

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

December 19, 2024 at 10:30 a.m.

---

1. <a href="#">23-21407-E-7</a> <a href="#">KMT-3</a>	BELLA VIEW CAPITAL, LLC Peter Macaluso	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DIARRO FOSTER 11-19-24 <a href="#">[264]</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. 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 19, 2024. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); FED. R. BANKR. P. 9006(d) (permitting opposition to be filed one day prior to the hearing); LOCAL BANKR. R. 9014-1(F)(1)(B) (extending that one day period, requiring fourteen days' notice for written opposition). Movant is five days 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.

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

Nikki B. Farris, the Chapter 7 Trustee, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses between the estate of Bella View Capital, LLC (“Debtor”) and Diarro Foster. The claims and disputes to be resolved by the proposed settlement involve certain transfers of real property and their avoidance, as well as releasing Foster from any potential liability related to a purported gift of \$100,000 (“Gift”). The real property subject of the transfer is commonly known as 487 Twin River Way, Sacramento, California (“Property”). Trustee was never able to uncover any independent evidence that an avoidable Gift was ever made, and Foster vehemently disputes any such Gift ever occurred.

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. 269):

1. Avoidance of the Subject Property Transfer. The Subject Property Transfers are avoided under 11 U.S.C. §§ 544, 548 and California Civil Code §§ 3439.04 and 3439.05 and preserved for the bankruptcy estate under 11 U.S.C. §§ 550 and 551. Foster consents to a judgment being entered in the Adversary Proceeding No. 24-02185 (in a form specifically agreed to), avoiding the Subject Property Transfers under 11 U.S.C. §§ 544, 548 and California Civil Code §§ 3439.04 and 3439.05 and preserving the transfers for the bankruptcy estate under 11 U.S.C. §§ 550 and 551.
2. Turnover. The Subject Property is property of the bankruptcy estate and the bankruptcy estate's interest is superior to that of Foster.
3. Release of the Gift. The Trustee disclaims any interest and all claims related to the Gift.
4. Limited Release. Subject to the terms of this Agreement, including Bankruptcy Court approval, the Trustee does hereby, for the bankruptcy estate, itself, and its legal or other representatives, agents, affiliates, successors-in-interest and assigns, irrevocably and unconditionally releases, acquits and forever discharges Foster, his employees, officers, affiliates, parent entities, estates, attorneys, predecessors and successors, agents and assigns, and each of them, from any and all lawsuits, claims, actions, demands or other legal or equitable responsibilities, covenants or obligations of any kind which the Trustee may have based on, pertaining to, or arising from the estate's interest in the Subject Property and the purported Gift of \$100,000. Likewise, Foster does hereby for himself and his heirs, legal or other representatives, executors, agents, attorneys, administrators, successors-in-interest and assigns, irrevocably and unconditionally releases, acquits and forever discharges the Trustee, her employees, officers, affiliates, parent entities, estates, attorneys, predecessors and successors, agents and assigns, and each of them, from any and all lawsuits, claims, actions, demands or other legal or equitable responsibilities, covenants or obligations of any kind which Foster may have against the Trustee, pertaining to, or arising from the Subject Property and the Gift. The release does not extend to any other claims the Trustee may have, if any.

## **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. While the Trustee believes she has strong claims related to the Subject Property Transfers and that she would prevail in any litigation related to the transfers, the probability of success is ultimately unknown. However, with respect to the Gift, the Trustee has been unable to locate any evidence other than the Owner's testimony, and Foster vehemently disputes that he received any money. Given that the Trustee's primary goal in the Adversary Proceeding was to recover one hundred percent (100%) ownership of the Subject Property, which the Agreement provides, the Agreement as a whole is in the best interest of the estate. Mot. 5:16-24, Docket 264.

### **Difficulties in Collection**

This factor weighs in favor of the Agreement, with respect to the Gift. Foster claims he is unable to pay the estate any money in the event the Gift is avoided. The Trustee does not dispute Foster's claim, particularly considering that the Subject Property was in foreclosure due to a loan in Foster's name. *Id.* at 5:25-6:1.

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

This factor favors the Agreement. The estate would incur significant expense if the Trustee continued with litigation, which would be unnecessary and inconvenient in light of the Agreement. Indeed, the Agreement provides for the Subject Property Transfers to be avoided and preserved for the estate, and

Foster has agreed that a judgment can be entered in the Adversary Proceeding as to those matters. *Id.* at 6:3-8.

### **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 Subject Property and the Subject Property Transfers. The Agreement provides the estate an opportunity to liquidate the Subject Property solely for the benefit of the bankruptcy estate. Notably, the Trustee believes that the Subject Property has meaningful equity, exceeding \$100,000. Moreover, the Trustee is avoiding continued litigation and the expense associated with such litigation. The Agreement is in the best interest of creditors. *Id.* at 6:10-15.

