

2. [23-90111](#)-E-11
[BSH](#)-4

MICHAEL HOFMANN

CONTINUED STATUS CONFERENCE RE:
AMENDED PLAN
4-25-24 [\[276\]](#)

Item 2 thru 5

The Status Conference is XXXXXXX
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NOVEMBER 21, 2024 STATUS CONFERENCE

Debtor/Debtor in Possession Status Report

On November 17, 2024, the Debtor/Debtor in Possession filed an updated Status Report. Dckt. 386. The Debtor/Debtor in Possession reports that the hearing on a Motion to Confirm the Subchapter V Plan in this case is set for December 12, 2024.

Unfortunately, it does not appear that there is a consensual plan to be prosecuted in this Bankruptcy Case.

At the Status Conference, **XXXXXXX**

SEPTEMBER 19, 2024 STATUS CONFERENCE

Subchapter V Trustee Status Report

The Subchapter V Trustee filed an updated Status Report on September 12, 2024. Dckt 314. The information included in the Status Report includes the following. The residence property is not insured. The Estate, which has an 8.333% interest in the residence property, does not have sufficient funds to irrigate and maintain the landscaping.

The underground diesel fuel tank and fuel have been removed by contractors hired by the Debtor. The Trustee recounts that the Debtor has left personal property on the residence property which is impeding the marketing and sale of that property. The Trustee also recounts the “challenges” in the marketing and sale of the property, with many of the “challenges” relating to conduct of the Debtor.

The Subchapter V Trustee further addresses financial reporting discrepancies, including apparent post-petition borrowing of monies, disbursements to a related entity, and undisclosed bank accounts.

Creditor’s Status Conference Statement

Creditors John P. Brichetto and Jacqueline Brichetto, John M. Brichetto and Lee Brichetto, Joseph Brichetto and Kera Brichetto filed their Status Report on September 13, 2024. Dckt. 315. Their observations include the following. The Debtor makes substantial monthly credit card payments, but the credit card statements are not included with the Monthly Reports. They note many of the same financial “irregularities” that are identified by the Subchapter V Trustee.

Debtor/Debtor in Possession Conference Statement

Debtor/Debtor in Possession Michael Hoffman filed his updated Status Report on September 10, 2024. Dckt. 311. In it the Debtor/Debtor in Possession discusses lack of coordination and responsiveness of other parties in this Bankruptcy Case. He raises issues concerning the condition of the residential property and the property insurance thereon.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that they now believe that dismissal of this Case is proper.

The Subchapter V Trustee reported that the Cleghorns, possible purchasers, have a condition that the Debtor/Debtor in Possession must give a release as a condition of any sale.

The Status Conference is continued to 2:00 p.m. on January 30, 2025

3. [23-90111-E-11](#)
[DL-7](#)

MICHAEL HOFMANN
Brian Haddix

**MOTION FOR EXPANSION OF
SUBCHAPTER V TRUSTEE'S
AUTHORITY OVER CERTAIN PERSONAL
PROPERTY OF THE ESTATE AND/OR
MOTION TO SELL , MOTION TO
DISPOSE OR REMOVE PERSONAL
PROPERTY
10-16-24 [363]**

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, attorneys of record, parties requesting special notice, and Office of the United States Trustee on October 17, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Expansion of Authority over Certain Personal Property of the Estate was properly 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 Expansion of Authority over Certain Personal Property of the Estate is granted.

Walter R. Dahl, the Subchapter V Trustee ("Trustee") requests an order expanding his authority in this case to allow him to sell the following items of personal property of the Estate:

1. Two large grain storage bins, GSI brand, Model VHD18-VN, serial numbers PNEG-012 & PNEG-013;
2. A large flatbed trailer;
3. Resting atop of the flatbed trailer is a wood and steel flatbed deck;

4. A number of items of personal property. Such items include, without limitation, various tanks, miscellaneous lumber, miscellaneous steel and other metals, various bins & boxes, miscellaneous paints, stains, oils and other liquids, desks and other furniture, disconnected washing machine and other appliances, and various tools, materials & supplies.

(“Personal Property”).

Trustee has already been granted authority in the case to market and sell the real property commonly known as 13330 Valley Home Road, Oakdale, CA 95361 (“the Residence”) by this court’s Order dated July 7, 2023. Docket 119. Trustee has a buyer for the Residence in the amount of \$460,000. Mot. 3:14-17, Docket 363. However, the potential buyer does not want to purchase the Residence with the Personal Property. Therefore, Trustee requests authority to sell or remove the Personal Property pursuant to 11 U.S.C. §§ 1183, 1184, & 105(a).

The court notes the original sales price for the Residence was \$519,000 prior to the bidding war that took place, and so this \$460,000 sales price is within that ball park. Mot. 3:3-5, Docket 249.

DEBTOR’S OPPOSITION

The Debtor/ Debtor in Possession filed an Opposition on November 7, 2024. Docket 388. Debtor/ Debtor in Possession states:

1. Trustee has already been acting without authorization to exercise control over the Personal Property.
2. The Court should not bless this unauthorized action by now granting the Subchapter V Trustee’s motion. *Id.* at 2:17-18.
3. The Subchapter V Trustee should have sought authorization from the Court granting him an expansion of his authority and a hearing held to allow the parties in interest an opportunity to weigh in on such an expansion of authority. The Court should not now approve the opening of the door after the horse has already been let out. *Id.* at 2:21-24.

APPLICABLE LAW

If the court removes the Debtor/Debtor in Possession in a Subchapter V case, then the Subchapter V trustee’s powers expand. The applicable statutory provisions are:

§ 1185. Removal of debtor in possession

(a) In general. On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure

to perform the obligations of the debtor under a plan confirmed under this subchapter.

(b) Reinstatement. On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

The duties of the Subchapter V trustee are specified in 11 U.S.C. § 1183, with there being an express expansion of those powers.

§ 1183. Trustee

(a) In general. If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary.

(b) Duties. The trustee shall—

(1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

(3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan filed under this subchapter;

(C) modification of the plan after confirmation; or

(D) the sale of property of the estate;

(4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;

(5) **if the debtor ceases to be a debtor in possession**, (A) perform the duties specified in section 704(a)(8) [file business tax returns and reports] and paragraphs (1) ^[FN.1], (2) [filed the list, schedule, and statement required under 11 U.S.C. § 521(a)(1)], and (6) [furnish information for filing specified tax return] of section 1106(a) of this title, including operating the business of the debtor;

(6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and

(7) facilitate the development of a consensual plan of reorganization.

FN.1. 11 U.S.C. § 1106(a)(1) incorporates by reference the duties specified in 11 U.S.C. § 704(a)(2), (5), (7), (8), (9), (10), (11), and (12), which are:

(2) be accountable for all property received;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business

The grounds for removal of a Subchapter V debtor/debtor in possession are essentially the same as the grounds for removing a Chapter 12 debtor, and closely align with the grounds for removing a Chapter 11 debtor. 8 Collier on Bankruptcy P 1185.01 (16th 2023).

DISCUSSION

The creation of the “hybrid” Debtor/Debtor in Possession remaining in control of property of the Bankruptcy Estate and the Subchapter V Trustee being vested with control of specific property to sell arose out of the continuing fighting, bickering, and family disputes which spilled over to this court from the State Court. Debtor and his family members have been fighting for years, with Debtor seeking to assert his, and now the Bankruptcy Estate’s, 8.33 % interest in those properties.

