

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**December 5, 2024 at 10:30 a.m.**

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1. [24-22608-E-7](#)

**STEPHANIE IRBY**

**CONTINUED REAFFIRMATION  
AGREEMENT WITH HYUNDAI CAPITAL  
AMERICA  
9-12-24 [\[14\]](#)**

Attorney: Candace Y. Brooks [attorney did not certify the reaffirmation agreement]

Continued from 11/13/24 to afford the Debtor the opportunity to appear and provide the required certifications to the court.

An agreement to reaffirm a debt owed to Hyundai Capital America, which is secured by a 2021 Kia Sportage having a value of \$20,126, was filed by Stephanie Irby ("Debtor"). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 7% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is (\$19,870.99) which has not been reduced from the pre-petition claim.

Debtor having income of \$3,653.71 and expenses of (\$3,557.98), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise in connection with this reaffirmation agreement. The proposed monthly payment is \$601.77 for 35 months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

While reaffirmation of this obligation appears to be advantageous to Debtor, she did not appear at the November 13, 2024 hearing to verify to the court that she understands the legal effect of the reaffirmation.

The court continues the hearing to 10:30 a.m. on December 5, 2024, to afford the Debtor the opportunity to appear and provide the required certifications to the court.

**December 5, 2024 Hearing**

At the December 5, 2024 hearing, **XXXXXXX**

2. [24-24023-E-11](#)  
[BPC-1](#)

NEXT HILL ENTERPRISES,  
LLC  
Richard Jare

CONTINUED MOTION FOR AN ORDER  
DESIGNATING CHAPTER 11 CASE AS  
A SINGLE ASSET REAL ESTATE CASE  
9-26-24 [\[19\]](#)

Item 2 thru 3

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

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

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

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

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

### December 5, 2024 Hearing

The court continued the hearing on this Motion to afford the Parties an opportunity to supplement the record provide evidence concerning the business operation concerning these properties. On November 8, 2024, Movant filed a Supplemental Brief and supporting Declaration. Dockets 42, 43. Movant states:

1. Debtor in Possession provided extensive testimony at the 341 Meeting that indicates the Properties are part of a "single project." Supp. Brief 3:10-11, Docket 42.
2. Debtor testified that when it bought the Properties in the spring of 2022, the Debtor intended to develop the raw land of both parcels into a unified apartment complex. The Debtor explained that developing the Properties

together would make a “decent sized project” that would be affordable to lease out and a good investment for outside investors. *Id.* at 3:12-15.

3. Moreover, the Debtor met with city council members to obtain feedback on the Debtor’s drawings that re-route the road that divides the Properties in order for the Debtor to “unify the properties.” All of this testimony cuts against the Debtor’s contention that this is not a single project yet. *Id.* at 3:15-18.
4. Accordingly, the Properties constitute a “single project” for purposes of 11 U.S.C. § 101(51B).

In the Declaration of Michael Wachtell in support of the Supplemental Brief, Mr. Wachtell testifies as to the facts of the Supplemental Brief. Moreover, Mr. Wachtell authenticates the attached Exhibit, which is the full transcript of the 341 Meeting showing where Debtor in Possession made comments indicating the parcels of land were intended to be used as a single project.

### **Debtor in Possession’s Reply**

Debtor in Possession filed a Declaration and Supplemental Document in response to Movant’s supplemental pleadings on November 22, 2024. Dockets 46, 47. Debtor in Possession titles the Declaration as an Amended Declaration of Debtor in Possession’s managing partner, Payam Sanatkar. Mr. Sanatkar reiterates what was stated in his original Declaration, but adds the following testimony:

1. The 1 acre parcel is WORTH MORE by itself separately than as a project with the 4 acre parcel. There is probably no reason why the 1+ acres lot should not be worth more separate as we think a conditional zoning use as a single family home site or multi family. Decl. ¶ 7, Docket 46.
2. We are looking again at the values as SEPARATE being potentially higher than combined as one project. This it is NOT YET a single project. *Id.*

In the supplemental document, Debtor in Possession states:

1. The amended declaration clarifies that the 341 testimony was intended to emphasize that there is realistic hope for rehabilitation in that the parcels could in the future be a single project. Given what I have seen as the minimal state of the drawings which at best is an early stage conceptual, we are not anywhere even near any Project Stage let alone near any single asset project. Docket 47 at 1:26-2:4.

### **DISCUSSION**

The court offered the parties an opportunity to supplement the record and show that the two parcels are or are not to be considered a single project. As noted at the previous hearing, the court expressed concerns deeming the case to be a single asset real estate case when there were two parcels of land that were acquired at different points in time. Here, Movant has provided compelling evidence from Debtor’s own testimony that the Properties were, at least initially, intended to be used as a single project. Such testimony

supports a finding that the Properties are a single project, therefore supporting the finding that the case is a single asset real estate case.

Debtor in Possession states in ambiguous terms that the Properties may be used as a single project at some time, but for now, Debtor in Possession is investigating selling one parcel separately as it may be worth more on its own.

This Bankruptcy Case was filed on September 9, 2024. While the Debtor in Possession has obtained an order authorizing the employment of counsel (Order; Dckt. 26), the Debtor in Possession has not sought to obtain the employment of a real estate professional to sell one or two of the parcels.

On A/B Debtor lists one parcel having a value of \$1,150,000.00 and the other \$170,000.00. Dckt. 1 at 9. On Schedule D Debtor lists Movant as having a (\$79,000) claim secured by the \$170,000 valued parcel. The only other claims listed on Schedule D as being secured by the \$170,000.00 parcel are those of the El Dorado County Tax Collector for (\$2,000.00) and the El Dorado Irrigation District for (\$150.00).

Movants have invested substantial time and money in advancing this single asset real estate theory.

As discussed herein, the statutory definition of “Single asset real estate” means property constituting a single property or project which generates substantially all of the debtor’s gross income. 11 U.S.C. § 101 (51B). Here we have two parcels of property, which Debtor acquired. In his first Declaration, Payam Sanatkar, managing member of the Debtor, provides little testimony as to the “business” of the Debtor. Dckt. 29. The Amended Declaration, Dckt. 46, provides some testimony concerning the Debtor’s business, stating:

The testimony at the 341 supports the contention that there is realistic hope for rehabilitation, because it can be made into a single project with further efforts and with the ideal financing new partner. But we are not quite there yet so it is not a single asset today but it is not unrealistic to think that it can under the right circumstances be a single asset in the future.