### **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 the Estate will realize a meaningful return for creditors while avoiding potentially costly litigation. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Nikki 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 Diarro Foster (“Settlor”) 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. 269). The material terms of the compromise include:

1. Avoidance of the Subject Property, 487 Twin River Way, Sacramento, California Transfer. The Subject Property Transfers are avoided under 11 U.S.C. §§ 544, 548 and California Civil Code §§ 3439.04 and 3439.05 and preserved for the bankruptcy estate under 11 U.S.C. §§ 550 and 551. Foster consents to a judgment being entered in the Adversary Proceeding No. 24-02185 (in a form specifically agreed to), avoiding the Subject Property Transfers under 11 U.S.C. §§ 544, 548 and California Civil Code §§ 3439.04 and 3439.05 and preserving the transfers for the bankruptcy estate under 11 U.S.C. §§ 550 and 551.

2. Turnover. The Subject Property is property of the bankruptcy estate and the bankruptcy estate's interest is superior to that of Foster.
3. Release of the Gift. The Trustee disclaims any interest and all claims related to the purported Gift of \$100,000.
4. Limited Release. Subject to the terms of this Agreement, including Bankruptcy Court approval, the Trustee does hereby, for the bankruptcy estate, itself, and its legal or other representatives, agents, affiliates, successors-in-interest and assigns, irrevocably and unconditionally releases, acquits and forever discharges Foster, his employees, officers, affiliates, parent entities, estates, attorneys, predecessors and successors, agents and assigns, and each of them, from any and all lawsuits, claims, actions, demands or other legal or equitable responsibilities, covenants or obligations of any kind which the Trustee may have based on, pertaining to, or arising from the estate's interest in the Subject Property and the purported Gift of \$100,000. Likewise, Foster does hereby for himself and his heirs, legal or other representatives, executors, agents, attorneys, administrators, successors-in-interest and assigns, irrevocably and unconditionally releases, acquits and forever discharges the Trustee, her employees, officers, affiliates, parent entities, estates, attorneys, predecessors and successors, agents and assigns, and each of them, from any and all lawsuits, claims, actions, demands or other legal or equitable responsibilities, covenants or obligations of any kind which Foster may have against the Trustee, pertaining to, or arising from the Subject Property and the Gift. The release does not extend to any other claims the Trustee may have, if any.

Items 2 thru 3

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors and parties in interest, and Office of the United States Trustee on November 14, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer’s Fees and Expenses are granted.**

The Chapter 7 Trustee, Geoffrey Richards (“Trustee”), seeks to employ West Auctions, Inc. (“Auctioneer”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327, 328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Tori Elizabeth Jewel Barker (“Debtor”):

1. 2017 Chevrolet Equinox LS Sport, vin ending in 9567,

(“Vehicle”). Mot. 2:20-26, Docket 13. Trustee argues that Auctioneer’s appointment and retention is necessary to facilitate a liquidation of the Vehicle and produce the highest and best return to the estate. *Id.* at 3:3-10.

The essential terms of the Employment Agreement are as follows:

1. West will conduct an on-line public auction for the Vehicle on January 3, 2025, to January 8, 2025. Mr. Richards requests, however, that West be authorized to set and change the auction dates, and to conduct follow-up auctions, if appropriate, without further order of the Court.
2. West will store the Vehicle at its facility in Woodland, California.
3. West will oversee all auction activities.
4. West will post an on-line auction that sets forth bidding procedures, including the dates bidding is permitted and the date by which purchased property must be picked up by buyers.
5. From gross sale proceeds, West will be paid a commission in the amount of 15% of the gross sale price.
6. From gross sale proceeds, West will be reimbursed for its expenses, not to exceed \$1,300.00. Such expenses will include the transport of the Vessel to West's facility and storage until pick up by the buyer, inspection of the Vessel, advertising, DMV coordinator fees, auction set up and removal, and collection of sale proceeds.
7. West will assist with the transfer of title to the buyer. Past due DMV fees and penalties, if any, will be paid by the buyer.
8. The Vehicle will be sold as-is, where-is, and without warranty or representation. All sales will be final.
9. West will deliver to Mr. Richards a complete accounting from the sale of the Vehicle.

*Id.* at 3:19-4:10.

Donna Bradshaw, vice president of Auctioneer, testifies that West is experienced in sales of property like the Vehicle and is able to expose the Vehicle to a large number of prospective purchasers, and therefore, sell the Vehicle for the best possible price. West engages in extensive advertising, including internet advertisements, and it emails auction announcements to its subscriber list of approximately 33,700 people, and has 53,000 registered bidders.. Decl. ¶ 3, Docket 16. Ms. Bradshaw testifies West is a disinterested person as West does not represent or hold any interest adverse to the Debtor or to the estate. *Id.* at ¶ 8.

## **DISCUSSION**

### **Motion to Employ and Authorization to Sell**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the

trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ West Auctions, Inc. as Auctioneer for the Chapter 7 Estate.

Auctioneer is authorized to sell the 2017 Chevrolet Equinox LS Sport, vin ending in 9567.

### **Motion for Authorization of Fees and Expenses**

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)).

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)).

Here, Trustee has estimated that a fifteen percent broker's commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed \$1,300 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed \$1,300, in connection with the auction.

This allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

### **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 the sale may be allowed to move forward as soon as possible.

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.