The court’s Order removed the Debtor/Debtor in Possession from control over not only the Residence that is in the Bankruptcy Estate, but two other contiguous parcels of farmland. Order; Dckt. 119. The sale of the two farmland parcels was conducted without incident. Civ. Minutes, Order; Dckts. 189, 195.

The potential for conflict for the Debtor/Debtor in Possession arose because he sought to purchase the residence parcel. A serious question existed whether he could fulfill his fiduciary duties as the Debtor/Debtor in Possession in the marketing and sale of the Residence, while also “negotiating with himself” over the sale of the Residence. By vesting control of the Residence in the Subchapter V Trustee, the Debtor/Debtor in Possession was then free to aggressively negotiate to purchase the Residence, freed of fiduciary duties relating thereto.

First Sale of Residence
and Debtor/Debtor in Possession Default

The Subchapter V Trustee brought to court a Motion to approve the sale of the Residence. Motion; Dckt. 249. The stalking horse buyer was for a contract price of \$519,000. *Id.*

The Debtor/Debtor in Possession appeared at the hearing on the Motion to Sell, and aggressively bid up the sales price to \$555,000.00, with the Debtor/Debtor in Possession being the highest bidder. Civ. Minutes; Dckt .264.

Located on the Residence were two grain tanks, for which there was a fixture filing. The owner of the grain tanks was Valley Home Rice Company, a business in which the Debtor is a 49% owner as listed on the Schedules. *Id.* at 4. The grain bins were not sold as part of the real estate pursuant to the Subchapter V Trustee’s Motion. The court had previously granted the creditor relief from the stay to remove and sell the grain bins. *Id.*

The Debtor/Debtor in Possession and his counsel expressly represented to the court that the Debtor/Debtor in Possession had arranged the financing and had access to the monies to consummate the sale of the Residence for \$555,000. *Id.* at 9 and statements on the record at the March 7, 2024 hearing.

Unfortunately, the financing that the Debtor/Debtor in Possession represented to the court as being in place fell through and he couldn’t buy the Residence. The backup buyer approved by the court elected to walk away from the transaction. In a Status Report filed on October 3, 2024, the Debtor/Debtor in Possession explained the absence of funding to purchase the Residence as follows:

At the court auction for the property, Debtor/Debtor in Possession believed he had secured financing. Concurrent with this status conference report, Debtor/Debtor in Possession has filed his own declaration relating the facts of the pre-auction financing arrangements and his diligence in attempting to obtain alternative financing when the original financier backed out after the auction.

Debtor/Debtor in Possession has requested the original financier, Trace Chalmers, sign a declaration regarding the financing agreement and the reason for backing out of providing the loan after the court auction. At this time, Mr. Chalmers has not signed a declaration. If the court is inclined to impose sanctions upon Debtor/Debtor in Possession and Counsel, Counsel intends to subpoena Mr. Chalmers testimony regarding the financing.

Debtor/Debtor in Possession has also requested the alternative financier, Tony D. Avila, submit a declaration. So far, Mr. Avila has provided a letter explaining why the second financing offer was rescinded. Attached to this status conference report are three letters signed by Mr. Avila dated March 18, 2024, March 27, 2024, and October 3, 2024. The letters memorialize the approval of the loan, the rescinding of the loan, and an explanation for the rescinding of the loan. Counsel has drafted and emailed Mr. Avila a declaration that incorporates the October 3, 2024, letter nearly verbatim. Counsel has urged Mr. Avila sign and return the declaration as soon as possible.

Status Report, p. 3:8-23; Dckt. 348.

The Debtor/Debtor in Possession had previously discussed in a First Amended Status Report (Dckt. 271) his “funding” to make the purchase of the Residence that was represented to the court and how it fell through. The court’s review of this in the Civil Minutes for the April 24, 2024 Status Conference includes:

On April 23, 2024, Debtor/Debtor in Possession filed a First Amended Status Report. Dckt. 271. In it Debtor/Debtor in Possession states that though he was the successful highest bidder for the residential property included in the Bankruptcy Estate, his hard money lender, Advanced Capital Funding, Inc, “backed out” of its financing commitment on April 1, 2024. Given Debtor/Debtor in Possession did not have the funding, then the second highest bidder (for whom the price was increase by Debtor/Debtor in Possession’s winning over bid), will be purchasing the Property.

Debtor/Debtor in Possession also states that he will vacate the Property sold by April 30, 2024.

Debtor/Debtor in Possession anticipates that a court order setting how the proceeds from the sale of the Property will be necessary, and recommends that the court initiate the process by setting a hearing date and briefing schedule for matters for which no motion has been filed by any party in interest.

Attached to the First Amended Status Report is the loan commitment letter from Advance Capital Funding. Dckt. 271 at 3. That Loan Approval Letter expressly states:

1. The letter is the “loan approval for a real estate loan in the amount of Five hundred Sixty thousand dollars (\$560,000) secured by a first trust deed against the

property known as 13330 Valley Home rd, Valley Home
ca 95361 .. APN# 002-005-049”

2. Advanced Capital Funding Inc. has “based this approval off our current review and underwriting of Mr. Hofmann’s financial, credit, and current assets.”
3. The Loan Approval Letter is dated March 18, 2024.
4. It further states, “This approval expires in 30 days.”
5. The Loan Approval Letter is signed by Tony D. Avila, CEO.

The Loan Approval Letter does not state any further conditions or limitations on the Approval. The First Amended Status Report does not state why or how this apparent unconditional Loan Approval was “backed out” of by Advanced Capital Funding, Inc.

However, the court notes that in the very, very small font at the bottom of the Loan Approval Letter, is the following:

© 2020 All rights reserved. This is not a commitment to lend. Restrictions may apply. LTV limit is based on current, accurate appraised value. Advanced Capital Funding Inc reserves the right to amend rates and guidelines. All loans are made in compliance with Federal, State, and Local laws.

Thus, it appears that Debtor/Debtor in Possession may not have had a loan commitment. At the hearing on the Motion for Authorization to sell the Property, Debtor/Debtor in Possession represented to the court that the funding for the purchase had been obtained and would be provided by a friend in Los Angeles (the identity of such person can be made from a review of the audio recording from the hearing, it not being stated in the Civil Minutes).

Civ. Minutes; Dckt. 277 at 2-3. There has been little, if any, credible evidence or information that the Debtor/Debtor in Possession had the funding to purchase the Residence when he was making his overbids at the hearing on the proper motion to sell.

Attached to the October 13, 2024 filed Status Report by the Debtor/Debtor in Possession are copies of letters from Tony Avila, CEO of Advanced Capital Funding, Inc. Dckt. 348 at 6, 7y, 8. They include the March 18, 2024 letter referenced above. All three letters contain the legend at the bottom stating “This is not a commitment to lend.”

The second letter is dated March 27, 2024, stating that Advanced Capital Funding has declined the loan request. *Id.*

As the court may have noted at prior hearings and Status Conference, the California Secretary of State reports online that Advanced Capital Funding, Inc.’s status has been suspended since June 1, 2021 by the California Franchise Tax Board. <https://bizfileonline.sos.ca.gov/search/business>. Anthony Avila is listed as the agent for Advanced Capital Funding, Inc. *Id.*

The court also notes that the Debtor/Debtor in Possession clearly told the court that the Residence would be vacated by April 30, 2024.