Amd. Dec, ¶ 4, p. 3:9-15; Dckt. 46. Payam Sanatkar appears to testify that there is a single project here, to be developed, but it is not quite being developed yet because there is not “ideal financing.”

In the Supplemental Opposition, Dckt. 47, the Debtor in Possession asserts that while at this early stage the development of the two parcels is conceptual, there “is realistic hope for rehabilitation in that the parcels could in the future be a single project.” Supp. Opp., p. 2:1-4; Dckt. 47. It is then asserted that since the project is in the conceptual phase, and apparently does not have “ideal financing,” then this cannot be a single asset real estate case.

From the evidence presented, the court concludes that these two parcels are part of a single project. The Debtor in Possession is not attempting to liquidate a parcel that would not be part of a “single project.”

The Debtor in Possession offers the court no credible testimony as to how and what is being separately done for these two parcels of property. While one parcel may well be substantially worth more

than the other, that does not prevent there from being one project being attempted by the Debtor prior to the commencement of this Case.

Payam Sanatkar, the managing member of the Debtor and Debtor in Possession, provides this testimony under penalty of perjury that is pregnant with this being a single asset real estate case. After stating that one parcel may well be worth more than the other, he states:

This it is NOT YET a single project.

Amd. Dec., ¶ 7, p. 3:21; Dckt. 29 (emphasis in original). This indicates that this is “to be” a single project. Based on the testimony, this “is to be” a single project once the Debtor in Possession has worked on developing it as a single project, seeking funding for it to be a single project, and to have the reorganization be based on the Debtor as plan administrator or the Debtor in Possession work to make it a single project.

Applying the facts in this Case to the five factors, the court’s analysis is:

- (1) the use of the properties – here the Debtor and now the Debtor in Possession is seeking to develop them as a single project, to find the ideal financing, and then proceed with a single project.
- (2) the circumstances surrounding the acquisition of the properties, including the time of the acquisition and the funds used to acquire the properties – the two parcels were purchased in April 2022, and have been retained, undeveloped, by the Debtor since that time.
- (3) the location of the properties and proximity of the properties to one another – the two properties are located next to each other. The argument that there may be a road between the two does not alter that they are very closely physically associated.
- (4) any plans for future development, sale or abandonment of the properties – here the Debtor in Possession offers no plans for the separate sale of the parcels or development. Rather, the managing member merely concludes that “This is NOT YET a single project” (emphasis in original). The information provided by the Debtor in Possession is that the Debtor in Possession is working towards having these developed in a joint project. Merely because the Debtor in Possession has not yet obtained the “ideal financing” and is implementing development of the two parcels does not mean that it is not one project for the Debtor and now the Bankruptcy Estate.

On the three months since this Chapter 11 Case was filed, there appears to be no action taken by the Debtor in Possession to do anything with either or both parcels. Other than obtaining authorizing to hire Debtor in Possession counsel, oppose the present Motion, and file monthly operating reports showing no gross income, no expenditures other than a (\$614) “All other expenses,” nothing appears to being undertaken by the Debtor in Possession.

From Debtor in Possession’s conduct, the Debtor in Possession is proceeding with a single project for these two parcels.

At the hearing, **XXXXXXX**

## REVIEW OF MOTION

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

Five requirements must be met to qualify as a “single asset real estate case” under 11 U.S.C. § 101(51B). Lender satisfies each requirement. First, the Debtor is not a family farmer as the Debtor’s only assets are two undeveloped real property parcels, which the Debtor has marketed for real estate development purposes. Second, the two parcels are a “single project.” The Debtor contends that this is not a “single asset real estate” case because the Debtor purchased its parcels at different times and the parcels are not truly adjoining. However, the two parcels are adjacent to each other and share a common boundary. Third, the parcels are not residential real property since the parcels are undeveloped. Fourth, the Debtor has no income and a sale of the parcels would generate the only income of the Debtor. Fifth, the Debtor is not involved in any substantial business other than the operation of real property because the Debtor merely holds the parcels for potential development and sale. For each of these reasons, the Debtor is a “single asset real estate” debtor.

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

Congress provides in 11 U.S.C. § 362(d)(3) [emphasis added] that:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(3) with respect to a **stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate**, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) **or 30 days after the court determines that the debtor is subject to this paragraph**, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor’s sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on,

or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate;

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

### **Debtor in Possession's Opposition**

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

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

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

3. Mr. Sanatkar authenticates the Note filed as an exhibit with the Opposition, and Mr. Sanatkar believes the Note does not require monthly payments but merely outlines that more interest gets tack on if monthly payments are not made. *Id.* at ¶ 4.
4. The two parcels owned by Next Hill Enterprises, LLC are not truly contiguous. There is a private road noted as George's lane in the book of maps which other parcels in the community have access to. *Id.* at ¶ 5.
5. "Payam Sanatkar states that Prior to filing this case, Richard Jare observed that the 1 acre parcel is WORTH MORE by itself separately than as a project with the 4 acre parcel. There is probably no reason why the 1+ acres lot should not be worth more separate as we think a conditional zoning use as a single family home site or multi family might actually be the highest use. We are looking again at the values as SEPARATE being potentially

higher than combined as one project. This it is NOT YET a single project.”  
*Id.* at ¶ 7.

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

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

### **Movant’s Reply**

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

1. Although the Properties are separated by a road, the road is their common boundary, and they are adjacent parcels. The close proximity satisfies the single project requirement of 11 U.S.C. § 101(51B). *Id.* at 2:16-26.
2. Debtor in Possession’s other argument that Debtor in Possession is considering selling the Properties separately, as they would generate a higher return sold separately, is speculation and does not carry any evidentiary weight. Regardless, Debtor in Possession took affirmative steps before the case to acquire and market the Properties as part of a coordinated residential development scheme. *Id.* at 2:24-3:5.
3. The Note requires monthly payments, so Debtor in Possession’s interpretation of the note is incorrect. *Id.* at 3:6-15.
4. The Note is not defective in any way. *Id.* at 6:13-21.