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

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

The Motion to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective December 19, 2024, and Trustee is authorized to employ West Auctions, Inc. as Auctioneer for Trustee.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the 2017 Chevrolet Equinox LS Sport, vin ending in 9567.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of fifteen percent (15%) of the gross sales proceeds and expenses not to exceed \$1,300 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that the court does not authorize and Auctioneer shall not receive or be paid a “buyer’s premium” or other amount from any source in connection with the sale of the Vehicle.

**IT IS FURTHER ORDERED** that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

3. [24-24512-E-7](#)      **TORI BARKER**      **MOTION TO EMPLOY BARRY H.**  
[BHS-1](#)      **Ronald Holland**      **SPITZER AS ATTORNEY(S)**  
11-14-24 [18]

**Final Ruling:** No appearance at the December 19, 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, and Office of the United States Trustee on November 14, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Chapter 7 Trustee, Geoffrey Richards (“Trustee”) seeks to employ Barry H. Spitzer (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel, for a flat rate of \$1,500, to prepare certain Motions in this case.

Trustee argues that Counsel’s appointment and retention is necessary to prepare the Motion to Employ Auctioneer, Motion for Auctioneer’s Compensation, and Motion for Waiver of the 14-Day Stay.

Barry H. Spitzer testifies that he will prepare the Motions for Trustee. Mr. Spitzer testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. ¶ 7, Docket 21.

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

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

Local Bankruptcy Rule 9014-1(d)(5)(B)(iii) permits the court to authorize employment of a professional and to approve that professional's fees. That Rule states:

B) Notwithstanding the foregoing, the following requests for relief may be joined in a single motion, Fed. R. Civ. P. 18, incorporated by Fed. R. Bankr. P. 7018, 9014(c):

(iii) authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional, 11 U.S.C. §§ 327, 328, 330, 363, Fed. R. Bankr. P. 6004-6005.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Barry Spitzer as Counsel for the Chapter 7 Estate.

Here, the flat-rate fees requested of \$1,500 are reasonable for the services performed, and the court allows the fees as part of this Motion.

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

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

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

**IT IS ORDERED** that the Motion to Employ is granted, effective December 19, 2024, and Trustee is authorized to employ Barry Spitzer as Counsel for Trustee.

**IT IS FURTHER ORDERED** that flat-rate fees of \$1,500 are approved pursuant to 11 U.S.C. § 330 and Local Bankruptcy Rule 9014-1(d)(5)(B)(iii). The Chapter 7 Trustee is authorized to pay this sum to Counsel using funds of this Chapter 7 Estate.

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

4. [23-23834-E-7](#)  
[DNL-17](#)

**ANTONETTE TIN**  
**Peter Macaluso**

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
ANTONETTE TIN, ANTONETTE TIN AS  
TRUSTEE OF THE 2018 ANTONETTE  
BUTLIG TIN TRUST, ANTONETTE TIN  
AS THE TRUSTEE OF THE RA  
CORONEL FAMILY TRUST, EXEQUIEL  
ALLAN FERNANDO, EXEQUIEL ET AL.  
11-21-24 [\[251\]](#)**

**Items 4 thru 7**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, all creditors and parties in interest, and Office of the United States Trustee on November 21, 2024. By the court’s calculation, 28 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 for Approval of Compromise is granted.</b>
--

Nikki Farris, in her capacity as the Chapter 7 trustee for the substantively consolidated bankruptcy estate of Antonette Tin and the Royal Retreat at Royal green, LLC, (“Movant”) requests that the

court approve a compromise and settle competing claims and defenses with Tin, individually and as trustee of the 2018 Antonette Butlig Tin Trust (“ABT Trust”) and the Ra Coronel Family Trust (“RAC” Trust”), Exequiel Allan Fernando, individually and as trustee of the 2018 Exequiel Allan Fernando Trust (“EAF Trust”) and the EATF Special Needs Trust (“EATF Trust”), Erlinda B. Lynch, individually and as trustee of the EBL Family Trust (“EBL Trust”)(collectively, “Defendants”). The claims and disputes to be resolved by the proposed settlement involve claims surrounding the following items of real property:

- a. 8865 Haflinger Way, Elk Grove, CA 95757 (“Haflinger”);
- b. 779 Skylake Way, Sacramento, CA 95831 (“Skylake”);
- c. 986 Greenhurst Way, Sacramento, CA 95831 (“Greenhurst”);
- d. 865 Royal Green Avenue, Sacramento, CA 95831 (“Royal Green”);
- e. 8983 Richborough Way, Elk Grove, CA 95624 (“Richborough”); and
- f. 9706 Nature Trail Way, Elk Grove, CA 95757 (“Nature Trail”).

The Trustee asserts and the Defendants dispute liens (collectively “EJ Liens”) against property of the Defendants, Family Trusts based on a recordings, filings and orders related to the judgment entered in Sacramento County Superior Court Case No. 34-2022-00331072. Moreover, by Claim No. 2-1, Lynch asserts, and the Trustee disputes, a general unsecured claim based on a lease and agreement related to Royal Green LLC. These disputes are the subject of Adversary Proceeding Nos. 23-2098, 24- 02177, 24-02178 and 24-02179 (“Transfer Avoidance Cases”).