Unauthorized Grain Tank Credit Obtained
and Purchase of Grain Tanks

The creditor with a lien on the grain tanks conducted its sale of that collateral. It has been reported to the court that the Debtor/Debtor in Possession, without court approval, borrowed money from his significant other and bought the grain tanks, leaving them on the Residence. Conf. Hrg. Civ. Minutes; Dckt. 361; which includes:

No proposed [confirmation] order was lodged with the court [by counsel for the Debtor/Debtor in Possession]. As set forth in the Civil Minutes from the August 7, 2024 Status Conference, the Subchapter V Trustee stated his frustration with the conduct of the Debtor/Debtor in Possession, believing they presented impediments to the sale of the residential property. Dckt. 305. This included the Debtor/Debtor in Possession, without authorization from the court, purchased grain bins that were located on the residential property. In making reference for anyone listening to the audio recording of the Status Conferences, the court stated in the Civil Minutes:

As is evident from a review of the audio for this Status Conference, the Chapter 11 case has continued to “circle the drain” of delay and obfuscation.

Id. [Civ. Minutes, p. 3; Dckt. 277.] With respect to the Debtor/Debtor in Possession purchasing the grain bins, the court further notes in the Civil Minutes:

Additionally, a question arose as to how the Debtor/Debtor in Possession had not estate funds to “invest in” the Grain Tanks. If monies of the Estate were spent for such out of the ordinary course of business for such “investments,” the issue of the Debtor/Debtor in Possession’s ability to continue as the debtor in possession arises.

Id.

The Debtor/Debtor in Possession now seeks to assert that personal property left or placed by the Debtor/Debtor in Possession on the Residence to be sold should create an impediment to the Subchapter V Trustee selling the Residence.

Opposition That Court is
Approving Conduct After the Fact

The Debtor/Debtor in Possession opposition asserts that since the Subchapter V Trustee has found ways to dispose of the personal property and is seeking such by separate motion, the court should not “bless this unauthorized action” by granting this Motion. Opposition; p. 2:14-20; Dckt. 388. The Debtor/Debtor in Possession expressly views this as *nunc pro tunc* approval.

The record is clear that the Subchapter V Trustee has not sold the personal property and is now seeking authorization to do so. The record shows that the Subchapter V Trustee has found a buyer for some of the personal property and needs authority to get such sales approved and remove the other personal property (some sounding

like decaying junk (in the court's terminology). The Subchapter V Trustee is seeking authorization to act, not approval of past conduct.

The court finds it somewhat disingenuous of the Debtor/Debtor in Possession in complaining of the Subchapter V Trustee seeking the ability to clean up the mess left on the Residence by the Debtor/Debtor in Possession. Additionally, having to clean up the grain bins that the Debtor/Debtor in Possession purchased after obtaining credit without court authorization. 11 U.S.C. § 364(a).

**Requested Relief is Necessary For the
Subchapter V Trustee to Fulfill Prior Order
for Sale of Residence and Overcome
Obstacles Imposed by the Debtor/Debtor in Possession**

In this case, Trustee's requested expansion of powers pertains to items of property that are physically located on the Residence for which Trustee has authority to sell. Some have been left on the property by the Debtor/Debtor in Possession, indicating that he is abandoning them, or have been placed on the property through the unauthorized obtaining of credit and purchasing the grain tanks.

The court concludes that it is necessary and proper to expand the order vesting property in the Subchapter V Trustee to include the personal property that has been left on or placed on the Residence by the Debtor/Debtor in Possession. In order to smoothly effectuate the sale of the Residence, the court finds it appropriate that Trustee be granted a slight expansion in authority to include the sale, disposal, or removal of the Personal Property, which is described as:

- A. Grain Bin Personal Property;
- B. Large Flatbed Trailer;
- C. Wood and Steel Flatbed Deck; and
- D. Miscellaneous personal property items, which include, without limitation, various tanks, miscellaneous lumber, miscellaneous steel and other metals, various bins & boxes, miscellaneous paints, stains, oils and other liquids, desks and other furniture, disconnected washing machine and other appliances, and various tools, materials & supplies

to consummate the sale of the Residence without further delay.

Therefore, the court determines that it is necessary in this Subchapter V case for the court to issue an order, pursuant to 11 U.S.C. § 1185(a) to expand the Subchapter V Trustee's duties to now include the control of said Personal Property, including the marketing, sale, removal, or disposal (any such sale subject to subsequent court approval, for which they appear to be separate motions filed with the court) to include those under 11 U.S.C. § 363 and 1106(a)(1).

The Subchapter V Trustee shall prepare and lodge with the court a proposed order consistent with the forgoing Ruling.

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, attorneys of record, parties requesting special notice, and Office of the United States Trustee on October 17, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Sell Property is granted.</p>

Pursuant to an expansion of Chapter 11 Subchapter V duties in this case, Walter Dahl, the Subchapter V Trustee ("Movant," "Trustee"), requests an Order authorizing a sale of certain personal property pursuant to 11 U.S.C. § 363. Movant proposes to sell the personal property identified as two large grain storage bins, GSI brand, Model VHD18-VN, serial numbers PNEG-012 & PNEG-013 ("Property").

The proposed purchaser of the Property is Da Silva Dairy Farms, LP ("Buyer"), and the terms of the sale are:

- A. The sales price is \$2,500.00, and the buyer is required to fully and completely remove the Grain Bin Personal Property from the Residence real property within 10 business days following entry of the order authorizing the sale. Mot. 3:1-3, Docket 366.
- B. The buyer is also required to tender to Trustee via cashier's check or wire transfer, a deposit in the amount of \$5,000.00. *Id.* at 3:4-5.
- C. The sale of the Grain Bin Personal Property is "As-Is, Where-Is, With All Faults", and Trustee disclaims all warranties, express or implied, except the warranty of title. *Id.* at 3:6-7.

Requested Overbid Procedures

1. Neither Debtor, nor Carol Matthews, aka Carol Hofmann, nor The Valley Home Rice Company, LLC, shall be eligible to qualify as an overbidder.
2. In order for any eligible party other than Da Silva Dairy to qualify as an overbidder at the Sale Hearing, such party shall first have tendered to Trustee on or before 5:00 PM Pacific on November 18, 2024:
 - a. an earnest money deposit of \$5,000.00 via cashier's check or wire transfer; and,
 - b. a completed Personal Property Purchase Agreement ("PPPA") signed by the proposed overbidder(s), in substantially the same form, terms and conditions as the Da Silva PPPA.
3. The initial overbid at the Sale Hearing shall be not less than \$1,000.00 over \$2,500.00. Thereafter, the court may establish the minimum overbid increments.
4. The in-court auction shall proceed until no higher bid is received from a qualified bidder.
5. The court shall authorize Trustee to sell the Grain Bin Personal Property to the highest bidder, and, in the event the highest bidder fails to tender the additional deposit or otherwise defaults, to the second highest bidder.
6. Following the conclusion of the Sale Hearing, Trustee shall promptly refund to all qualified bidders the initial deposit tendered, other than the initial deposits tendered by the highest bidder and the second highest bidder.
7. Within two business days following conclusion of the Sale Hearing, Trustee and highest bidder at the Sale Hearing shall mutually execute an addendum to the PPPA stating the purchase price, and the highest bidder shall tender to Trustee via cashier's check or wire transfer the difference, if any between the purchase price and the initial deposit. In the Trustee notifies the second highest bidder via e-mail of the default of the highest bidder, and in the event the second highest bidder elects to purchase the Grain Bin Personal Property at the second highest bid amount, the second highest bidder and Trustee shall execute an addendum to the PPPA stating the purchase price, and the second highest bidder shall tender to Trustee via cashier's check or wire transfer the difference, if any between the purchase price and the initial deposit.
8. In the event the second highest bidder elects not to purchase, Trustee shall promptly refund its initial deposit. In the event either the highest bidder or the second highest bidder fails to tender the additional monies, fails to timely remove the Grain Bin Personal Property from the Residence real property or otherwise defaults, any and all deposits and monies tendered to Trustee by or on behalf of such defaulting bidder shall be non-refundable.