### **DISCUSSION**

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

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

11 U.S.C. § 101(51B).

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

13. I am informed and believe that pursuant to a Grant Deed dated April 28, 2022 (the “April Grant Deed”) that was recorded on April 29, 2022 in the El Dorado County Recorder’s Office bearing Instrument No. 2022-0019799, the Debtor acquired a second undeveloped parcel with an assessor’s parcel number of



054-361-009 (“Parcel 2”, together with Parcel 1, the “Properties”) from John La Grou and Cynthia La Grou, as trustees of the La Grou Family Trust dated December 12, 1999 (the “La Grou’s”). A true and correct copy of the April Grant Deed is filed concurrently herewith as Exhibit 7.

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

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

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

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

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

Collier’s Treatise on Bankruptcy states on the subject:

The definition of “single asset real estate” is also limited to a single property or project. **To be a single project, two or more properties must be linked together in some fashion in a common plan or scheme involving their use.** Thus, a court found that two parcels constituted single asset real estate where the debtor planned to develop both parcels for single-family homes and sought regulatory approvals for the two parcels on a unified basis, even though the debtor planned to develop one parcel before the other one. However, mere common ownership of two parcels is not sufficient. For example, where a debtor owned two parcels of real estate and had no

plans to combine the parcels in any way, and one parcel was rented to a tenant and the other was not, the court held that they did not constitute a single property or project. Similarly, a court held that a debtor's real estate did not constitute a single property or project within the meaning of section 101(51B) because the debtor owned 200,000 acres of timberland located in nine different watersheds, each regulated by a different regulatory authority.

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

Here, factors (1) through (3) work to support a finding that the case should be designated as a single asset real estate case. The evidence shows Debtor in Possession acquired the Properties in 2022, acquiring Parcel 1 in March of 2022, and acquiring Parcel 2 in April of 2022. Decl. ¶¶ 9, 13. Acquiring the Properties close in time could suggest the Properties were planned to be part of a single project.

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

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

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

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

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

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

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

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

From the Debtor in Possession side, little if anything is offered with respect to any business operations of the Debtor or the Debtor in Possession. As the Schedules show, the Debtor was, and now the Bankruptcy Estate is dirt rich and other asset devoid. There is no ongoing business operation for the Bankruptcy Estate to continue.

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

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

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

In paragraph 3 of his Declaration, Mr. Sanatkar makes what appears to be a legal argument over who is the "maker" of the promissory note filed as Exhibit 1 by Movant, denying that it was the Debtor. *Id.*

Looking at Exhibit 1 (Dckt. 22), there is no reference to Debtor in the Note that is dated September 2015. The “Borrower” is Joyce Berger, as Trustee. It is unclear as to the relevance of Mr. Sanatkar’s legal argument.

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

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

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

### **Prosecution of Case**

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

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

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

### **Continuance of the Hearing**

The Parties addressed the need to provide evidence concerning the business operation concerning these properties. Counsel for the Debtor in Possession suggested that the court deny the Motion without prejudice. Then, if Movant concludes that there is evidence to prosecute a motion for this relief, a new motion could be filed. Counsel for Movant suggested that the court continue the hearing and set a briefing schedule.

Rather than denying this Motion without prejudice, after considering the respective arguments, the court continued the hearing to 10:30 a.m. on December 5, 2024.

Supplemental pleadings shall be filed and served by Movant on or before November 8, 2024.

Supplemental opposition pleadings by Debtor in Possession shall be filed and served on or before November 22, 2024.

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

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

The Motion for an Order Designating Case as a Single Asset Real Estate Case filed by David Pick Family Partnership, L.P. ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **XXXXXXX**.

3. <a href="#">24-24023-E-11</a> <a href="#">CAE-1</a>	<b>NEXT HILL ENTERPRISES, LLC</b>	<b>CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-9-24 [1]</b>
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Debtor's Atty: Richard L. Jare

Notes:

Continued from 10/24/24 to be conducted in conjunction with the Motion for an Order Designating Chapter 11 Case As a Single Asset Real Estate Case.

U.S. Trustee Report at 341 Meeting lodged 10/30/24

<b>The Status Conference is <b>XXXXXXX</b></b>
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#### **DECEMBER 5, 2024 STATUS CONFERENCE**

At the Status Conference, **XXXXXXX**

#### **OCTOBER 24, 2024 STATUS CONFERENCE**

This voluntary Chapter 11 Case was filed by Next Hill Enterprises, LLC on September 9, 2024, and the Debtor is serving as the Debtor in Possession. The Schedules show that the only assets of the Debtor, and now the Bankruptcy Estate, are the two Parcels, which Debtor schedules as having a value of \$1,320,000. As shown on Schedule A/B the Debtor, and now the Bankruptcy Estate are devoid of any other assets - not even two nickels to rub together. Dckt. 1 at 7-10.

**December 5, 2024 at 10:30 a.m.**

**Page 13 of 52**

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

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

At the Status Conference, the Parties addressed the prosecution of this Case. The U.S. Trustee reported that the Meeting of Creditors has been continued to October 30, 2024.

The hearing on the Motion for the Court to Designate this a Single Asset Real Estate Case has been continued to 10:30 a.m. on December 5, 2024.

The Status Conference is continued to 10:30 a.m. on December 5, 2024 (Specially Set Time).

Item 4 thru 5

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2024. The court set the hearing for December 5, 2024. Order, Docket 46.

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

<p><b>The Motion to Employ is granted.</b></p>
--

Darrell Lee Peebles, Sr. ("Debtor") seeks to employ Keller William Realty and real estate agent Renee Lockwood ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(3) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market and sell Debtor's residence, real property commonly known as 4384 Binchy Way, Rancho Cordova, CA 95742 ("Property").

Debtor argues that Broker's appointment and retention is necessary to sell the Property and pay a 100% dividend to creditors with claims in the case. Mot. 2:14-19, Docket 47.

