

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**December 12, 2024 at 10:30 a.m.**

---

1. <a href="#">23-90111-E-11</a> <a href="#">BSH-4</a> , <a href="#">BSH-6</a>	<b>MICHAEL HOFMANN</b> Brian Haddix	<b>CONFIRMATION OF AMENDED PLAN</b> 4-25-24 [ <a href="#">276</a> ]
---	--	--

**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 not Provided. There is no proof of service on file for the Confirmation Hearing for the Fourth Amended Plan. At the hearing, **XXXXXXX**

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Confirmation of Plan of Reorganization is <b>XXXXXXX</b></b>
---

The Plan Proponent has complied with some, but not all, of the Service and Filing Requirements for Confirmation:

1. On or before October 15, 2024, the Plan Proponent was to serve a copy of this Order (Docket 360), a copy of the Subchapter V Plan, a ballot for voting on the Subchapter V Plan, and a copy of a notice of confirmation hearing on the case trustee, or standing trustee, the United States Trustee, and all creditors and other parties of interest. Within (3) days after service of the forging Plan Proponent was to file a certificate of service

**December 12, 2024 at 10:30 a.m.**

demonstrating compliance with Paragraph 2. No Certificate of Service has been filed with the court documenting service.

At the hearing, **XXXXXXX**

2. November 14, 2024: Last Day to File Objections to Confirmation. Objections were filed on November 14 and November 15m 2924. Dockets 394, 396.
3. December 5, 2024: Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service. The Tabulation of Ballots was filed on December 9, 2024. Docket 417.

#### Table of Classes

Creditor/Class	Treatment	
Class 1: Priority Claims	<b>Claim Amount</b>	est. \$0
	<b>Impairment</b>	Unimpaired
	Debtor does not anticipate any Priority Claims. In the event, however, that a Priority Claim is allowed, Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order.	
Class 2: Mercedes Benz	<b>Claim Amount</b>	<b>XXXXXXX</b>
	<b>Impairment</b>	Unimpaired
	Class 2 is unimpaired by this Plan, and Class 2 shall retain its security interest according to the instruments and statutes creating same. Debtor in possession will surrender his interest in the collateral and the claim will be paid by the co-obligor pursuant to the terms of the original documents with no modification by this Plan.	
Class 3: Noninsider nonpriority unsecured creditors	<b>Claim Amount</b>	<b>XXXXXXX</b>
	<b>Impairment</b>	Impaired

	<p>Class 3 is impaired in this Plan. Class 3 consists of ten creditors. Allowed Class 3 claims shall be paid a total of 1.39% principal payments paid in one lump sum commencing no later than 30 days after the effective date of the plan. All provisions of judgement (except for Paragraph 1(a) on pages 2-3 “RESIDENCE PORTION OF THE REAL PROPERTY”, and Paragraphs 3(e)(vi), 3(e)(viii)(1)-(2) on page 5 of the Second Amended Interlocutory Judgment attached as Exhibit C), loan or credit documentation of the General Unsecured Creditors shall be null and void during the period there is no Plan Default with respect to the treatment of Class 3. The Proofs of Claim filed, any pleadings determining the Allowed amount of a General Unsecured Claim, the Confirmation Order, and the Plan shall replace all Prepetition documentation of the General Unsecured Creditors.</p>
--	---

## Opposition to Plan

Walter R. Dahl, Subchapter V Trustee (“Trustee”) objects on the following grounds:

1. The Plan is likely not consensual and must be confirmed pursuant to 11 U.S.C. § 1191(b). The Plan does not satisfy either of the requirements of 11 U.S.C. § 1191(c)(2). Debtor states his projected disposable income is \$3,605 per month. Over the three year period commencing upon the date the first payment is due, Debtor’s projected disposable income will total \$129,780. If the court were to fix the duration of the Plan over five years, Debtor’s projected disposable income will total \$216,300. Opp’n 1:22-2:1, Docket 394.
2. In contrast, the Plan provides: [t]o complete this plan, Debtor shall submit to the supervision and control of the trustee, as is necessary for the execution of the plan, a single lump sum payment in the amount of \$13,000. The Plan is not “fair and equitable”, and thus not eligible for confirmation pursuant to 11 U.S.C. § 1191(b). Opp’n 2:2-6.

Creditors Sharon and Gary Hofmann (“Creditor”) object on the same ground as Trustee, arguing that Debtor has a monthly net income of \$3,605.00. Over a three-year period pursuant to 11 U.S.C. § 1191, Debtor should have included the sum of \$3,605.00 multiplied by 36 months, or \$129,780.00, in the Fourth Amended Plan. Similarly, a five-year period would have yielded the sum of \$3,605.00 multiplied by 60 months, or \$216,300.00. In any event, Debtor has severely under-reported his projected disposable income in violation of 11 U.S.C. § 1191. Opp’n 2:12-19, Docket 396.

## Debtor’s Response

Debtor filed a Response to the Oppositions on December 5, 2024. Debtor spends much of the Response arguing Trustee has not diligently performed his Subchapter V Trustee duties. Debtor eventually states:

1. Section 207 of the Social Security Act, codified as 42 U.S.C. § 407, states that any monies paid under the Social Security Act shall not be subject to “execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.” 42 U.S.C. § 407 (emphasis added). In other words, Social Security payments are statutorily exempt from the bankruptcy process. In turn, it follows that Social Security benefits cannot be subjected to the “operation” of the PDI test. Response 8:26-9:3, Docket 411.
2. To be clear, Social Security income is excluded from disposable income under 42 U.S.C. § 407 and the Bankruptcy Code’s definition of “current monthly income” in 11 U.S.C. § 101(10A). Response 9:15-20, Docket 411.
3. After excluding social security, Debtor’s disposable income is \$185. To satisfy the minimum requirement of § 1191(c)(2)(B), the Plan must provide for payments in the three-year period following the effective date, having a present value of not less than \$6,660 or in the five-year period following the effective date, having a present value of not less than \$11,100. Because the Plan provides for distribution on the effective date in the amount of \$13,000, it satisfies § 1191(c)(2)(B). Opp’n 10:24-28, Docket 411.

### **Declarations in Support of Confirmation**

The Declaration of Michael Hofmann, the Debtor/Debtor in Possession, has been filed in support of confirmation. Dckt. 415. In it, Debtor/Debtor in Possession provides the following testimony (as summarized by the court):

- A. Debtor/Debtor in Possession provides his legal opinion that the Plan complies with all applicable provisions of the Bankruptcy Code. Dec., p. 2:1-10; Dckt. 415.
- B. Debtor/Debtor in Possession provides his legal opinion that the Debtor, as proponent of the Plan has “complied with all applicable provisions of the Bankruptcy Code.” *Id.*; p. 2:12-13.
- C. Debtor/Debtor in Possession provides his legal conclusion and his finding of fact that the Plan has been proposed in good faith.
- D. Debtor/Debtor in Possession testifies that all administrative expenses will be paid in full, priority wage and tax claims will be paid in full, and impaired classes of claims shall not receive less than they would through a Chapter 7 liquidation (no computation is provided). *Id.*; p. 2:7-16.
- E. Debtor/Debtor in Possession provides his legal conclusion and factual finding that the Plan is feasible. *Id.*; p. 2:18-24. Debtor/Debtor in Possession does not authenticate any projection of income and expenses or incorporate it into his testimony.
- F. The Declaration includes a disclosure that it was drafted with the assistance of generative artificial intelligence. *Id.*; p. 3:15-22.

Exhibits A - H are filed in support of Confirmation. Dckt. 412. These include the “handbook for Small Business Chapter 11 Subchapter V Trustee, February 2020 (Exhibit B), and an ABI Journal Article “Are Social Security Benefits ‘Disposable Income’ for Purposes of Subchapter V, ABI Journal, September 30, 2021.”

### **Tabulation of Ballots:**

For the three classes of creditors, it appears no one voted on the Plan. Tabulation of Ballots, Docket 417.

### **DISCUSSION**

The United States Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(b)(2) that:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

With respect to confirmation of a Subchapter V Plan, 11 U.S.C. § 1191 states:

(a) Terms.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title [1] are met.

(b) Exception.—

Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(c) Rule of Construction.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)

(A) The debtor will be able to make all payments under the plan; or

(B)

(i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable Income.—For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

In defining current monthly income under 11 U.S.C. § 101(10A), explicitly excluded from that definition are benefits received under the Social Security Act.

(10A)The term “current monthly income”—

(A)**means the average monthly income from all sources** that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to

whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B)

(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent); and

(ii) excludes—

(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

11 U.S.C. § 101(10A) [emphasis added]. While “current monthly income” may not be “projected disposable income,” this treatment is relevant to this discussion.

As stated by Debtor/Debtor in Possession in the Reply, Congress expressly addresses Social Security benefits and “protections” granted for such benefits, including in connection with bankruptcy cases.

§ 407. Assignment of benefits

(a) In general. **The right of any person to any future payment under this title** [42 U.S.C. §§ 401 et seq.] shall not be transferable or assignable, at law or in equity, **and none of the moneys paid or payable or rights existing under this title shall be subject** to execution, levy, attachment, garnishment, or other legal process, or **to the operation of any bankruptcy or insolvency law.**

(b) Amendment of section. No other provision of law, enacted before, on, or after the date of the enactment of this section [enacted April 20, 1983], may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes. Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this title, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.

42 U.S.C. § 407 [emphasis added].

The Ninth Circuit has held that, at least in the Chapter 13 context, "Congress has spoken directly, and it explicitly excluded Social Security income from the calculation of disposable income." *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120 (9th Cir. 2013). The court in *Welsh* addresses whether Social Security income is included in computing the projected disposable income, stating:

Just as we cannot add to what Congress has enacted "under the guise of interpreting 'good faith,'" so too we cannot ignore the explicit repayment requirements that Congress has chosen to enact. When Congress speaks directly to one of the good faith factors, the judicial good faith inquiry is narrowed accordingly. *See, e.g., Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1227 (8th Cir. 1987) (noting that § 1325(b)'s "'ability to pay' criteria subsume[d] most" of the factors under the totality of the circumstances test). **Congress has spoken directly, and it explicitly excluded Social Security income from the calculation of disposable income.** We thus join every court of appeals that has decided the issue in concluding that, "[w]hen a Chapter 13 debtor calculates his repayment plan payments exactly as the Bankruptcy Code and the Social Security Act allow him to, and thereby excludes [Social Security income], that exclusion cannot constitute a lack of good faith." *Anderson v. Cranmer (In re Cranmer)*, 697 F.3d 1314, 1319 (10th Cir. 2012); *see also Beaulieu v. Ragos (In re Ragos)*, 700 F.3d 220, 227 (5th Cir. 2012) ("Having already concluded that Debtors' plan fully complied with the Bankruptcy Code, it is apparent that Debtors are not in bad faith merely for doing what the Code permits them to do."); *cf. Fink v. Thompson (In re Thompson)*, 439 B.R. 140, 144 (B.A.P. 8th Cir. 2010) ("Standing alone, the Debtors' retention of Social Security income is insufficient to warrant a finding of bad faith under § 1325(a)(3)." (internal quotation marks omitted)).<sup>56</sup>



The Welshes argue in the alternative that, even if Congress's adoption of the means test did not preclude courts from considering debtors' retention of Social Security income in assessing good faith, such consideration nevertheless would be prohibited by 42 U.S.C. § 407; that section provides in relevant [\*\*31] part:

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject . . . to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

42 U.S.C. § 407(a)-(b) (2006) (emphasis added). Because we conclude that Congress's adoption of the means test precludes us from considering, as part of our good faith inquiry, a debtor's retention of Social Security income, we have no occasion to decide whether such consideration would violate § 407's prohibition.

*Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1131-1132 (9th Cir. 2013).

While not clear in the Response, it appears that Debtor/Debtor in Possession's argument is that he has no projected disposable income since he has "only" \$9,496 in monthly net income from his business and an additional \$3,420.00 in Social Security income, which after deducting his "reasonable and necessary" expenses of (\$9,284.00) a month, that leaves only \$3,605.00, of which \$3,420.00 is the Social Security benefits excluded from bankruptcy.

### **Computation of Projected Disposable Income**

The Debtor/Debtor in Possession provides as Exhibit B copies of Amended Schedules I and J. Dckt. 358. These were filed on October 3, 2024, which was 18 months after the March 20, 2023 filing of this Bankruptcy Case. Filed as "Amended Schedules," these are statements that the original Schedules I and J needed to be corrected and that these "Amended Schedules" provide information accurate as of the March 20, 2023 commencement of this Bankruptcy Case.