Mot. 3:12-4:18, Docket 366.

DEBTOR'S OPPOSITION

The Debtor/ Debtor in Possession filed an Opposition on November 7, 2024. Docket 390. Debtor/ Debtor in Possession states:

1. Trustee has already been marketing the Residence with the grain bins apparent in the photographs, and without explanation, recently switched to marketing the Residence without the grain bins attached. *Id.* at 2:5-16.
2. The Subchapter V Trustee's decision to stop marketing the grain bins did not conserve the assets of the estate, was arbitrary, and lacked basic business judgment. The Subchapter V's mismanagement of the sale has now resulted in a much lower purchase offer on the property. *Id.* at 2:17-22.
3. The Subchapter V Trustee seeks to sell the real property without the grain tanks. The Subchapter V Trustee is not acting within the scope of the Court's order entered on July 7, 2023. *Id.* at 3:3-4.
4. Trustee has already been acting without authorization to exercise control over the grain bins.
5. The Court should not bless this unauthorized action by now granting the Subchapter V Trustee's motion. *Id.* at 3:15-24.
6. The Subchapter V Trustee should have sought authorization from the Court granting him an expansion of his authority and a hearing held to allow the parties in interest an opportunity to weigh in on such an expansion of authority. The Court should not now approve the opening of the door after the horse has already been let out. *Id.*

DISCUSSION

The court finds the requested bidding procedures to be appropriate and adopts them here. At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**

Debtor/ Debtor in Possession's opposition lacks merit. It is not the court's role to replace the business judgment of the Movant in exercising his powers to sell property of the Estate. Movant has been granted the authority to exercise control over selling property off the Estate, and the court does not find the business judgment related to exercising this authority of Movant to be improper. Every step of the way in this case Debtor/ Debtor in Possession has frustrated the process, resulting in the case languishing in bankruptcy without an end. Trustee has offered a reasonable end to the case with these sale motions.

The Grain Bin Problem Has Been Caused by the Debtor/Debtor in Possession

As the court has discussed in the Ruling on the Motion expanding the Subchapter V Trustee's authority to include the Grain Bins, the sale of the Residence Property was originally going to be made without the Grain Bins, the court having granted relief from the stay for the creditor having a lien on the Grain Bins to sell them and have them removed from the Residence Property. The creditor with a lien on the grain tanks conducted its sale of that collateral. It has been reported to the court that the Debtor/Debtor in Possession, without court approval, borrowed

money from his significant other and bought the grain tanks, leaving them on the Residence. Conf. Hrg. Civ. Minutes; Dckt. 361; which includes:

No proposed [confirmation] order was lodged with the court [by counsel for the Debtor/Debtor in Possession]. As set forth in the Civil Minutes from the August 7, 2024 Status Conference, the Subchapter V Trustee stated his frustration with the conduct of the Debtor/Debtor in Possession, believing they presented impediments to the sale of the residential property. Dckt. 305. This included the Debtor/Debtor in Possession, without authorization from the court, purchased grain bins that were located on the residential property. In making reference for anyone listening to the audio recording of the Status Conferences, the court stated in the Civil Minutes:

As is evident from a review of the audio for this Status Conference, the Chapter 11 case has continued to “circle the drain” of delay and obfuscation.

Id. [Civ. Minutes, p. 3; Dckt. 277.] With respect to the Debtor/Debtor in Possession purchasing the grain bins, the court further notes in the Civil Minutes:

Additionally, a question arose as to how the Debtor/Debtor in Possession had not estate funds to “invest in” the Grain Tanks. If monies of the Estate were spent for such out of the ordinary course of business for such “investments,” the issue of the Debtor/Debtor in Possession’s ability to continue as the debtor in possession arises.

Id.

The Debtor/Debtor in Possession now seeks to assert that since he, without court authorization purchased the Grain Bins and effectively stuck them on the Residence Property, the Subchapter V Trustee should not be authorized to sell them as part of what is necessary to sell the Residence Property.

While the Debtor/Debtor in Possession may believe, that after many years of fighting that his 8.334% interest in the Residence Property might be better off if the sale includes the Grain Bins that he placed on the Residence Property, he is not the one authorized to sell the Residence Property or the Grain Bins.

There is no retroactive granting of the authority for the Subchapter V Trustee to sell the Grain Bins. That authority is being granted pursuant to a separate motion prior to the court entering an order granting this Motion.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant will realize a small benefit to the Estate in removing the Property while also freeing up encumbrances on the Property that will allow Movant to sell the Residence in the related 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 Sell Property filed by Walter Dahl, the Subchapter V Trustee (“Movant,” “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 is granted, and Trustee is authorized to sell pursuant to 11 U.S.C. §§ 363(b) the two large grain storage bins, GSI brand, Model VHD18-VN, serial numbers PNEG-012 & PNEG-013 (“Property”). Trustee is authorized to effectuate the sale as follows:

1. Trustee is authorized to sell the Property to Da Silva Dairy Farms, LP (“Buyer”) or nominee for \$2,500, on the terms and conditions set forth in the Personal Property Purchase Agreement, Exhibit A, Docket 368, and as further provided in this Order.
2. The sale proceeds shall be first applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
3. Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

5. [23-90111](#)-E-11 **MICHAEL HOFMANN**
[DL-9](#) **Brian Haddix**

**MOTION TO SELL FREE AND CLEAR
OF LIENS AND/OR MOTION FOR
COMPENSATION FOR KELLER
WILLIAMS REALTY, REALTOR(S)
10-16-24 [\[372\]](#)**

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, attorneys of record, parties requesting special notice, and Office of the United States Trustee on October 17, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Walter R. Dahl, the Chapter 11 Subchapter V Trustee, (“Movant,” “Trustee”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 363(h). Although a Subchapter V

Trustee does not normally have authority to conduct a sale of property of the Bankruptcy Estate, the court entered an Order on July 7, 2023 authorizing Movant to market and sell property of the Estate in this case. Order, Docket 119. Here, Movant proposes to sell the real property commonly known as 13330 Valley Home Road, Oakdale, California, 95361 (“Residence”).

The proposed purchaser of the Jesus Aguilar Miranda (“Miranda”), and the terms of the sale are:

- A. The sales price is \$460,000.00, which Trustee believes, based upon the Declaration of Boudier which accompanies this motion, represents a fair value for the Residence.
- B. Miranda understand that the Trustee is obligated to sell the Residence for the highest and best price, and thus the Miranda Purchase and Sale Agreement (“PSA”) is subject to overbidding at the hearing on this motion.
- C. By this motion, Trustee seeks authorization for the sale of the Residence to the highest and best qualified bidder to be determined in court at the hearing on this motion (“the Sale Hearing”).
- D. The terms of sale of the Residence to any overbidder shall be the same as set forth in the Miranda PSA, save and except the price.
- E. The Miranda PSA provides that Trustee disclaims all representations and warranties, express or implied as to the Residence, other than the warranty of title, and that the Residence is being sold “AS IS, WITH ALL FAULTS”.
- F. The terms of sale include a real estate brokerage fee of 5.0% of the sales price, to be shared between Trustee’s broker/agent and Buyer’s broker/agent as they agree, and to be paid directly from escrow upon closing.