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. 254):

- a. Trustee Properties. By judgments entered in Adversary Proceeding Nos. 24-02177 and 24-02179 (collectively “Judgments”), the pre-approved forms of which are attached as Exhibit A to the Settlement Agreement, the Trustee shall have and recover Skylake, Greenhurst, Royal Green and Richborough (collectively “Trustee Properties”), free of all claims of interest of the Defendants, including all claims of exemption that have been asserted or could be asserted by Tin. The Defendants, and all others acting in concert with them, shall deliver possession of the Trustee Properties to me on behalf of the Bankruptcy Estate.
- b. Haflinger. Upon entry of the Judgments: (a) Tin shall be allowed an exemption (“Homestead”) in the amount of \$525,000 against Haflinger pursuant to California Code of Civil Procedure Section 704.730; (b) the limitations of 11 U.S.C. Sections 522(p) and 522 (q) and California Code of Civil Procedure Sections 704.720 and 704.960 shall be waived; and (c) the Bankruptcy Estate’s asserted interest in Haflinger shall be abandoned to Tin.

c. Nature Trail. Upon entry of the Judgments: (a) the Bankruptcy Estate's asserted interest in Nature Trail shall be abandoned to Lynch; and (b) her Proof of Claim 2-1 shall be disallowed with prejudice.

d. Dismissals. Upon entry of the Judgments: (a) Adversary Proceeding No. 23-2098 shall be dismissed with prejudice and the parties bearing their own attorney fees and costs; and (b) the EJ Liens shall be deemed withdrawn with prejudice. At the Defendants' request, the Trustee shall deliver a full satisfaction of the State Court Case Judgment and release of each of the abstracts, judgment lien notices, levies and rent assignment orders.

e. Releases. The Settlement Agreement includes an exchange of broad releases and a waiver of the provisions of California Civil Code Section 1542.

Mot. 3:14-4:11, Docket 251.

## **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 supports approving the compromise because the expected result of litigating the dispute is at best uncertain. The Defendants heavily dispute liability. The Trustee has been advised by counsel that the compromise is a fair and equitable result accounting the risks of litigation. Mot. 6:1-7, Docket 251.

### **Difficulties in Collection**

This factor supports approving the compromise because the Defendants appear to be “cash poor” and, without cooperation, liquidation of the Trustee Properties would be complicated by their government regulated use and the medical needs and privacy rights of their residents. *Id.* at 6:8-11.

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

This factor supports approving the compromise. Any continued litigation will require time and expense that is otherwise wholly avoidable by the compromise. Even if the Trustee is successful, such litigation would consume time and resources. *Id.* at 6:12-16.

### **Paramount Interest of Creditors**

This factor supports approving the compromise. Fabros/Serame support the proposed settlement, which is expected to produce a 100% return to priority claims and an approximate 90% return to other general unsecured creditors. *Id.* at 6:17-22.

### **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 and the Estate are able to avoid costly litigation while realizing a massive return for all creditors in the case. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Nikki Farris, in her capacity as the Chapter 7 trustee for the substantively consolidated bankruptcy estate of Antonette Tin and the Royal Retreat at Royal green, LLC, (“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 Tin, individually and as trustee of the 2018 Antonette Butlig Tin Trust (“ABT Trust”) and the Ra Coronel Family Trust (“RAC” Trust”), Exequiel Allan Fernando, individually and as trustee of the 2018 Exequiel Allan Fernando Trust (“EAF Trust”) and the EATF Special Needs Trust (“EATF Trust”), Erlinda B. Lynch, individually and as trustee of the EBL Family Trust (“EBL Trust”) (collectively, “Defendants”) 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. 254). The essential terms of the settlement are as follows:

a. Trustee Properties. By judgments entered in Adversary Proceeding Nos. 24-02177 and 24-02179 (collectively “Judgments”), the pre-approved forms of which are attached as Exhibit A to the Settlement Agreement, the Trustee shall have and recover Skylake, Greenhurst, Royal Green and Richborough (collectively “Trustee Properties”), free of all claims of interest of the Defendants, including all claims of exemption that have been asserted or could be asserted by Tin. The Defendants, and all others acting in concert with them, shall deliver possession of the Trustee Properties to me on behalf of the Bankruptcy Estate.

b. Haflinger. Upon entry of the Judgments: (a) Tin shall be allowed an exemption (“Homestead”) in the amount of \$525,000 against Haflinger pursuant to California Code of Civil Procedure Section 704.730; (b) the limitations of 11 U.S.C. Sections 522(p) and 522 (q) and California Code of Civil Procedure Sections 704.720 and 704.960 shall be waived; and (c) the Bankruptcy Estate’s asserted interest in Haflinger shall be abandoned to Tin.

c. Nature Trail. Upon entry of the Judgments: (a) the Bankruptcy Estate’s asserted interest in Nature Trail shall be abandoned to Lynch; and (b) her Proof of Claim 2-1 shall be disallowed with prejudice.

d. Dismissals. Upon entry of the Judgments: (a) Adversary Proceeding No. 23-2098 shall be dismissed with prejudice and the parties bearing their own attorney fees and costs; and (b) the EJ Liens shall be deemed withdrawn with prejudice. At the Defendants’ request, the Trustee shall deliver a full satisfaction of the State Court Case Judgment and release of each of the abstracts, judgment lien notices, levies and rent assignment orders.

e. Releases. The Settlement Agreement includes an exchange of broad releases and a waiver of the provisions of California Civil Code Section 1542.