No current November 2024 income and expense information is provided by the Debtor/Debtor in Possession. If the "Amended Schedules" I and J were intended to state information that was accurate as of October 2024, the court notes the following:

- A. While the Debtor/Debtor in Possession states having monthly net business income of \$9,469.00, the Debtor/Debtor in Possession neglects to provide the required statement to Schedule I, as stated in ¶ 8a of Schedule I:

Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income

- B. Debtor/Debtor in Possession has no dependants and lists expenses as being reasonable and necessary for himself, which raise some questions, of:

1. (\$4,100.00) for rent (the Debtor/Debtor in Possession not having residential real property for which a mortgage is being paid in this Case);
2. (\$600.00) Electricity, heat, natural gas;
3. \$0.00 Water, sewer, garbage;
4. \$0.00 Phone, internet, cable;
5. (\$1,100.00) for food and housekeeping supplies;
6. (\$400.00) Medical and dental expenses;
7. (\$400.00) Gas and car maintenance;
8. (\$750.00) Health insurance (for which Debtor has (\$400.00 a month in out of pocket medical expenses);
9. (\$376.00) Vehicle insurance;
10. (\$707.00) Self employment tax; and
11. (\$150.00) Pet expense.

Looking at the original Schedules filed by Debtor reported having \$15,032.00 in after tax, Medicare, and Social Security deductions income, which included \$3,290.00 in Social Security Income. Dckt. 32 at 33-34. Then on original Schedule J Debtor listed having (\$9,650.00) in expenses, which included:

- A. Nothing for rent or mortgage, the Debtor then residing in the family property that was the subject of the State Court Action;
- B. (\$700.00) Home maintenance and repairs;
- C. (\$1,960.00) Food and housekeeping;
- D. (\$1,000.00) Medical and dental;

- E. (\$300.00) Gas and car maintenance;
- F. (\$430.00) Health insurance;
- G. (\$420.00) Vehicle insurance;
- H. (\$4,000) LLC; and
- I. (\$350.00) Pet expenses.

*Id.* at 35-36. Even with the (\$4,000.00) LLC expense, this left the Debtor with \$5,382.00 in monthly net income, which after deducting \$3,290.00 for Social Security benefits, left \$2,092.00 of projected disposable income.

On Schedule A/B Debtor states that he has no non-farm animals, such as “Dogs, cats, birds, horses.” It is unclear what pet expenses Debtor could have.

It is clear that Debtor/Debtor in Possession has grossly changed the expenses, as well as income. No explanation is provided. No detailed income and expense information for Debtor/Debtor in Possession’s business is provided. The court notes that it has been represented to the court that Debtor has a significant other with which he resides, however, it is not clear what the significant other contributes toward housing, food, maintenance, and other expenses.

## **Review of the Plan**

The main point of contention among the Parties is whether Debtor/ Debtor in Possession is in compliance with 11 U.S.C. § 1191(b) in actually committing all disposable income to the non-consensual Plan. Debtor/ Debtor in Possession has presented evidence that social security benefits are not part of the monthly disposable income calculation, so the Plan indeed commits all disposable income and is confirmable.

The court is presented with the Original Schedules A/B and Amended Schedules A/B which just provide the court with net business income and fail to show how that is computed.

Looking at the recent Monthly Operating Reports filed by the Debtor/Debtor in Possession, the court notes the following information for the most recent Report filed:

- A. February 2024 Report (filed October 3, 2024); Dckt. 351.
  - 1. Cash Receipts.....\$7,704.11
  - 2. Cash Disbursements.....(\$11,280.40)
    - a. The monthly Expenses include:
      - (1) Meals and Entertainment.....(\$250.00)
      - (2) Payroll Expenses.....(\$3,453.61)

- (3) Pet Expenses.....(\$375.70)
    - (4) Utilities.....(\$1,161.83)
  - 3. Monthly Net Cash Flow.....(\$3,576.29)
  - 4. Bank of America Account Statement, 9382 includes:
    - a. Mission Lane LLC payment.....(\$1,100.00)
    - b. Mission Lane LLC payment.....(\$ 700.00)
    - c. Mission Lane LLC payment.....(\$500.00)
    - d. Mission Lane Payment.....(\$100.00)
    - e. Veterinary
      - (1) 1/05/24.....(\$624.35)
      - (2) 2/08/24.....(\$256.92)
      - (3) 2/14/24.....(\$677.80) [UCD VMTH]
      - (4) 2/20/24.....(\$310.00) [UCD Vet Med Teaching HO]
      - (5) 2/20/24.....(\$1,390.00) "
    - f. Cash Withdrawals
      - (1) 2/26/24.....(\$800.00)
      - (2) 2/26/24.....(\$500.00)
    - g. WINRED Steve Garv.....(\$36.44) ["political contribution"]

On October 3, 2024, the Debtor/Debtor in Possession filed a number of other Monthly Operating Reports, which provide the following information of income and expenses for each period:

B. December 2023; Dckt. 347.

- 1. Cash Receipts.....\$7,923.53
- 2. Cash Disbursements.....(\$12,059.39)
- 3. Monthly Net Cash Flow.....(\$4,135.86)

C. Amended November 2023; Dckt. 346.

- 1. Cash Receipts.....\$38,534.07
- 2. Cash Disbursements.....(\$13,485.50)
- 3. Monthly Net Cash Flow.....\$26,051.57

D. October 2023; Dckt. 345.

- 1. Cash Receipts.....\$17,592.12
- 2. Cash Disbursements.....(\$21,591.40)
- 3. Monthly Net Cash Flow.....(\$3,999.28)

E. September 2023; Dckt 344.

1. Cash Receipts.....\$7,168.50
2. Cash Disbursements.....(\$37,673.77)
3. Monthly Net Cash Flow.....(\$30,505.27)

Looking at the September 2023 Monthly Operating Report, Exhibit D, there are Pet Expenses totaling (\$18,030.02). Dckt. 344 at 7.

F. Amended August 2023; Dckt. 343.

1. Cash Receipts.....\$5,209.75
2. Cash Disbursements.....(\$5,314.64)
3. Monthly Net Cash Flow.....(\$104.89)

G. Amended July 2023; Dckt. 341.

1. Cash Receipts.....\$4,920.06
2. Cash Disbursements.....(\$5,032.33)
3. Monthly Net Cash Flow.....(\$112.27)

H. Amended June 2023; Dckt. 339

1. Cash Receipts.....\$4,571.30
2. Cash Disbursements.....(\$16,147.01)
3. Monthly Net Cash Flow.....(\$11,575.71)

The cash disbursements included: (1) \$2,000.00 to Valley Home Rice, (2) \$1,000.00 to Valley Home Rice, \$500.00 to Valley Home Rice, and then a (\$3,503.85) to Valley Home Rice. Additionally, there were “Health Insurance Expenses” of: (1) \$32.80, (2) 356.33, (3) 760.00, (4) \$2,002.00, (5) \$1,750.00, and (6) \$375.60. Dckt. 339 at 7.

I. Amended May 2023; Dckt. 337.

1. Cash Receipts.....\$6,895.43
2. Cash Disbursements.....(\$18,988.76)
3. Monthly Net Cash Flow.....(\$12,093.33)

The cash disbursements include: (1) \$399.58 pet expense, (2) \$1,430.75 pet expense, and (3) \$10,200.00 pet expense. Dckt. 337 at 7.

One might argue that this Debtor/Debtor in Possession has no projected disposable income, but losses money each month of existence.

On the other hand, one might conclude that the Debtor/Debtor in Possession is spending money unnecessarily and unreasonably so as to create the appearance of not having projected disposable income.

In the Creditor's Objection, they raise the liquidation valuation issue with regard to what portion of the Estate's interest in the proceeds from the sale of the real properties can be claimed as exempt by Debtor.

On Amended Schedule C filed on January 25, 2024, Debtor listed the following major exemptions:

- A. \$455,575.00 exemption in Debtor's \$43,600.00 interest in the 13330 Valley Home Rd Property pursuant to California Code of Civil Procedure § 704.730. (This section of the California Code of Civil Procedure states the amount of a homestead exemption.)
- B. \$142,122.00 exemption in Debtor's \$142,122.00 interest in "Settoff Credit vs siblings/Trust" pursuant to California Code of Civil Procedure § 704.730.

At the hearing, **XXXXXXX**

The Fourth Amended Plan of Reorganization is **XXXXXXX**

Item 2 thru 4

**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, Creditors, and Office of the United States Trustee on November 14, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

**The Motion to Reduce Time Allowed to Amend Exemptions is denied.**

Peter L. Fear, the Chapter 7 Trustee ("Trustee") moves this court for an order reducing the time allowed for Debtor to amend his exemptions. Trustee states:

1. He has attempted to reach a deal with David Martinez ("Debtor") to sell one of the two parcels of real property in this case, 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property") and 425 Osprey Drive, Patterson, CA (the "Osprey Property"). Trustee has been unable to reach a deal.
2. Debtor has elected to apply the homestead exemption to the Osprey Property, which is subject to the related Motion for Relief this court intends to grant. However, Trustee has become concerned that after foreclosure of the Osprey Property, Debtor will elect to claim the homestead exemption, or a wildcard exemption, in the Las Palmas Property, which will limit any recovery and prejudice the Estate. Mot ¶ 19, Docket 99.

3. Therefore, with no supporting law provided, Trustee asks this court to limit the time period that Debtor is allowed to amend an exemption to December 2, 2024, or to a time that is at least three days prior to any hearing granting relief from stay. *Id.* at ¶ 22.

## DISCUSSION

Fed. R. Bankr. P. 1009(a)(1) states:

A debtor may amend a voluntary petition, list, schedule, or statement at any time before the case is closed. The debtor must give notice of the amendment to the trustee and any affected entity.

9 COLLIER ON BANKRUPTCY ¶ 1009.02 states on the matter:

The debtor has a right to amend the petition, lists, schedules or statements as a matter of course until the case is closed. The only exception to this rule is the chapter 7 debtor's statement of intention with respect to property securing consumer debts. .

However, a recent Supreme Court decision has thrown into question the ability of a bankruptcy court to limit amendments based on equitable considerations like bad faith or prejudice to creditors. . .

In determining whether an amendment would prejudice creditors, the appropriate inquiry is not whether a creditor will recover less or be adversely affected by the amendment. Instead, a court must determine whether the creditor would be adversely affected by having detrimentally relied on the debtor's initial position.

Here, Movant has not met its burden in arguing for its position. The law seems clear to the court; a debtor may amend at any time before the case is closed, and in rare cases where there may be some room for a court to limit amending, those facts are not present in this case. Moreover, Trustee's concern about Debtor changing the homestead exemption appears misplaced. As the court has noted in the related Motion for Relief, California law defines a "homestead" in which an exemption may be claimed to as follows:

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.



Cal Code Civ Proc § 704.710(c). The homestead exemption is not one that can be moved at whim, but must fulfill certain statutory requirements.

At the hearing, **XXXXXXX**

Therefore, the Motion is denied, the court not being presented with facts or argument providing the court with grounds for granting the relief requested.

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 Reduce Time Allowed to Amend Exemptions filed by Peter L. Fear, the Chapter 7 Trustee (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

-----

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, and Office of the United States Trustee on November 14, 2024. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Attendance of Debtor at Meeting of Creditors 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, -----.

<b>The Motion to Compel Attendance of Debtor at Meeting of Creditors is <span style="color: red;">XXXXXXX</span>.</b>
---

Movant Peter L. Fear, the Chapter 7 Trustee (“Trustee”) prays for an Order compelling debtor David Martinez (“Debtor”) to appear at the continued 341 Meeting of Creditors. Trustee asserts Debtor has missed two prior 341 Meetings, but Trustee requires Debtor’s attendance to administer assets in the case. Debtor moves this court pursuant to 11 U.S.C. § 341(a).

Movant provides a Declaration in support at Docket 106 stating “[a]s a result of the Debtor’s refusal to appear at the meetings of creditors, [Trustee] has been unable to obtain information necessary for the administration of the bankruptcy estate.” Decl. ¶ 10, Docket 106.