Mot. 3:1-15, Docket 373.

Movant submits the declaration of Paul Boudier, Movant’s real estate agent in the sale, to provide testimony as to fairness of the sale. Decl., Docket 374.

Requested Overbid Procedures

- 1. Neither Debtor, nor Carol Matthews, aka Carol Hofmann, nor The Valley Home Rice Company, LLC, shall be eligible to qualify as an overbidder.
- 2. In order for any eligible party other than Miranda to qualify as an overbidder at the Sale Hearing, such party shall first have tendered to Trustee on or before 5:00 PM Pacific on November 18, 2024:
 - a. an earnest money deposit of \$46,000.00 via cashier’s check or wire transfer; and,
 - b. a completed purchase and sale agreement signed by the proposed overbidder(s), in substantially the same form, terms and conditions as the Miranda PSA.

3. The initial overbid at the Sale Hearing shall be not less than \$10,000.00 over \$460,000.00. Thereafter, the court may establish the minimum overbid increments.
4. The in-court auction shall proceed until no higher bid is received from a qualified bidder.
5. The court shall authorize Trustee to sell the Residence to the highest bidder, and, in the event the highest bidder fails to tender the additional deposit or otherwise defaults, to the second highest bidder.
6. Following the conclusion of the Sale Hearing, Trustee shall promptly refund to all qualified bidders the initial deposit tendered, other than the initial deposits tendered by the highest bidder and the second highest bidder.
7. Within two business days following conclusion of the Sale Hearing, Trustee and highest bidder at the Sale Hearing shall mutually execute an addendum to the purchase and sale agreement stating the purchase price, and open escrow. In the event the Trustee notifies the second highest bidder via e-mail of the default of the highest bidder, in the event the second highest bidder elects to purchase the Residence at the second highest bid amount, the second highest bidder and Trustee shall execute an addendum to the purchase and sale agreement stating the purchase price, and open escrow.
8. In the event the second highest bidder elects not to purchase, Seller shall promptly refund its initial deposit. In the event either the highest bidder or the second highest bidder fails to tender the additional deposit or otherwise defaults, any and all deposits tendered to Trustee by or on behalf of such defaulting bidder shall be non-refundable. In escrow, the party purchasing the Residence shall be credited with all deposits tendered to Trustee.

Mot. 3:20-4:20, Docket 372.

Sale Free and Clear of Interests

The Motion seeks to sell the Property free and clear of all interests of Sharon Hofmann and Gary Hofmann (“Hofmann Creditor”), the Debtor’s siblings. Sharon Hofmann owns an undivided 45.833% interest in the Property and Gary Hofmann owns an undivided 45.833% interest in the Property.

Congress provides in 11 U.S.C. § 363(h) for the sale of property in which the bankruptcy estate owns a partial interest and the other interests are owned by non-debtor parties.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate’s interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate’s undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

Additionally, the Debtor and Bankruptcy Estate, Sharon Hofmann, and Gary Hofmann assert liens against the various interests in the Property. These arise out of the pre-bankruptcy State Court.

Movant is requesting a sale free and clear of interests and liens, that the corresponding liens and interests may attach to proceeds of the sale. Mot. 5:6-14, Docket 372.

DEBTOR'S OPPOSITION

The Debtor/ Debtor in Possession filed an Opposition on November 7, 2024. Docket 392. Debtor/ Debtor in Possession states:

1. Trustee has already been marketing the Residence with the grain bins apparent in the photographs, and without explanation, recently switched to marketing the Residence without the grain bins attached. *Id.* at 2:5-16.
2. The Subchapter V Trustee's decision to stop marketing the grain bins did not conserve the assets of the estate, was arbitrary, and lacked basic business judgment. The Subchapter V's mismanagement of the sale has now resulted in a much lower purchase offer on the property. *Id.* at 2:17-22.
3. The Subchapter V Trustee offers only his own declaration that, "Due to their concerns regarding an underground diesel fuel storage tank at the Residence, the continuing presence of two large grain storage bins and related equipment at the Residence, and potential post-purchase litigation by Debtor, the Cleghorns ultimately elected not to proceed with purchasing the Residence." The Subchapter V Trustee offers no evidence that he ever communicated to the Cleghorns that the Grain Tanks were free & clear. Because there is no evidence that the Subchapter V Trustee diligently communicated the status of the grain tanks, the Court should deny the motion. *Id.* at 3:4-11.

DISCUSSION

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

Debtor/ Debtor in Possession's opposition does not have merit. It is not the court's role to replace the business judgment of the Movant in exercising his powers to sell property of the Estate with the business judgment of the court (as if the court were the estate administrator) or the Debtor/Debtor in Possession. Movant has been granted the authority to exercise control over selling property off the Estate, and the court will not question the business judgment related to exercising this authority. Every step of the way in this case Debtor/ Debtor in

Possession has frustrated the process, resulting in the case languishing in bankruptcy without an end. Trustee has offered a reasonable end to the case with these sale motions.

Moreover, Debtor/ Debtor in Possession now objects on the basis that the sale price is much lower than the original price. While that is true, the court reminds Debtor/ Debtor in Possession that the court graciously permitted Debtor / Debtor in Possession to overbid at the previous sale, based on a promise that there was funding available, only for the funds to fall through, wasting everyone's time and money. The original sale was both increased by Debtor/ Debtor in Possession and ultimately failed because of Debtor/ Debtor in Possession. Objecting now on the basis of the sales price being too low is without merit.

The original buyers for the Residence Property that the Subchapter V Trustee entered into contract to buy the Residence Property for \$519,000. Motion to Sell, ¶ 11; Dckt. 249. The current Buyer now has agreed to pay \$460,000 for the Residence Property. The \$519,000 sale was lost because of Debtor/Debtor in Possession's overbidding and his failure to have the financing that he and his attorney represented to the court was in place.

While a \$60,000 difference may appear to be a lot, for the Debtor's and the Bankruptcy Estate's 3.334% interest in the sale proceeds, it is an insignificant amount. There is a real estate commission of 5% (divided between the Movant's and the Buyers' respective brokers) that will be paid. Five percent (5%) of \$60,000 is (\$3,000) to be deducted, producing what would be additional sales proceeds of \$57,000. With a 3.334% interest, the Debtor's/Bankruptcy Estate's portion of the \$57,000 would be \$1,900.

So, Debtor/Debtor in Possession's opposition is that there would have been \$1,900.00 if the first sale had been concluded (and not overbid by Debtor/Debtor in Possession, who defaulted on his purchase).

Assuming that Debtor/Debtor in Possession's experienced bankruptcy counsel bills with an hourly rate of \$400 for Chapter 11 cases, the \$1,900.00 of additional "value" was exhausted after four hours of billings.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Trustee to recover proceeds for the Estate and effectuate the sale that was previously delayed by Debtor/ Debtor in Possession.

Allowance of Fees for the Real Estate Broker Employed as a Professional by the Subchapter V Trustee

The Motion requests the court allow and authorize payment from the sales proceeds of a five percent (5%) real estate commission for Keller Williams Market Center and Paul E. Boudier. The court finds that the fees computed on a percentage basis recovery for the Estate are reasonable and a fair method of computing the fees in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission to be split evenly between Movant and Purchaser's real estate agents.