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

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

-----

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

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

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

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

**The Motion for Turnover is XXXXXXX.**

#### **December 19, 2024 Hearing**

The court continued the hearing in this case to be heard in conjunction with the Motion to Approve Compromise. A review of the Docket on December 16, 2024 reveals nothing new has been filed with this court under this Docket Control Number.

At the hearing, XXXXXXX

#### **REVIEW OF MOTION**

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

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

## **DISCUSSION**

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

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

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

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

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

## **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge’s power to issue corrective sanctions, including incarceration, to obtain a person’s compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017).

Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

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

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

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

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

6. [23-23834-E-7](#)  
[DNL-8](#)

ANTONETTE TIN  
Peter Macaluso

**CONTINUED MOTION FOR TURNOVER  
OF PROPERTY**  
8-7-24 [[177](#)]

**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—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 August 7, 2024. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Turnover 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 for Turnover is <b>XXXXXXX</b></b>
--

**December 19, 2024 Hearing**

The court continued the hearing in this case to be heard in conjunction with the Motion to Approve Compromise. A review of the Docket on December 16, 2024 reveals nothing new has been filed with this court under this Docket Control Number.

At the hearing, **XXXXXXX**

## REVIEW OF MOTION

Nikki Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin (“Debtor Tin”) to account for and turn over her interest in The Retreat at Skylake LLC (“Skylake LLC”) and The Retreat at Greenhurst LLC (“Greenhurst LLC”).

Movant argues that on the petition date, Debtor Tin held 100% ownership of Skylake LLC and Greenhurst LLC. She used these LLCs to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way, Sacramento real properties, currently controlled by Debtor Tin and her spouse, Exequiel Fernando. Mot. 2:15-18, docket 177. **According to Movant, monthly income from Debtor Tin’s interest in the LLCs is estimated to be at least \$16,000 per month. *Id.* at 2:19-22. A sale of these interests could generate income for the Bankruptcy Estate. However, Debtor Tin has not complied with accounting and turnover requests made by Movant on April 23, 2024, and August 1, 2024. *Id.* at 2:25-26.**

Movant submits her own Declaration in support at Docket 180, authenticating the facts alleged in the Motion. Movant submits as Exhibits the prior requests for turn over and accounting. Docket 179.

On September 10, 2024, Movant submitted a Supplemental Declaration, detailing Bank of America’s response to a Rule 2004 Examination Request. Docket 216. Movant testifies as to large amounts of money being moved around among the entities post-petition, including a \$56,000 sum paid from Skylake LLC to a trust controlled by Debtor Tin, and Greenhurst LLC paying \$52,000 to a trust controlled by Mr. Fernando. *Id.* at ¶ 6.

## DISCUSSION

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

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

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

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

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

No opposition has been filed to this Motion by Debtor or any other party in interest.

The interests in the LLC’s are property of the Bankruptcy Estate and it is not clear what will be “turned over.” The Motion further requests that the Debtor turnover the proceeds of the LLCs that come into her possession, which would be the monies generated from the operations of the businesses therein.

At the hearing, the Parties identified the following items to be turned over to the Chapter 13 Trustee:

- A. \$5,562.00, which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate’s interest in The Retreat at Skylake LLC;
- B. \$5,022.00 which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate’s interest in The Retreat at Greenhurst LLC; and
- C. An Income and Expense Accounting for all revenues and expenses for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC.

**The profit distributions and the accountings shall be delivered to Russell J. Cunningham, Esq., counsel for the Chapter 7 Trustee on or before September 26, 2024. The payment by the Debtor of the \$5,562.00 and \$5,022.00 to the Trustee by the Debtor is without prejudice to the rights and interests of the Bankruptcy Estate to profit distributions from each of the Limited Liability Companies, computation of profits and distributions for that period, and other rights and interests relating thereto.**

The hearing on the Motion is continued to 10:30 a.m. on October 3, 2024.

## **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge’s power to issue corrective sanctions, including incarceration, to obtain a person’s compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017).

Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

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

The court continued the hearing on this Motion to allow Debtor to make all required turnover payments to Trustee, and to provide Trustee with an accounting for all revenues and expenses, and the profit distribution calculation, for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC. Order, Docket 228.

As of the court’s October 1, 2024 review of the Docket, no updated information had been filed with respect to the continued hearing.

At the hearing, counsel for the Trustee stated that from today’s hearing, the Trustee is looking to address the following.

The Debtor has provided accounts for the two care home LLCs. The two LLCs had \$500,000 gross revenues for the first 8 months, but only \$11,000 profit. Twenty percent of the revenue is being paid for rent to the Debtor and her husband.

Half of the rent is for the current period, and half is for “catch up” payments to the insider for the prior year. The Trustee needs to further investigate these payments and the computation of the profits from the LLCs which are due the Bankruptcy Estate.

**The Parties agreed that the Debtor, as the managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC will provide an Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation for October, November, and December, 2023, and for September 2024, all of which are post-petition months for which the Bankruptcy estate held the interests in the LLCs.**

The Parties agreed that these Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation will be made under penalty of perjury.