The Trustee includes as exhibits the email exchange between the Trustee and Debtor’s counsel. The Trustee attempts to explain to the Debtor and his counsel that this appears it may be a surplus case, but Debtor is looking at a creditor foreclosing on the residence property in which the homestead exemption is claimed (there being no non-exempt equity in the residence property) and Debtor may lose that exempt value.

#### **APPLICABLE LAW**

11 U.S.C. § 341(a) states:

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.

The court is not permitted to attend or preside at any 341 Meeting. *Id.* at 341(c). Nothing in 11 U.S.C. § 341 permits the court to order a debtor to attend a 341 Meeting. Movant has not offered any other sources of law for the court to grant such a request, a form of injunctive relief.

Congress then expressly provides in 11 U.S.C. § 343(a) that the Debtor “shall” (not “may” or “might”) appear at the 341 Meeting of Creditors.

§ 343. Examination of the debtor

**The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a)** of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343 (emphasis added).

## DISCUSSION

The Trustee does not direct the court to specific law or treatise authority addressing the basis for issuing an order compelling the attendance of the Debtor at the 341 Meeting. However, this may be one of the opportunities in which the court may use the provisions of 11 U.S.C. § 105(a) to enforce the provisions of 11 U.S.C. § 343.

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

Here, the order of the court is requested to carry out the provisions of 11 U.S.C. § 343 that require the Debtor to attend the 341 Meeting of Creditors. In looking at the Declaration and Exhibits, the “need” for such attendance may well be for the Trustee to confirm that the Debtor is not going to act to protect his exempt equity in his residence. Or it may be that the Debtor has other plans with respect to the residence property and does not want to disclose those to the Trustee.

Therefore, upon review of the Motion and supporting pleadings, the Motion is granted, with the court ordering the Debtor and Debtor’s counsel to appear at the continued 341 Meeting.

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

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

The Motion to Compel Attendance of Debtor at Meeting of Creditors filed by Movant Peter L. Fear, the Chapter 7 Trustee (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and debtor David Martinez, the Debtor, and Thomas A. Moore, Esq., the attorney of record for Debtor, and each of them, are ordered to appear at the continued 11 U.S.C. § 341 Meeting of Creditors pursuant to 11 U.S.C. § 343 and Fed. R. Bankr. P. 2004, 2005. The continued Meeting is to be held on **XXXXXXX**.

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

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

-----

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, and Office of the United States Trustee on November 14, 2024. By the court's calculation, 28 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 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, **XXXXXXX**.

**The Motion to Extend Deadline to File a Complaint Objecting to Discharge is granted.**

Peter L. Fear, the Chapter 7 Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to David Martinez's ("Debtor") discharge because Debtor has not attended either of the scheduled 341 Meetings held on October 8, 2024 and on November 7, 2024.

The deadline for filing a complaint objecting to discharge was December 9, 2024. Dckt. 82. The Motion requests that the deadline to object to Debtor's discharge be extended to March 7, 2025.

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 14, 2024, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete the 341 Meeting and examine the Debtor, 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 March 7, 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 Peter L. Fear, 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 the deadline for Movant to object to David Martinez's ("Debtor") discharge is extended to **March 7, 2025**.

5. <a href="#">24-90219-E-7</a> <a href="#">24-9008</a> KOSTKAS V. CASEY, JR ET AL	JESSE/AMBER CASEY CAE-1	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 9-17-24 [7]
--	----------------------------	---

**Item 5 thru 6**

Plaintiff's Atty: Pro Se  
Defendant's Atty: Eric R. Gassman

Adv. Filed: 7/25/24  
Amd. Complaint Filed: 9/17/24  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

Notes:  
Continued from 11/21/24 to be conducted in conjunction with the continued hearing on the Motion to Dismiss.

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

## **DECEMBER 12, 2024 STATUS CONFERENCE**

On December 12, 2024, the hearing on the Motion to Dismiss the First Amended Complaint was conducted. The court **XXXXXXX**

### **September 9, 2024 Status Conference**

On September 17, 2024 Plaintiff Richard Kostkas filed an Amended Complaint. Dckt. 7. Plaintiff seeks a determination that the obligation stated in the amount of \$50,000 of the Defendant-Debtor is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). A Reissued Summons was issued by the Clerk of the Court on September 18, 2024. Dckt. 9.

With the Reissued Summons, the Status Conference has been reset to November 21, 2024.

The Amended Complaint having been filed and the Reissued Summons having reset the Status Conference, the Status Conference has been continued to 2:00 p.m. on November 21, 2024.

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

-----

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 Plaintiff-Creditor, Chapter 7 Trustee, and Office of the United States Trustee on October 24, 2024. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Dismiss Adversary Proceeding is <del>denied</del> without prejudice.</b></p>
--

Jesse Casey and Amber Casey, Debtor-Defendants ("Defendant") move for the court to dismiss all claims against it in Richard S. Kostkas' ("Plaintiff-Creditor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

## REVIEW OF COMPLAINT

The Complaint, summarized as follows, alleges the following grounds:

1. Through Plaintiff-Creditor's IRA, Plaintiff-Creditor lent money to Amber Casey, Defendant. Complaint ¶ 1, Docket 1.
2. The Complaint seeks to oppose the discharge of Plaintiff-Creditor's credit to Amber L. Casey per 11 U.S.C. 523(a)(2). Amber L. Casey intentionally misrepresented her purchase price of the collateral to secure a real estate loan funded by the IRA. *Id.* at ¶ 2.
3. Tony Avila was assisting Amber Casey in obtaining financing on the 386 Cantrautti Road, Joelton, TN 37122 property ("Property"). Mr. Avila states



the property was purchased by Mrs. Casey for \$410,000.00 on May 10, 2022. *Id.* at ¶ 4.

4. Based on the \$410,000.00-purchase price, good credit and job history, Plaintiff-Creditor's IRA funded a \$50,000.00 dollar loan secured by the Property. *Id.* at ¶ 7.
5. The Property was never worth \$410,000, instead being sold in January of 2024 for only \$280,000. *Id.* at ¶¶ 8,9.
6. Defendant never paid back the loan.

While the Amended Complaint reviews a number of events, transactions, and dealings by the Defendant-Debtor and others, it appears that the key allegations in the Amended Complaint are found in the following paragraphs:

12. The \$410,000.00 purchase price of the Property was based on an October 22, 2021 appraisal obtained by Mr. Hostettler. The assessed value was dependent upon \$120,000.00 in repairs being performed on the Property. However, the repairs were never undertaken; thus, the value of the Property at the time of the Debtors' purchase was closer to \$280,000.00. Despite knowing that the appraisal reflecting an inflated value, Debtors provided this appraisal to Mr. Avila on December 20, 2021, for him to use in securing financing for their purchase of the Property. Moreover, Debtors were aware that the Property was appraised less than two years previously for \$225,000.00. This fact was known to Mr. Avila, who ordered the appraisal, and Mr. Casey. See Appraisal, Exhibit 6.

...

15. Mr. Avila presented Plaintiff with a June 6, 2022, Loan Application on behalf of Debtor Mrs. Casey. See Loan Application, Exhibit 9. This Application contained several materially false statements, which were known to Mr. Avila and Debtors. These false statements were made with the intent to deceive Plaintiff into thinking Debtor Mrs. Casey's financial circumstances were better than they were in fact. The false statements included:

- a. The Property was represented as having a value of \$410,000.00 when in fact it was only worth \$280,000.00;
- b. The note payable to Mr. Hostettler in the amount of \$192,884.00 was intentionally omitted from the statement of liabilities on Debtor Mrs. Casey's Loan Application as submitted to Plaintiff.
- c. The Loan Application refers to Mr. Hostettler paying \$2,200.00 a month in rent for the Property, despite Mr. Hostettler only signed a rental agreement for \$900.00 a month and further had not made any rental payments.

...

17. Relying upon the materially false statements in Debtor Mrs. Casey's Loan Application, as Debtors knew he would, Plaintiff reasonably relied upon the

Application, was deceived as to Debtor Mrs. Casey's financial condition, and lent \$50,000.00 to Debtor Mrs. Casey, which was funded by Plaintiff's IRA, and secured through a Note and Deed of Trust (Exhibit 10). At the close of this loan, the net proceeds from the loan were directed to the JV A, of which Debtor Mr. Casey, Mr. Hostettler and Mr. Avila were parties.

...

21. Debtor Mrs. Casey acknowledged and verified the June 6, 2022 Loan Application with the knowledge that it contained materially false statements made with the intent to deceive Plaintiff to lend her \$50,000.00. Debtor Mr. Casey was intimately aware of his wife's financial condition and shared in her efforts to deceive Plaintiff.

## **THE MOTION**

The Motion responds to the Complaint's claims with the following grounds:

1. Mr. Avila stated in his email that the purchase price for the Property was \$410,000. The Loan Application provides the original cost of the Property as \$410,000. According to the Property Appraisal, the opinion of value was \$410,000. The valuation was not dependent on any future work. Mot. 3:23-26, Docket 14.
2. The note payable to Mr. Hostettler was omitted from the Loan Application because it was extinguished. Defendant attaches his own Exhibits to show this. *Id.* at 4:7-13.
3. There was no exaggeration of rent payments. The amount listed as Gross Rent was calculated based on prepayments made towards the existing mortgage amount. *Id.* at 4:23-26.

## **PLAINTIFF-CREDITOR'S OPPOSITION**

Plaintiff-Creditor filed an Opposition on November 8, 2024. Dckt. 18. Plaintiff-Creditor reiterates the facts alleged in the Complaint and contests all of Defendant's arguments point by point. Plaintiff-Creditor also states that the Appraisal attached as Ex. 6 to the Complaint that cited the Property at \$410,000 is subject to the completion of the attached construction bid, which was for \$120,000. In any event, the Property was not properly valued at \$410,000 and sold for much less.

## **DEFENDANT'S RESPONSE**

Defendant filed a Response on December 5, 2024. Dckt. 28. Defendant argues Plaintiff's claim is simply devoid of any actual facts, and Plaintiff alleges false statements which are immaterial and incorrect.

## **APPLICABLE LAW**

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to

relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”)).

Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court’s formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot “plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (“[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.”).

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court “required to ‘accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.’” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

## DISCUSSION

A Motion to Dismiss for failure to state a claim is only considered on the face of the complaint and the attached exhibits. The court is to construe all well-pleaded facts in favor of the nonmoving party. The standard the Supreme Court has given trial courts in considering the complaint is the “plausible” standard of stating a claim for recovery, which is a slightly higher standard than the “possible” standard. Therefore, the court does not now delve into the veracity of the facts alleged for purposes of determining this Motion.

11 U.S.C. 523(a)(2) states:

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B ) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C)

(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than \$500 [2] for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than \$750 2 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. .

At the hearing, **XXXXXXX**

~~Plaintiff-Creditor has stated a plausible claim for recovery for purposes of surviving a 12(b)(6) Motion. The facts alleged are that Defendant represented to Plaintiff-Creditor the Property had a valuation~~

~~of \$410,000. Plaintiff-Creditor relied on this representation to his detriment. The court may confer that the representation was fraudulent, constituting a claim for a nondischargeable debt under 11 U.S.C. § 523(a)(2).~~

~~\_\_\_\_\_ The Motion to Dismiss Adversary Proceeding is not warranted at this stage. The Motion is denied.~~

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

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

The Motion to Dismiss Adversary Proceeding filed by Jesse Casey and Amber Casey, Debtor-Defendants (“Defendant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss ~~is denied.~~

Items 7 thru 9

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors and parties in interest, and Office of the United States Trustee on November 14, 2024. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is a week late of the required notice period. At the hearing, **XXXXXXX**

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

**The Motion for Approval of Compromise is granted.**

Nikki B. Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with U.S. Small Business Administration ("SBA"). The claims and disputes to be resolved by the proposed settlement involve the SBA's claim secured by the following items of collateral:

(a) Porter Cable Nails; (b) Senco Nail Guns; (c) Edge Bender Machine; (d) Denta Table Machine; (e) Rowell Table Saw; (f) 42" Drum Sender; (g) 3 Head Shaper; (h) Frame Table Machine; (i) Castle Pocket Hole Machine; (j) 3 Shaper 1/4; (k) 3 Dewalt Chop Saw 12"; (l) Spry Loud; (m) Boring Machine; (n) 2 Porter Cable Compressor; (o) Porter Cable Multiple Routers; and (p) 7 Wood Working Tables,

(collectively "Personal Property Assets"). The Personal Property Assets are subject to the undisclosed blanket lien of the SBA in the amount of \$94,943.77 as of June 14, 2024. Mot. 2:20-21, Docket 49.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 51):

1. Allowance of Secured Claims. Subject to the terms of this Agreement, the SBA shall be allowed a secured claim in the amount of \$94,943.77. The SBA's lien shall be in the priority and against the assets for which its UCC Financing Statement was filed.
2. Carve Out and Distribution of Any Proceeds of the SBA's Collateral. In the event any of the SBA's collateral is sold or the proceeds collected by the Trustee, including the Personal Property Assets, the SBA consents and agrees that the proceeds shall be distributed as follows (which represents a carve out to the extent the payment is not on account of a senior lien or any avoided amount by the Trustee):
  - A. First, costs of sale and/or collection, including any auction and auctioneer fees and costs;
  - B. Second, payment of senior liens, if any;
  - C. Third, 50% of the proceeds to the SBA and 50% for the benefit of the bankruptcy estate other than the SBA (not to exceed the amount of the SBA's secured claim);
  - D. Fourth, payment of any junior liens, if any; and
  - E. Fifth, the balance to the estate.