Sale Free and Clear of Interests and Liens

The Trustee requests that the sale be ordered free and clear of the following lien and interests:

e. The balance of the sales proceeds to Trustee to be held in a separate interest-bearing account pending entry of an order of the Bankruptcy Court directing Trustee to disburse such proceeds among

Michael, Sharon and Gary as their interests have been determined by prior orders of the Stanislaus County Superior Court. The liens, encumbrances, and other interests of Michael, Sharon, Gary, and all other parties claiming an interest in the Residence shall transfer and attach to such proceeds and be of the same validity, force, status, extent and effect, and subject to the same rights of avoidance or other challenge, as such interests in the Residence had prior to the sale. All rights of Trustee, Debtor, Sharon, Gary, and any other party in interest to seek avoidance or challenge the validity, force, status, extent, and effect of such interests shall be expressly reserved

Motion, p. 5:20-22, 5:6-14; Dckt. 272. While the court does not see a problem with the sale of the interests of the Bankruptcy Estate (those the Debtor had), Sharon Hofmann, and Gary Hofman, all of who have been identified and are consenting to the sale, the court does not see how it can order that the sale is free and clear of any other interests of unknown persons. Presumably, the preliminary title report would disclose such persons.

11 U.S.C. § 363(f)(1)-(5) authorizes the sale of property free and clear of liens and encumbrances when:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Here, the Estate, Sharon Hofmann, and Gary Hofmann consent, the respective lien interests are and have been the subject of long running State Court and now in this court dispute, and the creditors can be compelled to accept to a monetary payment that relates to their lien or encumbrance.

The interests, liens, and encumbrances will attach to the net sales proceeds; after payment of costs, expenses, real estate commission, pro rata property taxes and assessments, and a \$12,500.00 carve-out to the bankruptcy estate; in the same amount, extent, and priority as they existed in the Property prior to the sale.

The Motion is granted and the Subchapter V Trustee is authorized to sell the property commonly known as 13330 Valley Home Road, Oakdale, California, 95361, with the interests, liens and encumbrances of Michael Hofmann and the Bankruptcy Estate, Sharon Hofmann, and Gary Hofmann, and each of them, attaching to the net sales proceeds in the same order, extent, amount, validity, and priority as they existed in the Property prior to the sale.

Court's Initial Draft of Possible Order (the court anticipating that the Trustee will seek to draft the order and review it with the title company prior to having it lodged with the court).

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

The Motion to Sell Property filed by Walter Dahl, the Subchapter V Trustee (“Movant,” “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 is granted, Trustee is authorized to sell pursuant to 11 U.S.C. §§ 363(b), 363(f), and 363(h) the entirety of the real property commonly known as 13330 Valley Home Road, Oakdale, California, 95361 (“Residence”).

1. Trustee is authorized to sell the Residence, including the interests of Sharon Hofmann and Gary Hofmann pursuant to 11 U.S.C. § 363(h), to Jesus Aguilar Miranda or nominee for \$460,000, on the terms and conditions set forth in the Miranda Purchase and Sale Agreement, Exhibit “A”, Docket 375, and as further provided in this Order. The interests of the Bankruptcy Estate, Sharon Hofmann, and Gary Hofmann shall attached to the sale proceeds as further provided in this Order.
2. The sale is made free and clear of all liens and encumbrances that can be asserted by Debtor Michael Hofmann and the Bankruptcy Estate, Sharon Hofmann, and Gary Hofmann, with the liens and encumbrances attaching to the sales proceeds as further provided in this Order.
3. The sale proceeds shall be first applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale, including toward pro-rated current year real property taxes owing to Stanislaus County, and all delinquent prior years’ real property taxes owing to Stanislaus County.
4. Trustee is authorized to pay a real estate broker’s commission in an amount not more than five percent (5.0%) of the actual purchase price upon consummation of the sale. The commission shall be paid to Trustee’s broker, Keller Williams Realty and Paul Boudier, and if the purchaser has been represented by a real estate broker or agent, shall be shared equally with such purchaser’s broker or agent.
5. There is authorized a \$12,500.00 payment to Trustee as a “carve-out”, for administrative expenses and other allowed claims, to be held by Trustee pending further orders of the court.
6. The balance of the sales proceeds, after payment of the forgoing, to Trustee are to be held in a separate interest-bearing account pending entry of an order of the Bankruptcy Court directing Trustee to disburse such proceeds among Michael, Sharon and Gary Hofmann as their interests have been determined by prior orders of the Stanislaus County Superior Court. The liens, encumbrances, and other interests of Michael, Sharon, Gary, ~~and all other parties claiming an interest~~ in the Residence shall transfer and attach to such proceeds and be of the same validity, force, status, extent and effect, and subject to the same rights of avoidance or other challenge, as such interests in the Residence had prior to the sale. All rights of Trustee, Debtor, Sharon, Gary, and any other party in interest to seek avoidance or challenge the validity, force, status, extent, and effect of such interests shall be expressly reserved.
7. Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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 of interest on October 31, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant," "Trustee") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1035 W. 18th Street, Merced, California 95340 ("Property").

The proposed purchaser of the Property is Jose Juan Gonzalez Cortez ("Buyer"), and the terms of the sale are:

- A. Purchase Price: \$250,000.00
- B. Initial deposit: \$2,500.00
- C. Loan Amount: \$237,500.00.
- D. Balance of down payment: \$10,000.00.

- E. Close of escrow shall occur within 15 days of written court approval.
- F. Inspection and appraisal contingency to be 12 days, loan contingency to be 15 days from acceptance.
- G. Offer deadline to be extended to 10/12/24. Extension of inspection time frame to 11/10/24.
- H. Property is being sold in as-is condition, including but not limited to, buyer providing smoke detectors, carbon monoxide detectors, & water heater bracing, if necessary.
- I. Arbitration/Mediation to be removed from contract.
- J. Bathroom mirrors to be included in sale.
- K. Seller will pay for Natural Hazard Zone Disclosure Report, including tax information.
- L. Buyer and Seller to each pay ½ of the escrow fees 50/50.
- M. Buyer to pay for owner's & Buyer's Lender title insurance policies.
- N. Buyer and Seller shall each pay ½ of the County and City transfer tax (if applicable).
- O. Seller to pay HOA fee to prepare disclosures & Buyer to pay HOA certification fee.
- P. Buyer waives home warranty plan.
- Q. Seller acceptance is subject to US Bankruptcy Court approval and possible overbid.
- R. Escrow and Title to be with Old Republic Title - Alicia McDonald.
- S. Inspection & appraisal contingency to be 12 days, loan contingency to be 15 days from acceptance.
- T. Selling agent's commission & listing agent's commission 3% of sales price each.

Mot. 2:28-3:16, Docket 435.

Trustee proposes to make disbursements from proceeds of the sale as follows:

- 1. Gross Sale Proceeds: \$250,000.00
 - a. Realtor 6% commission (\$15,000.00):
 - i. Brian Brazeal (3%): \$7,500.00
 - ii. Buyer Realtor (3%): \$7,500.00

- b. Estimated closing costs: \$5,000.00
- 2. Net Proceeds Before Lien Payments: \$230,000.00
 - a. Bank of America (Estimated): \$99,401.28
- 3. Net Proceeds Before Administrative Distributions Pursuant to Compromise: \$130,598.72
 - a. Special Counsel Jeffrey Golden: \$56,911.61
 - b. Estimated Tax Liability - to be reserved (25% of \$130,598.72): \$32,649.68
 - c. Estimated Administrative Expenses - to be reserved: \$15,000.00
- 4. Net Proceeds Before Distribution to Unsecured Claims Pursuant to Compromise: \$26,037.43
 - a. Subrogated amount for Unsecured Creditors (10%): \$2,603.74
- 5. Remainder for WVJP 2021-4 LP: \$23,433.69

Mot. 4:1-12, Docket 435.