Renee Lockwood, a realtor at Keller William Realty, testifies that she has performed her duties in marketing the Property and has a buyer in place. Decl. ¶ 4, Docket 52. Ms. Lockwood testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at 5.d.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Keller William Realty and real estate agent Renee Lockwood ("Broker") for the Chapter 13 Estate on the terms and conditions set forth in the Residential Purchase Agreement filed as Exhibit A, Dckt. 54. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Darrell Lee Peebles, Sr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, effective November 22, 2024, and Debtor is authorized to employ Keller William Realty and real estate agent Renee Lockwood ("Broker") for the Chapter 13 Estate on the terms and conditions set forth in the Residential Purchase Agreement filed as Exhibit A, Dckt. 54.

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

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

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



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

5. [20-21927-E-13](#)  
[FF-3](#)

**DARRELL PEEBLES**  
Gary Fraley

**MOTION TO SELL O.S.T.**  
11-22-24 [\[49\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2024. The court set the hearing for December 5, 2024. Order, Docket 46.

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

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Darrell Lee Peebles, Sr., Chapter 13 Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 4384 Binchy Way, Rancho Cordova, CA 95742 ("Property").

The proposed purchaser of the Property is Kiet Nyugen, and the terms of the sale are:

1. Purchase Price: \$775,000.00 cash.

2. Current encumbrances: 1st Deed of Trust held in favor of Selene Finance to be paid in full through the purchase funds. Payoff amount is currently estimated at \$413,235.13 (per Estimated Seller's Statement).
3. The sale will repay 100% of all filed and approved claims.
4. The sale will pay all commissions and costs related to this transaction.

Mot. 2:14-23, Docket 49.

## 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: **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 generate enough funds to pay all creditors in full and leave a dividend for Debtor to move on for a fresh start.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$46,500. Seller's agent, Renee Lockwood of Keller Williams, is to receive a 3.5% split of the commission, and Buyer's agent, Masoud Kashidi of Real Estate source, Inc., is to receive a 2.5% split of the commission. As part of the sale in the best interest of the Estate, the court permits Movant to pay the brokers 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 Darrell Lee Peebles, Sr., Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Darrell Lee Peebles, Sr., Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Kiet Nyugen or nominee ("Buyer"), the Property commonly known as 4384 Binchy Way, Rancho Cordova, CA 95742 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$775,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 59, 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 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor 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 paid to Seller's agent, Renee Lockwood of Keller Williams, who is to receive a 3.5% split of the commission, and Buyer's agent, Masoud Kashidi of Real Estate source, Inc., who is to receive a 2.5% split of the commission. .
- E. ~~No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.~~

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~~If a dispute between the Chapter 13 Debtor and the Chapter 13 Trustee shall arise as to such amount, then the amount stated in the Chapter 13 Trustee's demand shall be disbursed to the Chapter 13 Trustee and resolution of any such dispute shall be made by this court.~~

**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 (*pro se*), Chapter 7 Trustee, and creditors on November 7, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 4004(a) (requiring twenty-eight days' notice).

The Motion for Denial of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4004(a). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Denial of Discharge is granted.**

Tracy Hope Davis, the United States Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on November 6, 2024. Dckt. 19.

Objector argues that Felton Brookter II and Devora M. Brookter ("Debtors") are not entitled to a discharge in the instant bankruptcy case because Debtors previously received a discharge in a Chapter 7 case.

Debtors filed a Chapter 7 bankruptcy case on August 25, 2017. Case No. 17-13289. Both Debtors received a discharge on December 4, 2017. Case No. 17-13289, Dckt. 32.

The instant case was filed under Chapter 7 on October 21, 2024.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtors received a discharge under 11 U.S.C. § 727 on December 4, 2017, which is less than eight years preceding the date of the filing of the instant case. Case No. 17-13289, Dckt. 32. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtors are not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 24-24731), the case shall be closed without the entry of a discharge, and Debtors shall receive no discharge in the instant case.

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

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

The Motion for Denial of Discharge filed by Tracy Hope Davis, the United States Trustee, (“Objector”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 24-24731, the case shall be closed without the entry of a discharge for either of the two Debtors, Felton Brookter II and Devora M. Brookter, in this Bankruptcy Case..

Item 7 thru 8

**ALL TIN CASE MATTERS WILL BE HEARD ON THE 11:00 A.M. CALENDAR**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors that have filed claims, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

**The Motion for Authority to Use Estate Funds is granted.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), moves this court for an Order allowing her to use estate funds in the amount of \$4,000 to pay mediation fees. Trustee states in her Motion:

1. Trustee, Erlinda Lynch in her individual capacity and as trustee for the EBL Family Trust, Antonette Tin in her individual capacity and as trustee for the Butlig Tin Trust, Exequial Allan Fernando in his individual capacity and as trustee for the 2018 Exequial Allan Fernando Trust and as trustee for the EATF Special Needs Trust, have agreed to engage in private mediation through the services of Jamie P. Dreher, with his fees paid 50% by the Trustee and 50% by Tin, Fernando and Lynch collectively. Mot. 2:12-27, Docket 246.

2. Trustee would pay \$4,000 of the estate's funds, and Trustee is currently in possession of the \$4,000 from Tin, Fernando and Lynch, which would also be paid toward the mediation fee. *Id.* at 3:1-6.
3. Trustee moves this court for the Order pursuant to 11 U.S.C. §§ 363(c)(1) and 721.

## DISCUSSION

11 U.S.C. § 363(c)(1) states:

(c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

However, as the requested use of estate funds is not in the ordinary course of business, the more appropriate section of the Code to cite would be 11 U.S.C. § 363(b), which 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.

In order to use property of the estate outside the ordinary course of business, Trustee must provide notice and an opportunity for a hearing before the property may be used, sold or leased. 3 COLLIER ON BANKRUPTCY ¶ 363.02.

11 U.S.C. § 721 provides:

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

Here, Trustee is seeking to use estate funds not in the ordinary course of business by paying a mediator's fees. Trustee explains that the nature of the adversary proceedings is complicated and it would behoove all parties to engage in mediation before being set in prolonged litigation. The court agrees. Therefore, the Motion is granted pursuant to 11 U.S.C. §§ 363(b) and 721, and Trustee is authorized to use estate funds in an amount not to exceed \$4,000 to pay mediator fees.