Mot. 3:10-20, Docket 49.

Debtor Enrique Martinez Olmos filed a Nonopposition on December 2, 2024. Docket 61.

## **DISCUSSION**

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

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

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

Movant argues that the four factors have been met.

### **Probability of Success**

This factor heavily weighs in favor of the Agreement. The Trustee does not dispute that the SBA is entitled to a secured claim against the Personal Property Assets. In fact, the Trustee has been provided and reviewed the loan documents that form the basis for the SBA's claim. Consequently, it is highly unlikely that the Trustee would prevail in any litigation with the SBA. Mot. 4:10-13.

### **Difficulties in Collection**

Movant's argues this factor is neutral.

### **Expense, Inconvenience, and Delay of Continued Litigation**

This factor favors the Agreement. The estate would incur significant expense litigating the dispute and the cost could limit the return to the estate from the sale of the Personal Property Assets. Indeed, the estate does not dispute the SBA's entitlement to a secured claim with respect to the Personal Property Assets. Further, litigation would be inconvenient and time consuming. The law favors compromise and not litigation for its own sake. *Id.* at 4:17-21.

### **Paramount Interest of Creditors**

This factor weighs in favor of the Agreement. By entering into the Agreement, the Trustee is ensuring a return to the estate on account of the Personal Property Assets. Moreover, the Trustee is avoiding unnecessary litigation, particularly since the Trustee does not dispute the SBA's entitlement to a secured claim. The Agreement is in the best interest of creditors. *Id.* at 4:24-27.

### **Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Trustee is ensuring a return to the estate on account of the Personal Property Assets that would otherwise be encumbered by the SBA's lien. The Motion is granted.

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



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

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

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and U.S. Small Business Administration ("SBA") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 51. The material terms of the Settlement are as follows:

1. Allowance of Secured Claims. Subject to the terms of this Agreement, the SBA is allowed a secured claim in the amount of \$94,943.77. The SBA's lien is in the priority and against the assets for which its UCC Financing Statement was filed.
2. Carve Out and Distribution of Any Proceeds of the SBA's Collateral. In the event any of the SBA's collateral is sold or the proceeds collected by the Trustee, including the Personal Property Assets, the SBA consents and agrees that the proceeds shall be distributed as follows (which represents a carve out to the extent the payment is not on account of a senior lien or any avoided amount by the Trustee):
  - A. First, costs of sale and/or collection, including any auction and auctioneer fees and costs;
  - B. Second, payment of senior liens, if any;
  - C. Third, 50% of the proceeds to the SBA and 50% for the benefit of the bankruptcy estate other than the SBA (not to exceed the amount of the SBA's secured claim);
  - D. Fourth, payment of any junior liens, if any; and
  - E. Fifth, the balance to the estate.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors and parties in interest, and Office of the United States Trustee on November 14, 2024. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is a week late of the required notice period. At the hearing, **XXXXXXX**

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

<p><b>The Motion for Approval of Compromise is granted.</b></p>
---

Nikki B. Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Josh Agah ("Landlord"). The claims and disputes to be resolved by the unexpired lease ("Lease") for commercial space located at 1812 Rail Road Ave., Suite G, Ceres, CA and 1818 Rail Road Ave., Suite B, Ceres, CA 95307, which Lease shall be deemed rejected, effective December 5, 2024, pursuant to 11 U.S.C. § 365 and terminated, and the Leased Property shall be deemed surrendered to the Landlord or its designated agent no later than December 5, 2024.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 57):

1. Rejection and Termination of Lease. The Lease shall be deemed rejected, effective December 5, 2024, pursuant to 11 U.S.C. § 365 and terminated,

and the Leased Property shall be deemed surrendered to the Landlord or its designated agent no later than December 5, 2024.

2. Administrative Claim. Subject to the terms of this Agreement, the Landlord agrees, as to the Debtor's bankruptcy estate only, that any administrative claim for past due rent that may be asserted for the time period of the Petition Date through December 5, 2024 shall be deemed waived.
3. General Unsecured Claim. To the extent authorized under applicable law, the Landlord shall be authorized to file a proof of claim asserting only a general unsecured claim against the Debtor's bankruptcy estate for any prepetition debt owed and/or on account of the rejection of the Lease for the Leased Property. However, the Landlord is not required to make any such claim. In addition, any right of the Trustee to object to any proof of claim, if necessary, shall be preserved.
4. Timing of Filing of Proof of Claim. Any proof of claim to be filed by the Landlord must be filed within sixty (60) days of entry of the order approving this Stipulation to be deemed timely.
5. Access to the Leased Property. The Trustee shall provide access to the Leased Property to allow the Landlord to market the property.
6. Removal of Estate Assets. The Trustee shall cause any bankruptcy estate property in which the estate intends on auctioning and not abandoning to be removed from the Leased Property no later than December 5, 2024. Subject to applicable law, if any bankruptcy estate property remains at the Leased Property upon the Trustee's surrender, the Landlord may discard or otherwise dispose of such property without further notice.
7. Relief from Stay. The Landlord shall have relief from stay as against the bankruptcy estate under 11 U.S.C. § 362 as of December 5, 2024 to exercise any of its rights and remedies against the Leased Property available under state and/or bankruptcy law, including proceedings to recover possession of the Leased Property and/or to dispose of any Personal Property owned by the estate and remaining at the Leased Property upon surrender on December 5, 2024.

Mot. 3:21-4:9, Docket 54.

Debtor Enrique Martinez Olmos filed a Nonopposition on December 2, 2024. Docket 63.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is

appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

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

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

Movant argues that the four factors have been met.

### **Probability of Success**

This factor weighs in favor of the Agreement. The Landlord may be entitled to an administrative claim on account of the Leased Property since the Personal Property Assets are stored at the property. At a minimum, the Landlord contends that it has the authority to retake possession of the Leased Property and dispose of the Personal Property Assets. While the Trustee could litigate the amount of and the entitlement to an administrative claim, the probability of success is ultimately unknown. Mot. 4:25-5:3.

### **Difficulties in Collection**

Movant's argues this factor is neutral.

### **Expense, Inconvenience, and Delay of Continued Litigation**

This factor supports the Agreement. The estate would incur unnecessary expense litigating the dispute. The cost of litigation would significantly exceed any benefit the estate would receive in light of the terms of the Agreement and could limit the return to the estate from the potential assets currently available. Indeed, the estate will not be responsible for any amounts to the Landlord for any administrative rent claim which will allow it to maximize any return from the Personal Property Assets. Further, litigation would be inconvenient and time consuming. *Id.* at 5:7-12.

### **Paramount Interest of Creditors**

This factor heavily weighs in favor of the Agreement. By entering into the Agreement, the Trustee is ensuring that any administrative claim the Landlord may assert for rent does not diminish the potential return to the estate from the estate's assets. Notably, the bankruptcy estate has no need for the Lease or the Leased Property as this is a Chapter 7 case. Moreover, the Trustee is avoiding unnecessary litigation over the administrative claim and the Lease Deposit that could further reduce any return. The Agreement is in the best interest of creditors.. *Id.* at 5:14-19..

## Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Trustee is ensuring that any administrative claim the Landlord may assert for rent does not diminish the potential return to the estate from the estate's assets, benefitting all creditors. The Motion is granted.

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

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

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

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Josh Agah ("Landlord") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 57. The material terms of the Settlement are as follows:

1. Rejection and Termination of Lease. The Lease for the Leased Property at 1812 Rail Road Ave., Suite G, Ceres, CA and 1818 Rail Road Ave., Suite B, Ceres, CA 95307, is deemed rejected, effective December 5, 2024, pursuant to 11 U.S.C. § 365 and terminated, and the Leased Property is deemed surrendered to the Landlord or its designated agent no later than December 5, 2024.
2. Administrative Claim. Subject to the terms of this Agreement, the Landlord agrees, as to the Debtor's bankruptcy estate only, that any administrative claim for past due rent that may be asserted for the time period of the Petition Date through December 5, 2024 shall be deemed waived.
3. General Unsecured Claim. To the extent authorized under applicable law, the Landlord is authorized to file a proof of claim asserting only a general unsecured claim against the Debtor's bankruptcy estate for any prepetition debt owed and/or on account of the rejection of the Lease for the Leased Property. However, the Landlord is not required to make any such claim. In addition, any right of the Trustee to object to any proof of claim, if necessary, is preserved.

4. Timing of Filing of Proof of Claim. Any proof of claim to be filed by the Landlord must be filed within sixty (60) days of entry of the order approving this Stipulation to be deemed timely.
5. Access to the Leased Property. The Trustee shall provide access to the Leased Property to allow the Landlord to market the property.
6. Removal of Estate Assets. The Trustee shall cause any bankruptcy estate property in which the estate intends on auctioning and not abandoning to be removed from the Leased Property no later than December 5, 2024. Subject to applicable law, if any bankruptcy estate property remains at the Leased Property upon the Trustee's surrender, the Landlord may discard or otherwise dispose of such property without further notice.
7. Relief from Stay. The Landlord shall have relief from stay as against the bankruptcy estate under 11 U.S.C. § 362 as of December 5, 2024 to exercise any of its rights and remedies against the Leased Property available under state and/or bankruptcy law, including proceedings to recover possession of the Leased Property and/or to dispose of any Personal Property owned by the estate and remaining at the Leased Property upon surrender on December 5, 2024.

9. [24-90324-E-7](#)

**ENRIQUE OLMOS**  
**Gary Fraley**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**11-16-24 [59]**

**Final Ruling:** No appearance at the December 12, 2024 Hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, other parties in interest, and Chapter 7 Trustee as stated on the Certificate of Service on November 20, 2024. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$34 due on November 1, 2024.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
---

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.

10. <a href="#">18-90029-E-11</a> <a href="#">FWP-31</a>	<b>JEFFERY ARAMBEL</b> <b>Pro Se</b>	<b>MOTION TO SELL FREE AND CLEAR OF LIENS</b> <b>11-7-24 [2035]</b>
---	---	--

**Item 10 thru 11**

**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 (*pro se*), other parties in interest, and Office of the United States Trustee on November 7, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Focus Management Group USA, Inc., the duly appointed Plan Administrator in this case pursuant to Section 1.74 of the confirmed Plan of Reorganization, (“Movant”) moves the court for an order authorizing it to sell property of the estate. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as vacant land in Stanislaus County, California, containing approximately +/- 0.8 acres of land, bearing Assessor’s Parcel No. 021-013-004, commonly referred to as the “Westley Lot” (“Property”).

The proposed purchaser of the Property is Dale Grewal, and the terms of the sale and relief requested in the Motion are:

- a. The sale of the Subject Property free and clear of liens and other interests to the Buyer in exchange for the Buyer’s payment of the purchase price in the amount of \$155,000.00, subject to overbidding, in accordance with the terms and conditions set forth in the PSA attached to the Exhibit Document as Exhibit 1. The sale of the Subject Property is on an “AS-IS” basis and without any warranties, disclosures, questionnaires, or guarantees provided by the Plan Administrator;
- b. In the alternative, the sale of the Subject Property, on the same terms and with no conditions, to the best overbidder that is approved by the Plan Administrator and the Court at the hearing on this Motion, taking into consideration all factors, and approval of a “back-up” buyer;
- c. The use of bidding procedures (the “Bidding Procedures”), at the beginning of hearing on the Motion, as set forth in Section IV of this Motion;
- d. The payment through escrow of: (i) any Subject Property taxes and assessments due on the Subject Property in the estimated amount of \$1,915.30 and any pro-rated current amounts, (ii) closing costs and other expenses, (iii) broker’s commission(s) (iv) U.S. Trustee fees, (v) a holdback of \$5,162 for estimated income taxes, and (vi) net proceeds from the sale of the Subject Property to Summit until its lien is paid in full;
- e. Waiving the 14-day stay period imposed by Bankruptcy Rule 6004(h).