On August 30, 2024, this Court granted the Third Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Golden Goodrich LLP, Special Counsel for Chapter 7 Trustee (“Special Counsel”) in the amount of \$110,801.70. The Court authorized Mr. Farrar to pay \$53,890.09 with the balance of \$56,911.61 to be paid upon further order of the Court. (Docket428). Mr. Farrar and WVJP 2021-4 LP request that Mr. Golden's outstanding fees of \$56,911.61 be paid from the net proceeds of the sale of the Property through escrow. *Id.* at 4:24-5:1.

Proposed Overbidding Procedures

- a. Any party overbidding must agree to purchase the Property on the identical terms as the proposed Agreement (aside from increased price);
- b. The proposed overbidder must first qualify to bid by demonstrating to the satisfaction of the Court and Mr. Farrar, that they have the financial ability to close the transaction according to the Agreement - such demonstration should be made to Mr. Farrar within 7 days of the hearing on this Motion;
- c. The first overbid must be at least \$252,500.00 (\$2,500.00 more than the purchase price) and successive bids must be in increments of at least \$500.00;
- d. In addition, the successful overbidder must deliver to Mr. Farrar within 7 days of the hearing, by cashier's check, a deposit of \$2,500.00. If the overbidder timely completes the purchase, the deposit will apply to the purchase price, but if the overbidder defaults, the deposit will be nonrefundable.

Mot. 6:6-15, Docket 435. The court finds the overbidding procedures to be reasonable and adopts them for purposes of this Motion.

DISCUSSION

Trustee requests, as part of this Motion, that Special Counsel be authorized a payment of \$56,911.61 through escrow. Though the fees have been allowed on an interim basis, it has not been suggested now \$56,911.61 of the net sales proceeds relate to Special Counsel's fees. While they is an interim allowance of the expense, the court does not see the connection to divert a little more than 50% of the after tax proceeds to Special Counsel.

At the hearing, **XXXXXXX**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Mr. Farrar to collect approximately \$130,598.72 for the estate, the unsecured creditors, and for lienholder WVJP 2021-4 LP pursuant to the Compromise.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$15,000. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

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

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

The Motion to Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, ("Movant," "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 is granted, and Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jose Juan Gonzalez Cortez or nominee ("Buyer"), the Property commonly known as 1035 W. 18th Street, Merced, California 95340 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$250,000, on the terms and conditions set forth in the Purchase Agreement, Exhibits A and B, Dckt. 440, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

- D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be split evenly between the Chapter 7 Trustee's broker, Brian Brazeal, and Buyer's agent, Berkshire Hathaway Homeservices Drysdale.

7. [24-90528](#)-E-11 HERITAGE HOME
[BSH-3](#) FURNISHINGS, LLC
Brian Haddix

**MOTION TO USE CASH COLLATERAL
AND/OR MOTION TO GRANT
REPLACEMENT LIENS , MOTION TO
SCHEDULE FINAL HEARING PURSUANT
TO BANKRUPTCY RULE 4001
11-1-24 [41]**

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).

No Certificate of Service has been filed by Movant. At the hearing, **XXXXXXX**

The Motion for Authority to Use Cash Collateral was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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 for Authority to Use Cash Collateral is granted on an interim basis, and the hearing is continued to **xx:xx a.m. on **xxxx**, 2025.**

Heritage Home Furnishings, LLC (“Debtor in Possession”) moves for an order approving the use of cash collateral from generated from the business, a family-owned California limited liability company created in 2009 which operates as a commercial furniture retailer with a showroom and separate warehouse located in Turlock, CA. Debtor in Possession requests the use of cash collateral to continue the Debtor’s operations and to reorganize.

Debtor in Possession proposes to use cash collateral to be allocated to critical business expenses necessary to sustain operations, including payment of rent to maintain the premises, payroll to retain essential employees, inventory purchases to meet customer demand, and adequate protection payments to secured creditors. Mot. 3:14-21, Docket 41.

In the Motion the Debtor in Possession requests that replacement liens be granted creditors in the new cash proceeds generated from the operation of the business. While not expressly stating such, the regular practice is to grant such replacement liens in the same priority as the original lien and to the extent that the creditor’s collateral was reduced through the use of cash collateral (thus, a creditor’s collateral is not increased).

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

In the prayer, Debtor/Debtor in Possession requests that a super-priority claim be granted pursuant to 11 U.S.C. § 503(b) and § 507(b) to the extent that there has been a diminution in the amount of Creditor’s collateral, notwithstanding the replacement lien. Motion, p. 7:18-21; Dckt. 41.

Debtor in Possession has submitted a proposed Stipulation with the court between it and the Small Business Administration (“SBA”). Exhibit A; Dckt. 43. The Stipulation calls for providing the SBA with superpriority claim pursuant to 11 U.S.C. §§ 503(b), 507(b), to the extent that the use of cash collateral results in a diminution of the SBA cash collateral notwithstanding the replacement lien.

The Debtor/Debtor in Possession also seeks authorization to make adequate protection payment in the amount of \$731 monthly.

With respect to the “super priority claim,” Congress provides for a super priority administrative expense in 11 U.S.C. § 507(b), stating:

(b) If the trustee, under section 362, 363, or 364 of this title, **provides adequate protection of the interest of a holder of a claim secured by a lien on property** of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) [unsecured administrative expense] of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor’s claim under such subsection shall have priority over every other claim allowable under such subsection.

Collier’s Treatise on Bankruptcy states:

A creditor seeking to assert a claim under section 507(b) must meet three criteria. First, the trustee must have, under section 362, 363 or 364(d), provided adequate protection of the interest of the holder of a claim secured by a lien on property.¹ Second, such creditor must have a claim allowable under section 507(a)(2). Third, the claim must have arisen from either the stay of action against

property under section 362, from the use, sale or lease of property under section 363, or from the granting of a lien under section 364(d).

4 COLLIER ON BANKRUPTCY ¶ 507.14[1].

This priority administrative expense arises statutorily when the adequate protection lien provided.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

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

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

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

(b)(2) Hearing

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

DISCUSSION

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 making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period xxxx, 202x,

through xxxx, 202x, including required adequate protection payments of \$731 to the SBA. 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 is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The Stipulation between Debtor in Possession and the SBA is not approved at this time, the court finding a noticed motion is required.

The court continues the hearing to xx:xx x.m. on xxxx, 202x, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by xxxx, 202x (seven days before hearing), with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Heritage Home Furnishings, 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 on an interim basis, pursuant to this order, for the period xxxx, 202x, through xxxx, 202x, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

Income	Sales	\$ 70,000.00
	Capital Contributions	\$ 10,000.00
	Total	\$ 80,000.00
Expenses	Rent	\$ 19,000.00
	insurance	\$ 2,780.00
	Payroll/Payroll-Tax	\$ 3,800.00
	Workers Comp-employers	\$ 530.00
	TID	\$ 2,400.00
	PG&E	\$ 98.00
	City of Turlock	\$ 440.00
	JoeGomes-Fuel	\$ 380.00
	Chrysler Capital	\$ 1,288.00
	Issuzu Finance	\$ 1,140.00
	Phones	\$ 500.00
	Internet	\$ 156.00
	quickbooks software	\$ 178.00
	SBA Adequate Assurance	\$ 731.00
	Inventory	\$ 45,000.00
	Total	\$ 78,421.00
	Net Income	\$ 1,579.00

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that the replacement lien granted the Small Business Administration is to provide adequate protection for the use of its cash collateral and prevent a diminution thereof from the pre-cash collateral use amount, as that term is used in 11 U.S.C. §§ 503(b) and 507(b)

IT IS FURTHER ORDERED that Debtor in Possession shall make monthly adequate protection payments of \$731 to the Small Business Administration.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xx:xx x.m.** on **xxxx, 202x**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 202x**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 202x** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

8. [19-90461](#)-E-7 LORRAINE ESCOBAR
[19-9014](#) CAE-1
REYES V. ESCOBAR

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-30-19 [25](#)

The Status Conference is continued to xxxxxxx , 2025.