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 Estate Funds filed by the Chapter 7 Trustee, Nikki B. Farris ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion is granted, and Trustee is authorized to use estate funds in an amount not to exceed \$4,000 to pay mediator fees to Jamie P. Dreher. Trustee is further authorized to tender the payment received from Erlinda Lynch in the amount of \$4,000 to Jamie P. Dreher, Trustee currently being in possession of such payment, and Mr. Dreher's fees totaling \$8,000 for the mediation.



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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on November 13, 2024, 2024. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The court notes that the Notice of Hearing, Dckt. 242, states that the notice is being given pursuant to Local Bankruptcy Rule 9014-1(f)(1), for which a minimum of 28 days notice is required. It appears that there is an error in the Notice.

At the hearing, **XXXXXXX**

The Motion for Turnover 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.

<p><b>The Motion for Turnover is granted.</b></p>
---

Nikki Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin (“Debtor Tin”) to turn over \$8,995.54. This sum comes from Debtor Tin withdrawing \$4,903.74 from F&M Bank #5001 (\$1,513.09), Bank of America #5094 (\$235.65), and Bank of Stockton #8444 (\$3,155.00), and from Debtor Tin withdrawing a \$4,091.80 refund check (“Refund”) payable to Royal Green LLC from State Compensation Insurance Fund. Mot. ¶¶ 5 and 6, Docket 241.

Movant submits her own Declaration in support at Docket 243, authenticating the facts alleged in the Motion. Movant testifies what was reported to be the amounts in the various bank accounts on Debtor Tin's Schedules was incorrect. Movant submits as Exhibits the Schedules and refund check. Docket 244.

## **DISCUSSION**

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor Tin to deliver and turn over \$8,995.54, which is property of the estate. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

At the hearing, **XXXXXXX**

## **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

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

**IT IS ORDERED** that the hearing on the Motion for Turnover is granted, and Antonette Tin is ordered to turn over to the Chapter 7 Trustee funds in the amount of \$8,995.54 as property of the Chapter 7 Bankruptcy Estate on or before **XXXXXX** 2024.

9. [24-23935](#)-E-7  
[MHW](#)-2

**ULISES MARTINEZ**  
**Peter Macaluso**

**MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
11-21-24 [33]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 21, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx 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, -----.

<p><b>The Motion to Extend Deadline to File a Complaint Objecting to Discharge is granted.</b></p>
--

Cristobal Pinedo, creditor in this case, (“Movant”) moves to extend the deadline to file a complaint objecting to Ulises Solis Martinez’s (“Debtor”) discharge because Mr. Pinedo recently obtained stay relief to proceed with pending nonbankruptcy litigation against the Debtor and other parties, arising from a personal injury cause of action. Were Mr. Pinedo to commence § 523(a)(6) litigation now and then not prevail in the underlying state-court litigation, any nondischargeability litigation would be a waste of all parties’ and the Court’s resources. By contrast, litigating § 523(a)(6) claims after resolution of the state-court action will streamline the nondischargeability litigation, given that Mr. Pinedo’s state-court claims will likely have preclusive effect before this Court.

The deadline for filing a complaint objecting to discharge was December 9, 2024. Dckt. 8. The Motion requests that the deadline to object to Debtor’s discharge be extended to June 9, 2025, to allow time for the state court litigation to conclude.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on November 21, 2024, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete the underlying state court litigation which may constitute a nondischargeable debt, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor’s discharge is extended to June 9, 2025.

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by Cristobal Pinedo, creditor in this case, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to Ulises Solis Martinez’s (“Debtor”) discharge is extended to **June 9, 2025.**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, all creditors and parties in interest, and Office of the United States Trustee on November 11, 2024. By the court’s calculation, 24 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, -----.

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

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as various personal property identified on line 50 of the Schedule A/B, including:

Item	Date In Service	Original Cost
Oneac 180VA power backup	11/13/07	\$219.67
Netgear 24 port gigabit switch router	5/09/17	\$1,224.80
Showclub VIP Computer System	1/23/18	\$4,284.67
(2) Clubtrax POS Terminals	11/05/18	\$8,123.53
(2) Clubtrax Receipt Printers	11/05/18	\$946.01
(2) Clubtrax EMV Card Readers	11/05/18	\$1,481.59
(2) Clubtrax Cash Drawers	11/05/18	\$318.43
Clubtrax Signature Pad	11/05/18	\$666.05
Clubtrax Server	11/05/18	\$2,122.87
2 ID scanners - ClubTrax	5/01/22	\$1,457.04
2 Fingerprint readers - ClubTrax	5/01/22	\$785.43
Rigid Professional Vacuum	11/06/07	\$215.49
2 QSC PLX-3602 amplifiers	12/10/07	\$3,153.99
Mid Atlantic equipment rack	12/10/07	\$1,266.34
1 Crown CTS-8200 amplifier	12/10/07	\$1,707.87
Starplus phone system	12/10/07	\$600.98
(3) Starplus phones	12/10/07	\$430.60
16 security cameras & 1 DVR	5/22/12	\$1,072.49
(6) Bill Acceptors	4/08/14	\$1,326.37
Ice-O-Matic Ice Machine	10/08/15	\$3,386.70
Ice-O-Matic Storage Bin	10/08/15	\$1,100.49
Triton ATM	10/28/21	\$4,503.10
8 Beta3 QS1000 top speakers	9/05/22	\$5,097.14
4 Spot 250 moving heads	9/05/22	\$5,419.38
2 UV LED Panel 250w	9/05/22	\$747.00
2 Stitch 7/40 Moving Head	9/05/22	\$2,797.56
10 36" couch caves	11/02/07	\$9,102.36
20 barrel chairs	11/02/07	\$2,677.16
VIP Room Decorations	7/17/23	\$3,753.31
QSC PLX-3602 amplifiers	12/10/07	\$1,576.99
Mid Atlantic equipment rack	12/10/07	\$1,266.33
49 JBL control 24ct speakers	12/10/07	\$11,390.59
(4) SPOT 250 MOVING HEAD 250W	6/14/21	\$4,601.05
2 StarBall	9/05/22	\$1,127.82
VIP Room Lights - 20 LED Lights	6/18/23	\$1,903.14
3 Banquettes	1/20/09	\$2,400.00
Loveseat	3/17/23	\$1,940.66
Clubtrax Cash Drawer	11/05/18	\$159.22
Clubtrax POS Terminals	11/05/18	\$4,061.77
(2) Clubtrax Receipt Printers	11/05/18	\$946.00
Clubtrax EMV Card Reader	11/05/18	\$740.79