Mot. 3:9-20, Docket 2035.

### **Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of the liens. The following creditors hold liens in the Property:

<b>Priority</b>	<b>Claim Holder</b>	<b>Estimated Claim</b>
Tax	Stanislaus County Tax Collector	\$1,915.30 (est.)
First	Summit	\$5,500,000



Second	Summit	\$1,000,000
Third	IRS	\$3,419,274.35
Fourth	Del Puerto Water District	To be determined

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

Movant has stated that Summit has given its consent to release their respective liens, to the extent not paid in full, on the Subject Property. The Plan Administrator expects that Summit will consent to the sale of the Subject Property free and clear of their liens pursuant to 11 U.S.C. § 363(f)(2). Mot. 6:1-5, Docket 2035.

The Plan Administrator seeks authority to pay the Stanislaus County Tax Collector and amounts that may be owed to the Del Puerto Water District from the proceeds of the sale. Therefore, Stanislaus County Tax Collector’s liens and any lien of the Del Puerto Water District shall be satisfied and released as paid in full. *Id.* at 6:6-9.

The preliminary title report for the Subject Property indicates that the IRS recorded a notice of federal tax lien against the Subject Property on May 3, 2024 in the amount of \$3,419,274.35 (the “Fed Tax Lien”). Decl. ¶ 13, Docket 2039. The Fed Tax Lien is disputed. On its face, the Personal Tax Notice for the Fed Tax Lien is issued to Arambel personally under his personal social security number. It is not directed to the Estate or the Estate’s tax ID number. The Plan Administrator has filed all state and federal tax returns required to be filed for the Arambel Estate for the tax years ending November 30, 2019, 2020, 2021, 2022, and 2023 under the Estate’s tax ID number, aka Federal Employer Identification Number or FEIN. None of these Estate tax returns show any unpaid amounts owed by the Estate. Mot. 6:10-18, Docket

2035. Therefore, pursuant to 11 U.S.C. § 363(f)(4), the Property should be sold free and clear of the IRS lien.

For this Motion, Movant has established grounds for selling free and clear from the liens of Summit and the IRS pursuant to 11 U.S.C. § 363(f)(2) and (4). The dispute of the IRS' claim is colorable, Movant presenting evidence that the tax lien is against property interests of Jeffrey Arambel in his personal capacity, not against property of the bankruptcy estate.

Upon the close of escrow, Stanislaus County Tax Collector and the Del Puerto Water District can release their liens upon being paid in full. The court does not now with this Order release the liens of Stanislaus County Tax Collector and the Del Puerto Water District pursuant to 11 U.S.C. § 363(f).

### **Proposed Overbidding Procedures**

- (a) Valuation of the consideration being received by the estate from the sale of the Subject Property at \$155,000.00;
- (b) the initial overbid must be at least \$10,000 higher than the \$155,000.00 gross sale price that the estate will receive from a sale to the Buyer, and each successive bid thereafter must be at least \$1,000 more than the previous highest qualified overbid or such other amounts as the Plan Administrator determines are appropriate;
- (c) prior to the date of the hearing and before being permitted to bid, any overbidder must deliver to the Plan Administrator a deposit by cashier's check payable to Focus Management Group USA, Inc., Plan Administrator on behalf of the estate, in an amount equal to \$15,000, and if an overbid is successful, the deposit by the successful overbidder shall be non-refundable; in addition, any person or entity seeking to overbid must identify the proposed overbidder and any principals, owners, members, or shareholders of the bidder and evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transaction(s), the adequacy of which the Plan Administrator and their advisors will determine in their sole discretion;
- (d) any overbid must be on the same terms and conditions as the PSA, and any overbidder must agree to sign a purchase and PSA for the purchase of the Subject Property in substantially the same form and terms as the PSA, except that all contingencies shall be deemed satisfied, waived, or otherwise removed and close of escrow shall occur on or before December 31, 2024 or as otherwise agreed; and
- (e) any overbidder seeking to appear at the hearing must make arrangements to appear by telephone. Instructions for telephonic appearance may be obtained from counsel for the Plan Administrator as identified in the caption of this Motion; and

- (f) approval by the Court of the second highest bid as a back-up buyer on the same terms and conditions.

The court finds the proposed overbidding procedures to be reasonable and adopts them for purposes of this Motion to Sell.

## **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 significant proceeds for payment of secured claims. Plan Administrator has engaged in extensive efforts to sell the Property and has used its business judgment in arriving at this sale, which the court will not replace with its own judgment.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$7,750 to be split evenly between Movant's agent, Pearson Realty, and Buyer's broker, RE/MAX Grupe Gold. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

## **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 so that the sale can move forward immediately upon entry of the Bankruptcy Court order approving the sale, Movant not anticipating any opposition.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

**Counsel for Focus Management Group USA, Inc., the duly appointed Plan Administrator in this case shall prepare a proposed Order consistent with this ruling and lodge it with the 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.

-----

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 (*pro se*), other parties in interest, and Office of the United States Trustee on November 7, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Focus Management Group USA, Inc., the duly appointed Plan Administrator in this case pursuant to Section 1.74 of the confirmed Plan of Reorganization, ("Movant") moves the court for an order authorizing it to sell property of the estate. 11 U.S.C. § 363. Here, Movant proposes to sell the real property consisting of vacant land in Stanislaus County, California, containing approximately +/- 946.6 acres of land, bearing Assessor's Parcel Nos. 021-009-002, 021-010-002, 021-010-015 to 021, 021-010-026 to 028, 021-010-036, 021-010-038, commonly referred to as the "Murphy Ranch" and the "Murphy Rangeland" ("Property").

The proposed purchaser of the Property is Gerber Ranch LLC, and the terms of the sale and relief requested in the Motion are:

- a. The sale of the Subject Property free and clear of liens and other interests to the Buyer in exchange for the Buyer's payment of the purchase price in the amount of \$993,930.00, subject to overbidding, in accordance with the terms and conditions set forth in the PSA attached to the Exhibit Document as Exhibit 1. The sale of the Subject Property is on an "As-is" "Where-is" basis and without any warranties, disclosures, questionnaires, or guarantees provided by the Plan Administrator;

- b. In the alternative, the sale of the Subject Property, on the same terms and with no conditions, to the best overbidder that is approved by the Plan Administrator and the Court at the hearing on this Motion, taking into consideration all factors, and approval of a “back-up” buyer;
- c. The use of bidding procedures (the “Bidding Procedures”), at the beginning of hearing on the Motion, as set forth in Section IV of this Motion;
- d. The payment through escrow of: (i) any Subject Property taxes and assessments due on the Subject Property in the estimated amount of \$1,593.86 and any pro-rated current amounts, (ii) closing costs and other expenses, (iii) broker’s commission(s) (iv) U.S. Trustee fees, (v) a holdback of \$36,100 for estimated income taxes, (vi) net proceeds from the sale of the Subject Property to Summit until its lien is paid in full; and (vii) the remaining net proceeds to Summit;
- e. Waiving the 14-day stay period imposed by Bankruptcy Rule 6004(h).

Mot. 3:8-21, Docket 2043.

#### **Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of the liens. The following creditors hold liens in the Property:

<b>Priority</b>	<b>Claim Holder</b>	<b>Estimated Claim</b>
Tax	Stanislaus County Tax Collector	\$1,593.86
Disputed	Ray E. Murphy and Joy Lou Murphy	\$0
First	Summit	\$250,000.00
Second	Summit	\$3,528,401.82
Third	West Valley Ag. Services, LLC	\$3,294,421.00
Fourth	Summit	\$5,500,000.00
Fifth	Summit	\$1,000,000.00
Sixth	Summit	\$14,448,592.63
Disputed	IRS	\$3,419,274.35

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

The Plan Administrator seeks authority to pay the Stanislaus County Tax Collector from the proceeds of the sale. Therefore, Stanislaus County Tax Collector's liens shall be satisfied and released as paid in full. Mot. 6:7-9. Upon the close of escrow, Stanislaus County Tax Collector can release their liens upon being paid in full. The court does not now with this Order release the liens of Stanislaus County Tax Collector pursuant to 11 U.S.C. § 363(f).

The Plan Administrator disputes the Deed of Trust recorded by Ray E. Murphy and Joy Lou Murphy on May 10, 2005 as Instrument Number 2005-0081670 in the Stanislaus County recorder. The estate's records indicate that the debt to Mr. and Ms. Murphy has been fully paid. Moreover, on or about April 12, 2016, Ray Murphy executed a full reconveyance of the Murphy Deed of Trust. *See* Exhibit 4, Docket 2049. The Plan Administrator is informed and believes that Ray E. Murphy and Joy Lou Murphy are both deceased. The Plan Administrator has made demands upon the administrator of the Murphys' estate, their daughter Sherri Murphy Schoening, that the Deed of Trust be reconveyed as fully satisfied. *See* Exhibit 2, *Id.* Ms. Murphy Schoening acknowledged that the obligation owed to the Murphys had been fully satisfied but failed and refused to record a reconveyance of the Murphys' deed of trust. The Murphys did not file a proof of claim and did not have their claim allowed or their lien preserved by the confirmed plan in this case. *Id.* at 6:10-20. With there being a colorable dispute to this claim, the court authorizes the sale being made free and clear of the Deed of Trust recorded by Ray E. Murphy and Joy Lou Murphy on May 10, 2005 pursuant to 11 U.S.C. § 363(f)(4).

Movant has stated that Summit has given its consent to release their respective liens, to the extent not paid in full, on the Subject Property. The Plan Administrator expects that Summit will consent to the sale of the Subject Property free and clear of their liens pursuant to 11 U.S.C. § 363(f)(2). Mot. 6:24-28, Docket 2043.

Movant argues West Valley Agricultural Services, LLC holds a secured claim against the Subject Property. Section 363(f)(1) permits a sale of the property “free and clear of any interest in [that] property...if...applicable nonbankruptcy law permits the sale of the property free and clear of such interest.” Section 363(f)(1) would allow the sale because West Valley Agricultural Services, LLC was junior to Summit and the Stanislaus County Tax Collector, and such senior lienholders could have foreclosed West Valley Agricultural Services, LLC out. *See* 11 U.S.C. 363(f)(1); *see also Bank of Am. v. Graves*, 51 Cal. App. 4th 607, 611-612 (stating that “[t]he term “sold-out junior lienor” refers to the situation in which a senior lienholder forecloses its lien, eliminating the junior lienor’s security interest”).

The court notes the Ninth Circuit has held this type of sale in bankruptcy would permit the court to sell the Property free and clear of West Valley Agricultural Services, LLC’s interest. *See In re Spanish Peaks Holdings II, LLC*, 862 F.3d 1148 (9th Cir. 2017) (holding had there not been a bankruptcy in that case, there would likely have been foreclosure sales that terminated junior interests in property, justifying a sale pursuant to 11 U.S.C. § 363(f)(1)). Therefore, the Property shall be sold free and clear of the junior lien of West Valley Agricultural Services, LLC pursuant to 11 U.S.C. § 363(f)(1).

The preliminary title report for the Subject Property indicates that the IRS recorded a notice of federal tax lien against the Subject Property on May 3, 2024 in the amount of \$3,419,274.35 (the “Fed Tax Lien”). Decl. ¶ 15, Docket 2039. The Fed Tax Lien is disputed. On its face, the Personal Tax Notice for the Fed Tax Lien is issued to Arambel personally under his personal social security number. It is not directed to the Estate or the Estate’s tax ID number. The Plan Administrator has filed all state and federal tax returns required to be filed for the Arambel Estate for the tax years ending November 30, 2019, 2020, 2021, 2022, and 2023 under the Estate’s tax ID number, aka Federal Employer Identification Number or FEIN. None of these Estate tax returns show any unpaid amounts owed by the Estate. Mot. 6:10-18, Docket 2035. Therefore, pursuant to 11 U.S.C. § 363(f)(4), the Property should be sold free and clear of the IRS lien. The dispute of the IRS’ claim is colorable, Movant presenting evidence that the tax lien is against property interests of Jeffrey Arambel in his personal capacity, not against property of the bankruptcy estate.