NOVEMBER 21, 2024 STATUS CONFERENCE

No updated Status Reports have been filed by the Parties. At the Status Conference, **xxxxxxx**

JULY 18, 2024 STATUS CONFERENCE

The Parties have reported that the State Court Action will have further proceedings in October 2024, and request that this Status Conference be continued. Dckt. 104.

The Status Conference is continued to 2:00 p.m. on November 21, 2024.

FEBRUARY 22, 2024 CONTINUED STATUS CONFERENCE

No updated Status Reports have been filed advising the court of the current status of the litigation in the Los Angeles Superior Court to which this Adversary Proceeding relates. In the last Status Report, as part of a request to continue the Status Conference, the court was advised that the Superior Court Action was set for trial on May 17, 2024.

In the order continuing the prior Status Conference (Dckt. 94), the court ordered the parties to file a short updated status report on or before February 1, 2024, advising the court of any changes in the State Court trial scheduling, and whether a further continuance of the February 22, 2024 Status Conference was requested. No such updated status reports have been filed.

At the Status Conference, Lorraine Escobar appeared and advised the court that the State Court Trial is set for May 17, 2024.

The Status Conference is continued to 2:00 p.m. on July 18, 2024.

NOVEMBER 10, 2022 STATUS CONFERENCE

On November 7, 2022, Plaintiff Emilio Reyes filed an Updated Status Report (Dckt. 87), advising the court that the Second District Court of Appeal reversed the ruling on the Motion to Strike the State Court Action, and that Plaintiff will now proceed with prosecuting that State Court Action to establish the asserted liability of Defendant-Debtor. A copy of the District Court of Appeal Decision (which is 33 pages in length) is filed as Exhibit A. Dckt. 87.

Defendant-Debtor Lorraine Escobar filed her Updated Status Report and Request for a Continuance on November 8, 2022. Dckt. 88. Defendant-Debtor states that she suffered from COVID-19 which has delayed her ability to request a rehearing before the District Court of Appeal, but she intends to pursue such request.

In her Status Report Defendant-Debtor takes “swipes” at the Plaintiff, asserting he is making misstatements, obfuscating the facts, and argues some of the underlying facts.

Adversary Proceeding Stayed

By prior Order of this Court, this Adversary Proceeding has been stated pending entry of a final judgment in the State Court Action in which Plaintiff asserts his claims against Defendant Debtor for which he seeks to have this court determine that such claims are nondischargeable. Order, Dckt. 50; Civil Minutes, Dckt. 49.

Further Continuance of the Status Conference

The one thing that Plaintiff and Defendant-Debtor agree on is that there is ongoing litigation in the State Court Action which must be completed to final judgment before this court can proceed on the issue of whether any obligation of Defendant-Debtor determined therein is nondischargeable in Defendant-Debtor’s bankruptcy case.

The court continues the Status Conference to 2:00 p.m. on May 25, 2023

The Post-Confirmation Status Conference is XXXXXXX

NOVEMBER 21, 2024 POST-CONFIRMATION STATUS CONFERENCE

A review of the Docket discloses that nothing further has been filed. Counsel for the Debtor/Debtor in Possession has not filed a motion for allowance of compensation.

At the Status Conference, XXXXXXX

AUGUST 29, 2024 STATUS CONFERENCE

On August 23, 2024, the Subchapter V Trustee filed a report stating that she has received the \$9,402.15 in fees allowed her as Subchapter V Trustee.

At the Status Conference, counsel for the Reorganized Debtor reported that the Plan was consensually confirmed. The only remaining matter to address before closing is that Debtor/Debtor in Possession counsel needs to file his fee application.

The Post-Confirmation Status Conference is continued to 2:00 p.m. on November 21, 2024.

JUNE 27, 2024 POST-CONFIRMATION STATUS CONFERENCE

The court's June 25, 2024 review of the Docket indicates that nothing further has been filed in this case since the court allowed the fees of the Subchapter V Trustee.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the only remaining matter is counsel's fee application, which has been delayed due to health issues. The Plan has been completed, with a 100% dividend to creditors holding general unsecured claims.

The Status Conference is continued to 2:00 p.m. on August 29, 2024.20

MARCH 28, 2024 POST-CONFIRMATION STATUS CONFERENCE

On January 26, 2024, the court entered its order allowing compensation for the Subchapter V Trustee. Dckt. 146. No compensation has been allowed for counsel for the Debtor/Debtor in Possession.

FINAL RULINGS

10. [22-90415](#)-E-7 JOHN MENDOZA
[23-9011](#)
WVJP 2021-4, LP V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR
NON-DISCHARGEABILITY
6-16-23 [1]

Item 10 thru 11

Final Ruling: No appearance at the November 21, 2024 Pre-Trial Conference is required.

The Pre-Trial Conference has been continued to 2:00 p.m. on January 16, 2024 by prior order of the court (Dckt. 36).

11. [22-90415](#)-E-7 JOHN MENDOZA
[23-9020](#)
FARRAR V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR DENIAL OF
DEBTOR'S DISCHARGE
10-16-23 [1]

Final Ruling: No appearance at the November 21, 2024 Pre-Trial Conference is required.

The Pre-Trial Conference has been continued to 2:00 p.m. on January 16, 2024 by prior order of the court (Dckt. 32).

12. [24-90219](#)-E-7 JESSE/AMBER CASEY
[24-9008](#) CAE-1
KOSTKAS V. CASEY, JR ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-17-24 [7]

Motion - Item #4 on 10:30 Calendar

Final Ruling: No appearance at the November 21, 2024 hearing is required.

The court has issued an Order continuing the hearing on the Motion to Dismiss Adversary proceeding and related Status Conference to December 12, 2024 at 10:30 a.m. Order, Docket 21.

No appearance of the parties is required at the November 21, 2024 hearing, the court having issued an Order continuing the hearing on the Motion to Dismiss Adversary proceeding and related Status Conference to December 12, 2024 at 10:30 a.m. Order, Docket 21.

13. [20-90349](#)-E-11 R. MILLENNIUM TRANSPORT,
[CAE-1](#) INC.
5-15-20 [1]

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION

Final Ruling: No appearance at the November 21, 2024 Status Conference is required.

The Status Conference has been continued to 2:00 p.m. on January 16, 2024, by prior order of the Court.

14. [24-90580](#)-E-11 RANCHO FRESCO MODESTO
[CAE-1](#) INC.

STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-2-24 [1](#)

DEBTOR DISMISSED: 11/07/24

Final Ruling: No appearance at the November 21, 2024 Status Conference is required.

The Bankruptcy Case having been dismissed on November 7, 2024 (Dckt. 30), the Status Conference is concluded and removed from the Calendar.