Additionally, the Debtor, as managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC, shall distribute to the Trustee any and all profits relating to the Estate’s interests in the LLC’s for these periods.

The Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation and distribution of the profits shall be made on or before 10:00 .m. on October 23, 2024, and be delivered to the office of Russell Cunningham, Esq., counsel for the Trustee by that time and date.

The hearing on the Motion is continued to 11:00 a.m. on October 24, 2024.

### **October 24, 2024 Hearing**

The court continued the hearing on this Motion to afford Debtor in this case to comply with Trustee’s demands for accountings under the penalty of perjury and to continue providing the Trustee with

profits of the operating care home LLCs. Debtor was to provide Trustee's counsel with the profits by October 23, 2024. Order, Docket 235.

A review of the Docket on October 21, 2024, reveals nothing new has been filed with the court under this docket control number. At the hearing, counsel for the Trustee requested that the hearing be continued a month as the Parties work to address these issues, if possible.

The Parties agreed to extend the prior order of the court, Dckt. 235.

The Motion is granted, with the court's prior order (Dckt. 335) extended.

The Hearing on the Motion is continued to 11:00 a.m. on December 5, 2024.

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

The court continued the hearing on this Motion from October 24, 2024, at the Parties' request for a continuation. A review of the Docket on December 3, 2024, reveals nothing new has been filed with the court. At the hearing, the Parties requested the hearing be continued so it may be conducted in conjunction with a Motion to Approve Compromise that resolves these issues.

The hearing is continued to 10:30 a.m. on December 19, 2024.

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

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

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

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

7. [23-23834-E-7](#)      **ANTONETTE TIN**  
[24-2179](#)      **Peter Macaluso**  
**CAE-1**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**8-20-24 [1]**

**FARRIS V. ANTONETTE TIN,**  
**TRUSTEE OF THE RA CORONEL**

Plaintiff's Atty: J. Russell Cunningham  
Defendant's Atty: Gregory M. Finch

Adv. Filed: 8/20/24  
Answer: 9/9/24  
First Amd. Answer: 9/17/24

Nature of Action:  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)  
Recovery of money/property - preference  
Recovery of money/property - other  
Declaratory judgment

Notes:  
Continued from 11/13/24

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

### **DECEMBER 19, 2024 STATUS CONFERENCE**

On December 19, 2024, a hearing was conducted in the Tin Bankruptcy Case for approval of a settlement that provides for the entry of a judgment in this Adversary Proceeding. ~~The court granted the Motion for Approval of the Settlement.~~

At the Status Conference, XXXXXXX



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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on November 27, 2024. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

<b>The Motion for Allowance of Professional Fees is <del>granted</del>.</b>
---

David Foyil, the Attorney ("Applicant") for Ismoil Kasimov, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 3, 2024 through November 22, 2024. The order of the court approving employment of Applicant was entered on September 16, 2024. Docket 81. Applicant requests fees in the amount of \$17,513.90 and costs in the amount of \$348.04. Applicant was paid a \$7,500 retainer prior to filing the petition, which Applicant seeks authorization to retain and apply toward his earned fees.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney'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 attorney 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 an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “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 generally administering the Chapter 11 case, which ultimately failed when creditor BMO Bank N.A. was successful on their Motion for Relief. The Motion for Relief was granted at Docket 80 as Debtor in Possession was unable to explain to the court where the collateral was physically located, and who owned which items of collateral. The case had other troubling issues involved, including failing to timely tender filing fees that resulted in the court issuing an Order to Show cause.

In reviewing the billing records, counsel for the Debtor in Possession, the only licensed attorney working on this case for whom billings are presented, lists the following services provided by the attorney:

5/28/2024.....Review Staff Noted, creditor message re repossession.....	0.10 hr
6/24/2024.....Review Skeleton Petition, Application to Pay Filing Fee in Installments.....	0.20 hr
7/8/2024.....Telephone Client re Possible Creditors.....	0.10 hr
7/15/2024.....Review Staff Note.....	0.10 hr
8/5/2024.....Appear (telephonic) at IDI.....	1.00 hr
8/19/2024.....Appear (telephonic) at Continued IDI.....	0.70 hr
8/20/2024.....Appear (telephonic) at 341.....	1.10 hr
8/20/2024.....Review/Edit Employment Application, Instruct Staff.....	0.20 hr
9/11/2024.....Appear at Court, Review File.....	1.00 hr
9/12/2024.....Appear (telephonic) at hearing on motion for relief and employ counsel.....	0.60 hr
9/18/2024.....Review Case Status, Notes, Hearing Prep.....	0.30 hr
9/18/2024.....Appear (telephonic) Status Conference.....	0.90 hr
9/24/2024.....Telephonic Call With Client.....	0.10 hr
10/1/2023.....Appear (telephonic) at Continued 341 Meeting.....	0.03 hr
10/18/2024.....Appear at Hearing, Review File.....	1.00 hr

10/29/2024.....Telephone Call With Client.....0.20 hr

11/8/2024.....Appear (telephonic) Rule 2004 Exam.....0.90 hr

11/21/2024...Appear (telephonic) Rule 2004 Exam.....0.50 hr

The one licensed attorney providing the legal representation for the Debtor in Possession billed a total of 9.30 hours for services provided from the period May 28, 2024 (the day the case was filed) through November 21, 2024.