### **Proposed Overbidding Procedures**

- (a) Valuation of the consideration being received by the estate from the sale of the Subject Property at \$993,930.00;
- (b) the initial overbid must be at least \$30,000.00 higher than the \$993,930.00 gross sale price that the estate will receive from a sale to the Buyer, and each successive bid thereafter must be at least \$5,000.00 more than the previous highest qualified overbid or such other amounts as the Plan Administrator determines are appropriate;
- (c) prior to the date of the hearing and before being permitted to bid, any overbidder must deliver to the Plan Administrator a deposit by cashier’s check payable to Focus Management Group USA, Inc., Plan Administrator on behalf of the estate, in an amount equal to \$40,000.00, and if an overbid is successful, the deposit by the successful overbidder shall be non-refundable; in addition, any person or entity seeking to overbid must identify the proposed overbidder and any principals, owners, members, or shareholders of the bidder and evidence of the prospective buyer’s source of capital or other financial ability to complete the contemplated

transaction(s), the adequacy of which the Plan Administrator and their advisors will determine in their sole discretion;

- (d) any overbid must be on the same terms and conditions as the PSA, and any overbidder must agree to sign a purchase and PSA for the purchase of the Subject Property in substantially the same form and terms as the PSA, except that all contingencies shall be deemed satisfied, waived, or otherwise removed and close of escrow shall occur on or before December 31, 2024 or as otherwise agreed; and
- (e) any overbidder seeking to appear at the hearing must make arrangements to appear by telephone. Instructions for telephonic appearance may be obtained from counsel for the Plan Administrator as identified in the caption of this Motion; and
- (f) approval by the Court of the second highest bid as a back-up buyer on the same terms and conditions.

The court finds the proposed overbidding procedures to be reasonable and adopts them for purposes of this Motion to Sell.

## **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 significant proceeds for payment of secured claims. Plan Administrator has engaged in extensive efforts to sell the Property and has used its business judgment in arriving at this sale, which the court will not replace with its own judgment.

Movant has estimated that a five percent broker's commission from the sale of the Property will equal approximately \$49,696.50 to be split evenly between Movant's agent, Pearson Realty, and Buyer's broker, Greg Nunes Realty. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five percent commission.

## **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 so that the sale can move forward immediately upon entry of the Bankruptcy Court order approving the sale, Movant not anticipating any opposition.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.



Counsel for Focus Management Group USA, Inc., the duly appointed Plan Administrator in this case shall prepare a proposed Order consistent with this ruling and lodge it with the court.

12. <a href="#">24-90343</a> -E-11	MARTINEZ PALLET	CONTINUED STATUS CONFERENCE
<a href="#">CAE-1</a>	SERVICES, INC.	RE:
		VOLUNTARY PETITION
		6-21-24 <a href="#">[1]</a>

**Item 12 thru 13**

Debtor's Atty: Gabriel E. Liberman

Notes:

Continued from 10/31/24 to be conducted in conjunction with the continued hearing on the Motion to Use Cash Collateral.

Operating Reports filed: 11/20/24

[CAE-1] Status Conference Statement filed 11/27/24 [Dckt 72]

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

**DECEMBER 12, 2024 STATUS CONFERENCE**

The Debtor/Debtor in Possession filed an Updated Status Report on November 27, 2024. Dckt. 72. It reports that the adequate protection payments have been made and the First Amended Plan draft is now being circulated.

The Debtor/Debtor in Possession suggests continuing the Status Conference approximately 60 days so it can be coordinated with a tentative confirmation hearing date.

At the Status Conference, XXXXXXX

**OCTOBER 31, 2024 STATUS CONFERENCE**

Martinez Pallet Services, Inc., the Debtor/Debtor in Possession, filed its Status Conference Statement on October 24, 2024. Dckt. 57. The Debtor/Debtor in Possession reports that the use of cash collateral by the Debtor/Debtor in Possession has been done pursuant to this court's Interim Order (Dckt. 53). The Debtor/Debtor in Possession reports that the Subchapter V Plan was filed on September 19, 2024 (Dckt. 51). The court notes that it does not appear to have received a proposed order from the Debtor/Debtor in Possession a proposed order setting a confirmation hearing, EDC Form 6-202 (Order Setting Subchapter

**December 12, 2024 at 10:30 a.m.**

**- Page 49 of 76 -**

V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines, Paragraph 4; Dckt. 8) , or a motion to set a confirmation hearing date.

At the Status Conference, several issues concerning the workers were discussed. The Parties agreed to extend the use of Cash Collateral through the end of the year based on the existing budget. The court has entered a separate order thereon for relief pursuant to the Motion to Use Cash Collateral.

**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 in Possession, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

At the Initial hearing, opposition was stated by Creditor asserting the lien on the cash collateral that is to be used.

**The Motion for Authority to Use Cash Collateral is granted and the Debtor/Debtor in Possession is authorized to use cash collateral through June 30, 2025.**

**The hearing on the Motion is continued to xxxxxxx.** The Debtor/Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral on or before xxxxxxx. Opposition Pleadings shall be filed and served on or before xxxxxxx. Replies may be presented orally at the continued hearing.

## **December 12, 2024 Hearing**

The court continued the hearing on this Motion, having authorized the use of cash collateral through December 31, 2024. Docket 64. Debtor/ Debtor in Possession was to submit supplemental pleadings by November 25, 2024, with oppositions to be submitted by December 6, 2024. On November 22, 2024, Debtor/ Debtor in Possession filed supplemental pleadings, including a proposed cash collateral budget that extends authorization through June 30, 2025. Docket 69. No oppositions were filed.

The Supplemental Proposed Cash Collateral at Exhibit A, Docket 70 includes expenditures in line with the previously proposed budget.

At the hearing, **XXXXXXX**

The Supplemental Proposed Cash Collateral Budget is approved, and Debtor/ Debtor in Possession is authorized to use cash collateral in accordance with the terms of the Budget included as Exhibit A, Docket 70.

### **REVIEW OF THE MOTION**

Martinez Pallet Services, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral from operating its business on the commercial property commonly known as 3925 W. Linwood Avenue, Turlock, California 95380 (“Property”). Debtor in Possession’s business manufactures and sells wood pallets by buying new wood material and donated recycled wood it receives from various businesses. Mot. 2:13-14, Docket 15. Debtor in Possession’s gross receipts from January 1- through June 27, 2024 was \$498,372.64 with a net profit of \$4,960.19. *Id.* at 3:1-2.

Debtor in Possession’s business performed well during the Covid years when wood products were in high demand. However, the price of wood has since dropped by 50%. *Id.* at 3:17-18. Furthermore, the interest rate on the note secured by the Property has increased from 3.5% in 2022 to 8.5% today, increasing the mortgage payment. *Id.* at 3:13-16. Debtor in Possession requests the use of cash collateral to continue operating the business in the ordinary course from the Property and to make adequate protection payments.

Debtor in Possession proposes to use cash collateral for the following expenses:

Martinez Pallet Services, Inc.							
Income/Expense	Interim	Final Budget					
		Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24
Income							
Sales- Pallet Sales	\$	80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000
Sales- Wood Shavings	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Sales- Pickup Services	\$	9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
Total Income	\$	91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000
Cost of Goods Sold							
Raw Materials- Wood	\$	6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
Raw Materials- Broken Pallets	\$	3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Raw Materials- Nails	\$	1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
Total COGS	\$	10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500
Gross Profit	\$	80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500
Expense							
Bookkeeping & Accounting	\$	-	\$ -	\$ -	\$ -	\$ -	\$ -
Fuel (Diesel, Gas, & Propane)	\$	18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000
Merchant Service Fee	\$	30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30
Office Supplies	\$	75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75
Salaries & Wages - 8 employees	\$	7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550
Shareholder Salaries & Wages - 3 employees	\$	-	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500
Meals & Entertainment	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Card and Bank Fees	\$	26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26
IT & Telcom Expense	\$	350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350
Utilities	\$	600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600
Insurance - Liability	\$	167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167
Insurance - Auto	\$	7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000
Saw Blades - Replacements	\$	1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100
Auto Expense - Maintenance	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Total Business Expense	\$	38,898	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398
Net Operating Income	\$	41,602	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102
Adequate Protection to secured creditors							
First Chatham Bank			\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
Balboa Capital			\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Total Adequate Protection Expense	\$	-	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000
Net Income	\$	41,602	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102

Exhibit A, Docket 18. As seen in the chart, First Chatham Bank would be receiving adequate protection payments of \$20,000 per month, and Balboa Capital will be receiving adequate protection payments of \$1,000 per month.

First Chatham Bank holds a first priority security interest secured by a UCC-1 financing statement recorded on December 8, 2022 against all of Debtor in Possession's personal property assets utilized in the Debtor in Possession's business and a first priority Note secured by a deed of trust in the Property. Mot. 4:25-5:12. The Note is also personally guaranteed by Debtor in Possession's shareholders, Francisco J. Mora Martinez and Adela Espinoza Sanchez. Mr. Martinez testifies in his Declaration that "without cash collateral use Debtor would suffer irreparable harm to their business operations if not permitted immediate use of cash collateral." Decl. 6:13-14, Docket 17.

Debtor in Possession estimates the Property to be worth \$3,159,000 (Decl. 2:24-25, Docket 17), while First Chatham Bank's Claim is estimated to be \$3,000,000 (Decl. 4:20, Docket 17). Balboa Capital's claim is estimated to be in the amount of \$129,819.33. *Id.* at 4:21.

## APPLICABLE LAW

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

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the business and generating cash for adequate protection payments to secured creditors. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period July 24, 2024, through December 24, 2024, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

However, at the hearing counsel for First Chatham Bank stated an opposition to the use of cash collateral. Schedules are still to be filed (July 19, 2024, the extended deadline for such to be filed) and from the information provided, this Creditor cannot determine that the purported cash flow can be generated by the Debtor/Debtor in Possession.

The Parties agreed to authorize the use of cash collateral on the existing budget through and including September 6, 2024. The hearing is continued to 10:30 a.m. on August 29, 2024. Supplemental pleadings, in support of or in opposition to the use of cash collateral shall be filed and served on or before August 22, 2024. Replies may be presented orally at the continued hearing.

### **August 29, 2024 Hearing**

The court granted interim authority to use cash collateral through September 6, 2024. Order, Docket 31. The court set the date of August 22, 2024, for any supplemental pleadings in support or opposition of the use of cash collateral. *Id.* Replies may be heard at the hearing.

On August 22, 2024, First Chatham Bank (“Creditor”) filed a Supplemental Brief to the Motion. Docket 42. Creditor states:

1. Creditor respectfully requests that the Court require the debtor to file updated, accurate versions of the bankruptcy schedules and the documents used to support the Motion to Use Cash Collateral and Grant Adequate Protection. The Meeting of Creditors revealed many problems with the Debtor’s prior filings – missing assets, missing debts, questions concerning cash flow – and these issues must be resolved before the Court allows the Debtor to engage in the long-term use of cash collateral, and to ensure that the protection provided is actually adequate. Reply 1:22-27, Docket 42.
2. The following issues were identified at the Meeting of Creditors:
  - a. Debtor’s schedules stated that the business had no accounts receivable when the petition was filed. However, Ms. Espinosa (one of the owners of the debtor company and the secretary/treasurer of the company) testified under oath that the schedules were incorrect and that the business did, in fact, have accounts receivable when the petition was filed. *Id.* at 2:5-9.
  - b. Ms. Espinoza recently submitted a declaration that stated that the business’ 2021 and 2022 taxes had not been filed. When asked about potential tax liabilities, Ms. Espinoza represented that she believed the tax liability to be modest. However, the IRS has since filed a proof of claim for just over \$250,000, consisting mostly of unpaid corporate taxes dating back to 2019, but also over \$40,000 in unpaid payroll taxes. *Id.* at 2:10-15.
  - c. The assets stated by the Debtor list did not list the property that secures the loan from First Chatham Bank. That property is worth nearly \$3,000,000. *Id.* at 2:16-17.

Creditor does not identify in the Opposition the property that secures its claim which is not listed on the Schedules. Creditor has not filed its Proof of Claim as of the court's August 27, 2024 review of the Claims Register.