ID scanner - ClubTrax	5/01/22	\$728.52
Fingerprint reader - ClubTrax	5/01/22	\$392.72
(2) Clubtrax All-In-One POS PCs	11/05/18	\$1,724.84
2 Oneas 400VA power backup	11/13/07	\$1,261.77
1 Oneac 200VA power backup	11/13/07	\$349.72
Whirlpool washer	11/19/07	\$269.38
Whirlpool dryer	11/19/07	\$290.89
10' ladder	12/10/07	\$295.64
(3) 1U Rack Shelf	5/09/17	\$734.83
Quick n' Crispy Greaseless Air Fryer	9/20/23	\$3,480.00
2-Tier Glass Desk	11/09/23	\$217.50

Ex. 1 at 6-7, Docket 14. The sale will further include any other miscellaneous and small assets on site including papers, paper goods, decorations, food items and office supplies, as well as all potential items listed on the Schedule B (collectively, "Property"). What is not included are deposit accounts and the vehicle listed, which will be retained by the Estate.

The proposed purchaser of the Property is Applegate 401k Plan, Debtor's landlord, and the terms of the sale are:

- A. \$15,000 purchase price,
- B. As is and where is, with no warranties or guarantees, subject to existing liens or encumbrances, if any.

### **Proposed Overbidding Procedures**

(a) Overbidding shall start at \$15,500.00, with the overbids in minimum \$500.00 increments. The successful bidder, if not Buyer, will be required to sign a Purchase and Sale Agreement with the same terms as Exhibit "1" to the Motion to Sell. Further, as detailed in paragraph 2 above, if another party other than Buyer is the successful purchaser of the Subject Property, that party will also need to pay an administrative claim for post-petition rent at the rate of \$600.00 per day from October 28, 2024 through the date the Subject Property is removed from the premises.

(b) To qualify as a bidder, the bidder must send to the Trustee at 11230 Gold Express Drive, Suite 310-411, Gold River, CA 95670 or her attorney, at the address above, a Cashier's Check or a certified check for \$26,900.00 (representing the \$3,000.00 down payment plus the \$500.00 initial overbid plus \$23,400.00 administrative claim for post-petition rent at the rate of \$600.00 per day from October 28, 2024 through the date of this hearing, December 5, 2024) made payable to "Kimberly J. Husted, Chapter 7 Trustee, In re Deja Vu Showgirls - Sacramento, LLC" such that it is received by no later than noon on December 3, 2024. This Cashier's or certified check shall serve as a non-refundable deposit if the overbid is successful.

(c) The successful overbidder must deliver to the Trustee a Cashier's or certified check for the overbid amount within 10 days of Court approval of the sale.

The court finds the overbidding procedures are reasonable and adopts them here.

## **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: **XXXXXXX**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate where Trustee is able to sell miscellaneous items of property and realize a return for the Estate.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell 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 without pleading particular facts to support the request.

Although Movant has not pleaded specific facts, which is what the court looks to in granting this relief, the court grants relief in this specific Motion to allow the sale to close quickly on behalf of the Estate.

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Applegate 401k Plan or nominee ("Buyer"), the following items of personal property:



Item	Date In Service	Original Cost
Oneac 180VA power backup	11/13/07	\$219.67
Netgear 24 port gigabit switch router	5/09/17	\$1,224.80
Showclub VIP Computer System	1/23/18	\$4,284.67
(2) Clubtrax POS Terminals	11/05/18	\$8,123.53
(2) Clubtrax Receipt Printers	11/05/18	\$946.01
(2) Clubtrax EMV Card Readers	11/05/18	\$1,481.59
(2) Clubtrax Cash Drawers	11/05/18	\$318.43
Clubtrax Signature Pad	11/05/18	\$666.05
Clubtrax Server	11/05/18	\$2,122.87
2 ID scanners - ClubTrax	5/01/22	\$1,457.04
2 Fingerprint readers - ClubTrax	5/01/22	\$785.43
Rigid Professional Vacuum	11/06/07	\$215.49
2 QSC PLX-3602 amplifiers	12/10/07	\$3,153.99
Mid Atlantic equipment rack	12/10/07	\$1,266.34
1 Crown CTS-8200 amplifier	12/10/07	\$1,707.87
Starplus phone system	12/10/07	\$600.98
(3) Starplus phones	12/10/07	\$430.60
16 security cameras & 1 DVR	5/22/12	\$1,072.49
(6) Bill Acceptors	4/08/14	\$1,326.37
Ice-O-Matic Ice Machine	10/08/15	\$3,386.70
Ice-O-Matic Storage Bin	10/08/15	\$1,100.49
Triton ATM	10/28/21	\$4,503.10
8 Beta3 QS1000 top speakers	9/05/22	\$5,097.14
4 Spot 250 moving heads	9/05/22	\$5,419.38
2 UV LED Panel 250w	9/05/22	\$747.00
2 Stitch 7/40 Moving Head	9/05/22	\$2,797.56
10 36" couch caves	11/02/07	\$9,102.36
20 barrel chairs	11/02/07	\$2,677.16
VIP Room Decorations	7/17/23	\$3,753.31
QSC PLX-3602 amplifiers	12/10/07	\$1,576.99
Mid Atlantic equipment rack	12/10/07	\$1,266.33
49 JBL control 24ct speakers	12/10/07	\$11,390.59
(4) SPOT 250 MOVING HEAD 250W	6/14/21	\$4,601.05
2 StarBall	9/05/22	\$1,127.82
VIP Room Lights - 20 LED Lights	6/18/23	\$1,903.14
3 Banquettes	1/20/09	\$2,400.00
Loveseat	3/17/23	\$1,940.66
Clubtrax Cash Drawer	11/05/18	\$159.22
Clubtrax POS Terminals	11/05/18	\$4,061.77
(2) Clubtrax Receipt Printers	11/05/18	\$946.00
Clubtrax EMV Card Reader	11/05/18	\$740.79