However, the various non-attorneys working on this file have billed 109.30 hours for which compensation is sought. The licensed attorney representing the Debtor in Possession accounted for only 7.8% of the time for services provided.

Applicant, in explaining the reasonableness of the fees in light of the unsuccessful trajectory of the case, at the hearing, **XXXXXXX**

## **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.

General Case Administration: Applicant spent 64.74 hours in this category.

Asset Analysis and Recovery/Asset Disposition: Applicant spent .60 hours in this category.

Relief from Stay/Adequate Protection Proceedings: Applicant spent 15.30 hours in this category.

Meet ings of and Communications with Creditors: Applicant spent 9.59 hours in this category.

Fee/Employment Applications: Applicant spent 4 hours in this category.

Other Contested Matters (excluding assumption/rejection motions): Applicant spent 21.20 hours in this category.

Business Operations: Applicant spent 2.10 hours in this category.

Claims Administration and Objections: Applicant spent 1 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>
David Foyil, Esq. (the court's computation of time billed from the billing statement is 9.30 hrs)	9.40	\$400.00	\$3,760.00
Hannah Hooker (paralegal)	7.50	\$195.00	\$1,462.50
Galina Dorris (certified law student)	.50	\$205.00	\$102.50
Heather Temple (paralegal)	.20	\$165.00	\$33.00
Diana Santacruz (paralegal)	32.50	\$135.00	\$4,387.50
Alina Shapiulaeva (translation services and client support)	10.40	\$135.00	\$1,404.00
Meredith Brown (case analyst)	.80	\$135.00	\$108.00
Gayle Aguilar (secretary)	32.40	\$110.00	\$3,564.00
Katherine King (secretary)	12.74	\$110.00	\$1,401.40
Demi Castaeneira (secretary)	11.09	\$110.00	\$1,219.90
Rhonda Welser (secretary)	1	\$110.00	<u>\$110.00</u>
	109.13		
<b>Total Fees for Period of Application</b>			<b>\$17,552.80</b>

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$348.04 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$160.04
Copying		\$187.00
Filing Fees		\$1.00
<b>Total Costs Requested in Application</b>		<b>\$348.04</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 \$17,513.90 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession.

### Costs & Expenses

First and Final Costs in the amount of \$348.04 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

_____ Fees _____	\$17,513.90
_____ Costs and Expenses _____	\$348.04

~~pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case. Applicant is authorized to retain the pre-petition retainer of \$7,500 and apply that toward the fees awarded.~~

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 David Foyil, the Attorney (“Applicant”) for Ismoil Kasimov, Debtor in Possession (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\_\_\_\_\_ David Foyil, Professional employed by Debtor in Possession

~~Fees in the amount of \$17,513.90~~

~~Expenses in the amount of \$348.04,~~

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as  
counsel for Debtor in Possession.

~~**IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay the fees and costs allowed by this Order in a manner consistent with the order of distribution in a Chapter 11 case. Applicant is authorized to retain the pre-petition retainer of \$7,500 and apply that toward the fees awarded.~~

**9. 24-25163-E-11**

**AK INVESTMENTS, LLC**

**Pro Se**

**MOTION TO DISMISS CASE**

11-25-24 [10]

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

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

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

Sufficient Notice Provided. The court set the hearing for December 19, 2024. Dckt. 11.

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

**The Motion to Dismiss is XXXXXXX.**

On November 14, 2024, a Chapter 11 Bankruptcy Petition was filed for Debtor AK Investments, LLC. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor. On the Petition the name Jeff Czech is typed in as an attorney for the Debtor, but Jeff Czech did not sign the Petition. Dckt. 1 at 4. The Clerk of the Court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss if the Documents were not filed. Dckt. 2. The missing documents include: the List of the Creditors holding the 20 largest unsecured claims; List of Equity Security Holders, Master Equity Security Holder Address List, Schedules

A/B, D, E/F, G, H; Statement re Corporate Debtor; Statement of Financial Affairs; and Summary of Assets and Liabilities. *Id.*

The Clerk of the Court also issued a Notice to Debtor Concerning Legal Representation. Dckt. 3. This provides notice that the corporate Debtor must be represented by an attorney and cannot represent itself via its officers, managers, and representatives.

On November 25, 2024, a Motion to Dismiss Chapter 11 Bankruptcy Case was filed for the Debtor by Vishal V. Kaura, who is identified as “Authorized Representative, Manager, AK Investments, LLC. Vishal Kaura is not identified as being an attorney licensed to practice law in the State of California. Dckt. 10.

### **Prior Filing of Bankruptcy Cases For Debtor - Not Represented by an Attorney**

This not the Debtor’s and Vishal Kaura’s first foray into the world of Bankruptcy with the Debtor not represented by an attorney. The court has identified several prior bankruptcy cases by the Debtor and related entities for whom bankruptcy cases were filed without an attorney representing the limited liability company debtor.