On July 29, 2024, the Debtor's Schedules were filed. Dckt. 27. On Schedule A/B Debtor lists the following real property:

3925 W. Linwood Ave	Stated Value.....\$3,159,000
Turlock, California	

19.75 acre lot of industrial ground  
with a modest single family residence with  
three bedroom, two-half bath currently being  
used as Debtor's office.

Schedule A/B, Part 9; Dckt. 27 at 6-7.

Debtor lists Creditor as having a secured claim in the amount of (\$2,994,338.41), which is secured by a Deed of Trust on the Linwood Ave Property and 65 pieces of equipment. Schedule D, ¶ 2.3; *Id.* at 13. Debtor states that the value of the real property is \$3,159,000 and personal property is \$956,000, which secures Creditor's claim.

- d. Claims are being made by a number of former employees of the Debtor. At the Meeting of Creditors, Ms. Espinoza testified that she is aware of seven (7) former employees who have not been paid all that is owed, that she was provided an amount owed (but that she did not know whether that amount included statutory penalties for late payment of wages). In addition, it appears from information obtained at the Meeting of Creditors that at least one former employee was injured at work in January 2024, at a time when the Debtor may not have had Workers' Compensation Insurance. *Id.* at 2:19-26.
3. Creditor is not currently adequately protected. *Id.* at 3:4-5. First, During the Meeting of Creditors, Ms. Espinoza admitted that the property that secures First Chatham Bank's loan to the Debtor is not insured as required under the loan agreement.

Second, the proposal in the Cash Collateral Motion would pay First Chatham Bank approximately 2/3 of the monthly principal and interest payments due under its loan agreement while the Debtor continues to use that property without limitation and without addressing the arrearage. *Id.* at 3:5-10.

4. Creditor requests the following:



- a. The hearing on the Motion to Use Cash Collateral be continued to the earliest possible date after the continued Meeting of Creditors on September 10, 2024.
- b. Debtor immediately obtain property insurance to cover the real estate that secures the First Chatham Bank loan to Debtor, as required by the loan agreement, and file proof of that insurance within 3 business days.
- c. Debtor file complete and accurate amended versions of all previously filed financial documents within 5 business days.
- d. Debtor file a statement under oath concerning the viability of the “interim budget” submitted with the Motion for Use of Cash Collateral, including whether the projected revenue targets were reached in the time since the document was filed and remain valid, whether the projected expenses proved accurate and remain valid, and verify the Debtor’s current liquid assets (bank accounts), as well as accounts receivable and payable.

*Id.* at 3:14-26.

At the hearing, counsel for the Debtor/Debtor in Possession reported that on August 28, 2024, the Responsible Representative for the Debtor/Debtor in Possession provided counsel with additional financial information that can be used to update the information provided and the Schedules. Additionally that copies of tax returns for 2021, 2022, and 2023, which have been filed, have also provided to counsel. There is a balance due on 2021 taxes to the IRS. Taxes are also due for 2022, the priority tax claim computed to be \$289,275.

The Monthly Operating Reports for June (which was only for four post-petition days) and July 2024 have been received by counsel for the Debtor/Debtor in Possession and will be filed. Counsel reported that for July, \$121,104 received in cash, made (\$115,852) in payments (including cash collateral adequate protection payment)

The amendments to the Schedules will include listing wage claims for former Employees (who appeared at the 341 meeting stating that they had such claims), which were not listed on the Schedules previously filed with the court. These wage claims are stated to be in the amount of (\$61,954), most of which would be priority claims if allowed.

Counsel addressed the issue of the Debtor/Debtor in Possession not have insurance on the real property. The Debtor/Debtor in Possession still has not yet obtained the property insurance for the real estate. There is general liability and auto insurance in place.

It appears from the information provided, that the impediment to obtaining the real property insurance has been the cost.

Counsel for Chatham Bank, the creditor asserting lien rights on the uninsured real property addressed the point of the Debtor needing to promptly get the financial information corrected. Counsel for

the Debtor/Debtor in Possession concurred and reported that it is being done in short order. The counsel and the Subchapter V Trustee all agreed to a short interim authorization to use cash collateral to keep the focus on getting everything filed.

Counsel for the Debtor/Debtor in Possession also reported that the Debtor/Debtor in Possession is considering surrendering the real property and moving the operation to a rental space.

Counsel for Chatham Bank reported that if the Debtor/Debtor in Possession did not have the insurance in place for the real property by the end of August 2024, Chatham Bank would obtain forced place insurance (which is expensive) to protect the obligation secured by the real property. Both counsel for Chatham Bank and the Subchapter V Trustee noted that such insurance only protects Chatham Bank's interests and does not insure the interests of the Bankruptcy Estate or Debtor.

The 341 Meeting of Creditors has been continued to September 10, 2024. August 13, 2024 Trustee Docket Entry Report.

The Parties agreed to the further authorization of the use of cash collateral on the same terms and conditions as under the court's prior Order (Dckt. 31) through September 30, 2024.

The Motion is granted and the use of cash collateral is further authorized on an interim basis through and including September 30, 2024. The hearing is continued to 10:30 a.m. on September 19, 2024.

### **September 19, 2024 Hearing**

The court continued the hearing as counsel for First Chatham Bank stated an opposition to the use of cash collateral at the hearing held on August 29, 2024. However, Debtor/Debtor in Possession provided counsel with additional financial information that can be used to update the information provided and the Schedules.

The Monthly Operating Reports for June (which was only for four post-petition days) and July 2024 have been received by counsel for the Debtor/Debtor in Possession and will be filed. Counsel for Debtor in Possession reported that for July, First Chatham Bank received adequate protection payments. The court continued the hearing after the parties agreed to the proposed use of cash collateral through September 30, 2024. Order, Docket 47.

On September 17, 2024, the Monthly Operating Reports for August and July 2024 were refiled. Dckts. 48, 49.

A review of the Docket on September 17, 2024 reveals nothing new has been filed with the court. At the hearing, counsel for the Debtor/Debtor in Possession reported that the Debtor/Debtor in Possession is still addressing the financial information being provided in the Schedules and to the U.S. Trustee.

### **October 31, 2024 Hearing**

The court continued the hearing on this matter, having granted the use of cash collateral on an interim basis through November 15, 2024. The court permitted replies, if any, to be made at the hearing.

Order, Docket 53. A review of the Docket on October 29, 2024 reveals nothing new has been filed with the court under this Docket Control Number.

At the hearing, counsel for the Debtor/Debtor in Possession reported that it is continuing to operate within the parameters of the cash collateral budget. Additionally, Schedule A/B has been amended to include an equipment asset that was not on the original Schedule. It now appears this will need to be a 100% Plan.

At this point, the Debtor/Debtor in Possession is considering releasing the property to the secured creditor and leasing a different business space.

The Debtor/Debtor in Possession is in the process of entering into a contract with Tesla that will significantly increase the income.

Counsel for Chatham Bank stated that he and counsel for the Debtor/Debtor in Possession have been in active communication. Since this is a SBA backed loan, the Bank's ability to agree to terms is more limited.

An individual translated for creditor Pedro Peres, who presented his concerns to the court in Spanish. The translation was summarized as saying that Mr. Peres and other workers at the Debtor's business believe that they have been paid late or not at all, while the shareholder was timely paid. He thinks that the principal has been not forthright with the court.

The Subchapter V Trustee reported that some of the workers at the Debtor's business that they question the ability to the Debtor to fund a Plan.

The Parties agreed to further extend the use of Cash Collateral through December 31, 2024, on the terms and conditions of the current Cash Collateral Order (Dckt. 53).

The hearing on the Motion is continued to 10:30 a.m. on December 12, 2024. The Debtor/Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral on or before November 25, 2024. Opposition Pleadings shall be filed and served on or before December 6, 2024. Replies may be presented orally at the continued hearing.

**The Court will issue a Chambers prepared Order.**

The Motion for Authority to Use Cash Collateral filed by Martinez Pallet Services, Inc. ("Debtor in Possession") having been presented to the court at the continued hearing on December 12, 2024, and upon review of the pleadings, evidence, arguments of counsel, the agreement of the Parties, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the use of cash collateral is authorized through June 30, 2025, to pay the following expenses and adequate protection payments set forth in the cash collateral budget:

Martinez Pallet Services, Inc.							
Income/Expense	Proposed Cash collateral Budget						
	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	
Income							
Sales- Pallet Sales	\$ 95,000	\$ 95,000	\$ 95,000	\$ 95,000	\$ 95,000	\$ 95,000	
Sales- Wood Shavings	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Sales- Pickup Services	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	
Sales- Tesla sales/services	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	
Total Income	\$ 151,000	\$ 151,000	\$ 151,000	\$ 151,000	\$ 151,000	\$ 151,000	
Cost of Goods Sold							
Raw Materials- Wood	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	
Raw Materials- Broken Pallets	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	
Raw Materials- Nails	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Total COGS	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Gross Profit	\$ 131,000	\$ 131,000	\$ 131,000	\$ 131,000	\$ 131,000	\$ 131,000	
Expense							
Bookkeeping & Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Fuel (Diesel, Gas, & Propane)	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Merchant Service Fee	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	
Office Supplies	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	
Salaries & Wages	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	
Shareholder Salaries & Wages	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	
Meals & Entertainment	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Card and Bank Fees	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	
IT & Telcom Expense	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
Utilities	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	
Insurance - Liability	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	
Insurance - Auto	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	
Insurance - Real Property	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	
Saw Blades - Replacements	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	
Auto Expense - Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Total Business Expense	\$ 53,898	\$ 53,898	\$ 53,898	\$ 53,898	\$ 53,898	\$ 53,898	
Net Operating Income	\$ 77,102	\$ 77,102	\$ 77,102	\$ 77,102	\$ 77,102	\$ 77,102	
Adequate Protection to secured creditors							
First Chatham Bank	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Balboa Capital	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	
Total Adequate Protection Expense	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	
Net Income	\$ 56,102	\$ 56,102	\$ 56,102	\$ 56,102	\$ 56,102	\$ 56,102	

Cash Collateral Budget, filed as Exhibit A; Dckt. 70.

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

**IT IS FURTHER ORDERED** that Debtor in Possession shall continue to make monthly adequate protection payments of \$20,000.00 to First Chatham Bank, and monthly adequate protection payments of \$1,000.00 to Balboa Capital as provided in the Budget Above.

**IT IS FURTHER ORDERED** that the hearing on the Motion for Authority to Use Cash Collateral is continued to **XXXXXXX**. The Debtor/Debtor in Possession shall file and serve Supplemental Pleadings for the further use of cash collateral on or before **XXXXXXX**. Opposition Pleadings shall be filed and served on or before **XXXXXXX**. Replies may be presented orally at the continued hearing.

**THE COURT WILL CONDUCT THE STATUS CONFERENCE AT 10:30 A.M. TO BE  
HEARD IN CONJUNCTION WITH THIS MOTION TO DISMISS**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, 20 largest creditors, other parties in interest, and Office of the United States Trustee on November 13, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is xxxxxxx.**

Poppy Bank ("Movant") moves this court for an Order dismissing the Chapter 11 case of Debtor in Possession American traders, Inc. ("Debtor in Possession") pursuant to 11 U.S.C. § 1112(b), alleging the case has not been filed in good faith. There are no other factual grounds stated in the Motion.

Creditor in this case Central Valley Associates, LLC filed a Joinder supporting Movant's Motion, citing the fact that Debtor cannot operate the hotel postpetition. Docket 69.

**Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*In re Weatherford*, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **The Pleadings in Support**

In the Declaration in support, Mr. Greenberg, Movant’s attorney, testifying as to the conversations Mr. Greenberg has had with Debtor in Possession’s attorney. These conversations involve a sale Debtor in Possession appears to have in place to sell the business and real estate asset, and Movant’s concerns with the sale, including the price being too low. Mr. Greenberg further states:

I have heard nothing from Debtor’s counsel since his November 4 email. Neither the Bank nor I have received any cooperation from Debtor in protecting the hotel property from vandalism and potential squatters. Neither the Bank nor I have received any further information about a potential sale. If the Court were to take Debtor’s counsel at his word stated in Court, once Debtor can no longer use the Bank’s cash collateral, there will be no money to protect the Subject Property.

Decl. ¶ 7, Docket 59.