ID scanner - ClubTrax	5/01/22	\$728.52
Fingerprint reader - ClubTrax	5/01/22	\$392.72
(2) Clubtrax All-In-One POS PCs	11/05/18	\$1,724.84
2 Oneas 400VA power backup	11/13/07	\$1,261.77
1 Oneac 200VA power backup	11/13/07	\$349.72
Whirlpool washer	11/19/07	\$269.38
Whirlpool dryer	11/19/07	\$290.89
10' ladder	12/10/07	\$295.64
(3) 1U Rack Shelf	5/09/17	\$734.83
Quick n' Crispy Greaseless Air Fryer	9/20/23	\$3,480.00
2-Tier Glass Desk	11/09/23	\$217.50

Ex. 1 at 6-7, Docket 14. The sale will further include any other miscellaneous and small assets on site including papers, paper goods, decorations, food items and office supplies, as well as all potential items listed on the Schedule A/B at Docket 1, excluding a 2017 Chevrolet Colorado pickup or any deposit accounts (collectively, "Property").

- A. The Property shall be sold to Buyer for \$15,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 14, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs and prorated real property taxes and assessments, 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.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

Item 11 thru 12

Debtor's Atty: Lewis Phon

Notes:

Continued from 11/13/24 to be conducted in conjunction with the hearing on the Motion to Dismiss this case.

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
--

**DECEMBER 5, 2024 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

**NOVEMBER 13, 2024 STATUS CONFERENCE**

A review of the Docket discloses that no updated Status Report has been filed by the Debtor in Possession. No motion to dismiss has been filed by the Debtor in Possession or the U.S. Trustee.

At the Status Conference, the U.S. Trustee has filed its Motion to Dismiss, which is set for hearing at 10:30 a.m. on December 5, 2024.

The Status Conference is continued to 10:30 a.m. on December 5, 2024, to be conducted in conjunction with the U.S. Trustee's Motion to Dismiss this Case.

**SEPTEMBER 18, 2024 STATUS CONFERENCE**

No updated Status Report has been filed by the Debtor in Possession. The 341 Meeting was continued to August 14, 2024, however, no updated report of that 341 Meeting is on the Docket. On August 2, 2024, the court entered an order granting relief from the automatic stay with respect to Debtor's single real estate asset.

At the Status Conference, counsel for the U.S. Trustee reported that the Debtor in Possession has told the U.S. Trustee that the foreclosure sale has been completed.

The U.S. Trustee further reported that a motion to dismiss this case would be filed.

**AUGUST 1, 2024 STATUS CONFERENCE**

The Debtor commenced this voluntary Chapter 11 Case on June 11, 2024. A review of the Docket on July 30, 2024, indicates that no Status Report has been filed and no Monthly Operating Report for June, 2024, has been filed.

At the Status Conference and related Motion for Relief Proceeding, at which the court granted the Motion to allow the creditor to proceed with a nonjudicial foreclosure sale against the Bankruptcy Estate's sole asset, the court addressed with the respective counsel the challenges faced in this Case and the failure of the Debtor in Possession to file Monthly Operating Reports and to provide insurance for the property of the Bankruptcy Estate.

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

12. <a href="#">24-22538-E-11</a> <a href="#">UST-1</a>	PLAZA ESTATES LLC Lewis Phon	<b>MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE 11-13-24 [90]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**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 or parties in interest, parties requesting special notice, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Dismiss or Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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, -----.

<p><b>The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is dismissed.</b></p>
--

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Plaza Estates LLC (“Debtor in Possession”) has been filed by Tracy Hope Davis (“Movant”), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor has failed to comply with its duties under the Bankruptcy Code including, *inter alia*, by failing to file any monthly operating reports (§ 1112(b)(4)(F)); by failing to pay quarterly fees in the amount of \$500 (§ 1112(b)(4)(K)); and for failure to prosecute this case. Mot. 2:2-6, Docket 90.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1). For cause reasons for dismissal include an unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter, and a substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation. 11 U.S.C. § 1112(b)(4).

## **DISCUSSION**

Here, Debtor in Possession has failed to file any Monthly Operating Reports, as is required by Local Bankruptcy Rule 2015-1(a) and 11 U.S.C. § 1112(b). Debtor in Possession has also failed to pay the quarterly fees to Movant as required by 11 U.S.C. § 1112(b)(4)(F). Moreover, the case is in its fifth month without any version of a plan on file. The case is not being diligently prosecuted.

The court further finds dismissal is the appropriate remedy in this case. Debtor in Possession’s main asset was an apartment complex located at 695 Plaza Avenue, in Sacramento, CA (“Property”). The Property was foreclosed on after this court granted relief from stay. *See* Order, Docket 84. With no other meaningful assets in the estate, there would be nothing of benefit for a Chapter 7 trustee to administer. Dismissal is proper.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

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

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis (“Movant”), the U.S. Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss or Convert is granted, and the case is dismissed.

13. [24-20145-E-7](#)  
[BLF-5](#)

**DONALD DUPONT**  
**Eric Schwab**

**MOTION TO ABANDON**  
**11-4-24 [\[225\]](#)**

**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, all creditors and parties in interest, and Office of the United States Trustee on November 4, 2024. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Abandon 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.

<b>The Motion to Abandon is granted.</b>
--

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

The Motion filed by Geoffrey Richards (“the Chapter 7 Trustee”) requests that the court authorize him to abandon property identified as Donald DuPont’s (“Debtor”) interest in DuPont Investments, LLC, d/b/a Rock Hill Winery (“Property”). There is little or no equity in the Property and is burdensome to the

estate, is of inconsequential value, and provides no benefit to the estate. The Declaration of Geoffrey Richards has been filed in support of the Motion and provides testimony that based on his business judgment, the Property should be abandoned at this time. Deck ¶ 2, Docket 227.

The court finds that the Property burdensome to the estate, is of inconsequential value, and provides no benefit to the estate, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

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

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the property identified as Donald DuPont’s (“Debtor”) interest in DuPont Investments, LLC, d/b/a Rock Hill Winery (“Property”) is abandoned to Debtor by this order, with no further act of the Chapter 7 Trustee required.