In the Memorandum in Support, Movant argues the petition was not filed in good faith as the petition “serves no valid bankruptcy purpose.” Mem. 11:2-3, Docket 60. Movant alleges that the petition was filed solely to obtain a tactical advantage to stay a pending civil case on the eve of trial, and a foreclosure sale of the leasehold interest which was also about to be noticed shortly after Debtor’s petition date. Debtor has even represented to the Court, through its attorney, its intention to liquidate, with no suggestion of reorganization and without hope of legally operating in the City of Modesto until at least 2027. *Id.* at 11:4-9.

Movant alleges the fact that Debtor in Possession’s single real estate asset is over \$300,000 less than the amount of the debt secured by the liens is also evidence of a petition filed not in good faith. *Id.* at 11:12-16. Furthermore, the hotel business cannot operate as the City of Modesto has stated that Debtor cannot obtain all permits needed to legally operate its hotel business until at least 2027, so there is no hope of a reorganization. *Id.* at 11:19-20. Debtor in Possession is not profitable, so it is impossible to provide adequate protection. *Id.* at 11:24-25. Finally, Movant alleges Debtor’s petition was tactical, and not related to reorganization, citing the filing being made on the eve of trial. *Id.* at 12:6-11.

### **Oppositions**

Debtor in Possession filed its Opposition November 27, 2024. Docket 75. Debtor in Possession states:

1. Contrary to Poppy's assertion, the Debtor has more than the real property at 1720 Sisk Road, Modesto, CA 95350 (the "Property") as its sole asset. The Debtor's Schedule A/8 shows that the Debtor owns furniture, equipment, and accounts worth approximately \$286,846.46, in addition to the Property. *Id.* at 2:1-8.
2. In the Motion to Dismiss, Poppy claims that the value of Debtor's estate is in decline, and claims that the Property is at significant risk of physical degradation, vandalism, and squatters. Poppy provides no evidence for these claims. On the contrary, the Debtor's Chief Financial Officer, Daljeet S. Mann, has provided for the Property's security from his personal funds, and no instances of vandalism or squatters have occurred at the Property. The Property has not degraded physically, and the estate has not declined in value. *Id.* at 2:10-17.
3. The Debtor has an offer to purchase the Property, however Debtor requests additional time under the auspices of bankruptcy to complete the sale of the Property and use the funds resulting from the sale to pay its creditors. The Debtor requests 90 additional days to complete a sale of the Property. This Motion should be denied or continued 60 to 90 days. *Id.* at 2:20-23.

Various other Oppositions were filed on December 2, 2024. Dockets 78-88. The Oppositions all state the various parties oppose dismissal, but no grounds for opposition are given.

### **Movant's Reply**

On December 4, 23024, Movant filed a Reply to the Oppositions. Docket 88. Movant states:

1. Debtor's Opposition asks this Court for more time to sell its only real estate property asset, without providing even a scintilla of evidence as to how it plans to sell this troubled property, and how it intends to obtain a sale price which will address all of the secured liens, let alone the significant unsecured claims against Debtor's estate. *Id.* at 1:24-27.
2. Debtor has, already for some time, unsuccessfully, been attempting to sell this property for over 9 months. *Id.* at 3:10.
3. The offer Debtor is pursuing is \$1,000,000.00 less than the amount needed to satisfy its secured obligations. This offer is also far less than the value of the property as represented by Debtor. *Id.* at 3:15-17.
4. Debtor has completely failed to provide this Court with any concrete plan to liquidate its only real estate asset for a price which would benefit the creditors of the Estate. *Id.* at 3:21-22.



## APPLICABLE LAW

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). The code provides a non-exhaustive list of for cause factors:

(4) For purposes of this subsection, the term “cause” includes—

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate;
- (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
- (E) failure to comply with an order of the court;
- (F) 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;
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;

- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Ninth Circuit has held that, although “section 1112(b) does not explicitly require that cases be filed in ‘good faith,’ courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis.” *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court’s finding that the Chapter 11 Petition was not filed in good faith when “the debtor’s Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond.” *Id.* at 829.

The court would note that bankruptcy court’s have found that a “desire for orderly liquidation of assets” is not a reason that would support a bad faith filing, but is a “legitimate reason[] to file bankruptcy.” *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

## **DISCUSSION**

Movant’s facts in support of the Motion are that Movant is substantially undersecured, the business is not profitable and cannot operate in bankruptcy, Movant is not being offered adequate protection payments, and the filing was made solely to avoid trial.

While the record appears to show that the Debtor in Possession cannot operate the hotel post-petition, it is not the Debtor in Possession’s strategy of this case to operate the business. Rather, Debtor in Possession is seeking an orderly liquidation, which courts have held to be a legitimate reason to file bankruptcy.

Debtor in Possession even reports having a sale potentially in place. However, no information about the sale is provided. Further, the Debtor in Possession does not provide how it intends to proceed with an orderly liquidation of the assets and the benefit to the Bankruptcy Estate from such a sale.

The main asset of the Bankruptcy Estate is the Debtor’s real property, which on Schedule A/B is listed with a value of \$3,400,000. Sch. A/B, ¶ 55; Dckt. 37 at 6. On Schedule D Debtor lists the real property being encumbered by liens totaling (\$3,228,851), of which Debtor lists Movant’s secured claim to be in the amount of (\$2,978,352.84). *Id.*; Sch. D. There is also a judgment lien securing a (\$214,931.70) securing the claim of TBS Financial, LLC listed by Debtor on Schedule D. It is not clear if this judgment lien encumbers the real property.

While the Debtor/Debtor in Possession, as the fiduciary of the Bankruptcy Estate, states that it is seeking buyers for the property of the Bankruptcy Estate, the court has not authorized the employment of any real estate or personal property sale professionals.

The creditors with claims secured by the real property not having yet filed proofs of claim, the court has only the Schedule D amounts to deal with at this time.

At the hearing, counsel for the Debtor/Debtor in Possession addressed the court, explaining how the Debtor/Debtor in Possession was going to proceed with the desired diligent sale of the assets of the Bankruptcy Estate. **XXXXXXX**

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

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

The Motion To Dismiss filed by Poppy Bank (“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**.

# FINAL RULINGS

15. [22-90225-E-7](#)

AVINASH SINGH

**MOTION FOR COMPENSATION FOR  
GABRIELSON & COMPANY,  
ACCOUNTANT(S)**

[GMR-2](#)

David Johnston

10-28-24 [\[178\]](#)

**Final Ruling:** No appearance at the December 12, 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 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 28, 2024. By the court’s calculation, 45 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 Avinash Singh, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 9, 2023, through October 27, 2024. The order of the court approving employment of Applicant was entered on January 9, 2023. Dckt. 110. Applicant requests fees in the amount of \$9,753.50 and costs in the amount of \$103.94.

## APPLICABLE LAW

### Reasonable Fees

December 12, 2024 at 10:30 a.m.

- Page 68 of 76 -

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. Applicant also assisted in reviewing and analyzing numerous financial and accounting records and operating reports involving financial operations and cash flows. 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.

Reviewed and Analyzed Debtor Business Operations and Cash Flows: Applicant spent 13.9 hours in this category. Applicant assisted trustee and counsel in reviewing and analyzing numerous financial and accounting records and operating reports involving financial operations and cash flows involving separate service station assets and real estate owned by the debtor.

Preparing Federal and California Estate Income Tax Returns: Applicant spent 7.8 hours in this category. Applicant assisted trustee and counsel in analyzing tax impact of various settlement propositions and preparation of first December 31, 2023 federal and California estate income tax returns, including review and evaluation of projected income tax liabilities.

Preparing the Fee Application: Applicant spent 1.0 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	17.4	\$425.00	\$7,395.00
Michael Gabrielson	5.3	\$445.00	\$2,358.50
<b>Total Fees for Period of Application</b>			<b>\$9,753.50</b>

### **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,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	-----	\$65.84
Copying Charges	-----	\$38.10
<b>Total Costs Requested in Application</b>		<b>\$103.94</b>

## **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 \$9,753.50 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 \$103.94 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	\$9,753.50
Costs and Expenses	\$103.94

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 Avinash Singh.

**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.



## Item 16 thru 17

**Final Ruling:** No appearance at the December 12, 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 Debtor, Chapter 7 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on October 21, 2024. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted, and the judicial lien of Farmer's Insurance Exchange is avoided in its entirety.**

#### REVIEW OF THE MOTION

This Motion requests an order avoiding the judicial lien of Farmers Insurance Exchange ("Creditor") against property of the debtor, Denise Arlene Cannistraci ("Debtor") commonly known as 407 Semple Street, Modesto, CA 95354 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$43,607.42. Exhibit 4, Dckt. 14. An abstract of judgment was recorded with Stanislaus County and was issued on June 11, 2019 and September 16, 2019, that encumbers the Property. *Id.*

The Motion is not clear which abstract it seeks to avoid, providing two abstracts to the court at Ex. 4, Docket 14. It is clear one abstract relates to the original judgment while the second abstract relates

to the renewal of the judgment, but the Motion does not state with particularity which abstract it seeks to avoid.

Moreover, there is no recorder information on the abstracts in the exhibits uploaded with the court. The court is unable to determine the document number of the abstracts or the date they were recorded. To afford Debtor a chance to supplement the record and clearly state what relief is requested, the court continues the hearing on this Motion to December 12, 2024 at 10:30 a.m.

### **December 12, 2024 Hearing**

The court continued this Motion to afford Debtor an opportunity to correct and clean up the record, identifying which creditor's lien interest will be avoided subject to this Motion. On December 9, 2024, Debtor filed supplemental pleadings. Debtor makes clear the abstract that Debtor seeks to avoid is the second abstract of judgment filed by Farmers Insurance was recorded on October 8, 2019, with a recording number of 2019-0069601-00. Debtor has correctly filed the abstracts of judgments that now clearly state the recorder information. Exhibits., Docket 30. The Motion is granted.

### **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 Denise Arlene Cannistraci ("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 Farmers Insurance Exchange, California Superior Court for Stanislaus County Case No. 62B974, recorded on October 8, 2019, Document No. 2019-0069601-00, with the Stanislaus County Recorder, against the real property commonly known as 407 Semple Street, Modesto, CA 95354, 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 12, 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 Debtor, Chapter 7 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on October 21, 2024. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien of Robert S. Stack d/b/a International Recovery Solutions is granted, and the judicial lien of Robert S. Stack d/b/a International Recovery Solutions is avoided in its entirety.**

### **December 12, 2024 Hearing**

The court continued this Motion to afford Debtor an opportunity to correct and clean up the record, identifying which creditor's lien interest will be avoided subject to this Motion. On December 9, 2024, Debtor filed supplemental pleadings.

Debtor makes clear that Debtor seeks to avoid the judgment lien of Robert S. Stack d/b/a International Recovery Solutions, who now has the rights to enforce the judgment. On January 17, 2008, Ruzicka Associates obtained a judgment against the Debtor, Denise Cannistraci, but the judgment was subsequently assigned to Robert S. Stack d/b/a International Recovery Solutions for enforcement. The Motion is granted.

### **REVIEW OF THE MOTION**

December 12, 2024 at 10:30 a.m.

- Page 75 of 76 -

This Motion requests an order avoiding the judicial lien of Ruzicka Associates (“Judgment Creditor”) against property of the debtor, Denise Arlene Cannistraci (“Debtor”) commonly known as 407 Semple Street, Modesto, CA 95354 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,990.21. Exhibit 4, Dckt. 19. An abstract of judgment was recorded with Stanislaus County on September 2, 2020, that encumbers the Property. *Id.* It appears the Claim and rights of collection have since been assigned to ROBERT S. STACK d/b/a INTERNATIONAL RECOVERY SOLUTIONS (“Assignee”). *Id.*

The Motion does not mention the Assignee at all, seeking instead to avoid the lien of Judgment Creditor. There is no evidence of the transfer of claim submitted to the court beyond the abstract of judgment mentioning the Assignee. The Motion must state with particularity as to whom relief is requested. To afford Debtor a chance to supplement the record and clearly state what relief is requested, the court continues the hearing on this Motion to December 12, 2024 at 10:30 a.m.

### **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 Denise Arlene Cannistraci (“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 Robert S. Stack d/b/a International Recovery Solutions, California Superior Court for Lake County Case No. SC701287, recorded on September 2, 2020, Document No. 2020-0066208-00, with the Stanislaus County Recorder, against the real property commonly known as 407 Semple Street, Modesto, CA 95354, 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.