14. [24-22575](#)-E-7

CHRIS OILAR

**CONTINUED REAFFIRMATION  
AGREEMENT WITH MEMBERS 1ST  
CREDIT UNION  
9-16-24 [\[15\]](#)**

Continued from 11/13/24 to afford the Debtor the opportunity to negotiate the amount of the debt to be reaffirmed.

An agreement to reaffirm a debt owed to Members 1ST Credit Union, which is secured by a 2019 Honda Odyssey having a value of \$30,524, was filed by Chris Oilar (“Debtor”). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 3.69% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is (\$40,064.16) which has not been reduced from the pre-petition claim.

Debtor having income of \$6,147.58 and expenses of (\$6,084.16), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise in connection with this reaffirmation agreement. The proposed monthly payment is \$775.50 for 61 months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

The effective interest rate for paying \$43,064.16 for the vehicle worth (at retail) \$30,524 is 18% per annum.

The court continues the hearing to 10:30 a.m. on December 5, 2024, to afford Debtor the opportunity to negotiate the amount of the debt to be reaffirmed.

### **December 5, 2024 Hearing**

At the hearing, **XXXXXXX**



# FINAL RULINGS

15. [24-22846](#)-E-11

ISMOIL KASIMOV  
David Foyil

CONTINUED ORDER TO SHOW CAUSE  
- FAILURE TO PAY FEES  
10-4-24 [\[91\]](#)

Item 15 thru 16

**Final Ruling:** No appearance at the December 5, 2024 Hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and other parties in interest as stated on the Certificate of Service on October 6, 2024. The court computes that 60 days' notice has been provided.

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

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

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

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

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

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

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

**Final Ruling:** No appearance at the December 5, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on November 2, 2024. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$434 due on October 28,, 2024.

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

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

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

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

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

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

**Final Ruling:** No appearance at the December 5, 2024 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on November 7, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Northern California Collection Service, Inc. (“Creditor”) against property of the debtor, Clinton Mark Lipscomb (“Debtor”) commonly known as 9609 Hickory Rail Way, Elk Grove, CA 95624 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$34,623.68. Exhibit 3, Dckt. 20. An abstract of judgment was recorded with Sacramento County on January 9, 2023, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$693,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$460,022.00 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 23, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$190,575.21 on Schedule C. Schedule C at 18, Docket 1.

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

## ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Clinton Mark Lipscomb (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Northern California Collection Service, Inc., California Superior Court for Sacramento County Case No. CGC-19576855, recorded on January 9, 2023, Document No. 202301090698, with the Sacramento County Recorder, against the real property commonly known as 9609 Hickory Rail Way, Elk Grove, CA 95624, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. [24-23461](#)-E-7

ANTHONY LENO  
Pro Se

AMENDED MOTION TO DISMISS CASE  
11-4-24 [\[53\]](#)

Item 18 thru 19

**Final Ruling:** No appearance at the December 5, 2024 hearing is required.

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The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 69.

**The Motion to Dismiss is denied without prejudice, having been rendered moot, this Bankruptcy case having been dismissed on November 25, 2024.**

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice, the case having been dismissed.

19. [24-23461](#)-E-7

ANTHONY LENO  
Pro Se

AMENDED MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
11-4-24 [[52](#)]

**Final Ruling:** No appearance at the December 5, 2024 hearing is required.  
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The case having previously been dismissed, the Motion is denied as moot without prejudice.  
Order, Docket 69.

**The Motion to Dismiss is denied without prejudice, having been rendered moot, this Bankruptcy case having been dismissed on November 25, 2024.**

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

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

The Motion to Confirm the Termination or Absence of Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice, the case having been dismissed.

**Final Ruling:** No appearance at the December 5, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served Creditor, Chapter 7 Trustee, and Office of the United States Trustee on October 31, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted</b></p>
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This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, Thu Yen Huynh and Hong Duy Vuong ("Debtor") commonly known as 2901 Highgate Lane, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,802.40. Exhibit A, Dckt. 29. An abstract of judgment was recorded with San Joaquin County on August 2, 2023, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$600,000.00 as of the petition date. Schedule A at 10, Docket 1. The unavoidable consensual liens that total \$232,888.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Am. Schedule D at 8, Docket 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$400,000.00 on Amended Schedule C. Am. Schedule C at 4, Docket 14.

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

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Thu Yen Huynh and Hong Duy Vuong (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2022-0007387, recorded on August 2, 2023, Document No. 2023-060518 with the San Joaquin County Recorder, against the real property commonly known as 2901 Highgate Lane, Tracy, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the December 5, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on October 25, 2024. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Michael Gabrielson, the Accountant (“Applicant”) for Chapter 7 Trustee Geoffrey Richards and the Estate of Caren Renee Shinar Spaulding, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 17, 2024, through October 24, 2024. The order of the court approving employment of Applicant was entered on April 8, 2024. Dckt. 40. Applicant requests fees in the amount of \$2,492.00 and costs in the amount of \$83.36.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional’s services, the manner in which services were performed, and the results of the services, by asking:



- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include preparing Federal and California Estate Income Tax Returns as well as preparing this Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Preparing Federal and California Estate Income Tax Returns: Applicant spent 4.7 hours in this category.

Preparing the Fee Application: Applicant spent 0.9 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Michael Gabrielson	5.6	\$445.00	<u>\$2,492.00</u>
<b>Total Fees for Period of Application</b>			\$2,492.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$86.36 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage	-----	\$54.16
Copying Charges	-----	\$32.20
<b>Total Costs Requested in Application</b>		\$86.36

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,492.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$86.36 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,492.00
Costs and Expenses	\$86.36

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Gabrielson, the Accountant (“Applicant”) for Chapter 7 Trustee Geoffrey Richards and the Estate of Caren Renee Shinar Spaulding having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Michael Gabrielson is allowed the following fees and expenses as a professional of the Estate:

Michael Gabrielson, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,492.00  
Expenses in the amount of \$86.36,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for Chapter 7 Trustee Geoffrey Richards and the Estate of Caren Renee Shinar Spaulding.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.