- a. AK Investments, LLC.....Chapter 11 Case No. 24-24458
  - i. Filed.....October 3, 2024
    - (1) Dismissed.....October 15, 2024.
      - (a) Dismissed for failure to timely file Documents, including: Schedules, Statement of Financial Affairs, List of Creditors Holding 20 Largest Unsecured Claims, and Summary of Assets and Liabilities.
  - ii. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor.
    - (1) On the Petition, in the Signature of Attorney Section, the name Pauldeep Bains is typed in, with the firm name stated to be “Sacramento Bankruptcy Lawyer.” 24-24458; Petition, Dckt. 1 at 4.
  - iii. The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-24458.
- b. In Case 24-24458, the U.S. Trustee filed a Notice of Related Cases, in which the U.S. Trustee identified the following cases having been filed by the Debtor or Vera Holdings, LLC, whose address was the same as the Debtor and Petitions for both the Debtor and Vera Holdings, LLC having been signed by Vishal V. Kaura.
  - i. AK Investments, LLC.....Chapter 11 Case 24-23560



- (1) Case filed.....August 12, 2024
    - (a) Dismissed.....August 26, 2024.
      - (i) Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).
  - (2) On the Petition the name of the person signing the Petition for the Debtor is not typed in, but it appears to be the signature of Vishal V. Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.
  - (3) The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-23560; Dckt. 3.
- ii. Vera Holdings, LLC.....Chapter 11 Case 24-22817
- (1) Filed.....June 27, 2024
    - (a) Dismissed..... July 9, 2024
      - (i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).
  - (2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-22817; Dckt. 1 at 4. No attorney's name is typed on this Petition.
  - (3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the Vera Holdings, LLC must be represented by an attorney. 24-22817; Dckt. 3.
- iii. Vera Holdings, LLC.....Chapter 11 Case 24-22289
- (1) Filed.....May 24, 2024
    - (a) Dismissed..... May 31, 2024
      - (i) Dismissed was pursuant to an Order to Show Cause regarding the failure of Vera Holdings,

LLC to be represented by Counsel. 24-22289;  
Order to Show Cause, Dismissal Order, Dckts.  
5, 14.

- (2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.
  - (3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing Vera Holdings, LLC and its officers, agents, and representatives that Vera Holdings, LLC must be represented by an attorney. 24-22289; Dckt. 3.
- iv. Vera Holdings, LLC.....Chapter 11 Case 24-23695.
- (1) Filed.....August 20, 2024
    - (a) Dismissed..... September 13, 2024
      - (i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).
  - (2) On the Petition the name of the person signing the Petition for the Vera Holdings, LL is written in next to the signature, and is Vishal V. Kaura. 24-23695; Dckt. 1 at 4. No attorney's name is typed on this Petition.
  - (3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the Vera Holdings, LLC must be represented by an attorney. 24-23695; Dckt. 3.
  - (4) In connection with Case 24-23695 filed by Vera Holdings, LLC, the U.S. Trustee commenced an Adversary Proceeding and obtained a Judgment prohibiting Vera Holdings, LLC from filing a bankruptcy case for two years without obtaining authorization from the Chief Bankruptcy Judge in the District where it sought to file another bankruptcy case. 24-02181; Judgment, Dckt. 18.

**California Secretary of State  
Online Status of Entity Service**

A review of the California Secretary of State Website online service for checking the status of corporate, LLC, and other non-living person entities provides information with respect to AK Investments, LLC, including: its principal and mailing addresses are 8850 Williamson Dr., Unit 2204, Elk Grove,

California 95759, and its Agent is an individual identified as Vishal V. Kaura, 8850 Williamson Dr., Unit 2204, Elk Grove, California 95759. <sup>FN.1.</sup>

FN. 1. <https://bizfileonline.sos.ca.gov/search/business>.

From the files in this court, Vishal Kaura, the Manager and representative of Debtor has been informed and educated on multiple prior occasions that the Debtor (and another limited liability company entity) must be represented by an attorney and cannot file bankruptcy merely through an officer or manager who is not an attorney. A search of the State Bar of California website online attorney search service discloses that there is not an attorney named “Vishal Kaura” who is licensed to practice law in California

## **Motion to Dismiss**

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.

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

In this case, Vishal V. Kaura, as the Authorized Representative, Manager, AK Investments, LLC has signed and filed a Motion to Dismiss the current Bankruptcy Case. Dckt. 10. In it he states that the Bankruptcy Case was filed to stop a foreclosure sale (Motion, § 1, ¶ 2), the creditor will now negotiate with Debtor, and Debtor concludes that the Bankruptcy Case is now not necessary. Motion, § 1, ¶¶ 2, 3, 4; Dckt. 10.

It appears that notwithstanding having been provided notification that the Debtor, and other non-human entities, must be represented by an attorney, Vishal V. Kaura has knowingly filed multiple bankruptcy cases for Debtor – even though Vishal V. Kaura is not an attorney licensed to practice law in California.

### **Motion for Relief From Stay**

On December 11, 2024, U.S. Bank, N.A., as Indentured Trustee, filed a Motion for Relief From the Stay. Dckt. 17. The relief requested is not only for relief in this Bankruptcy Case, but for relief pursuant to 11 U.S.C. § 362(d)(4), which would then preclude an automatic stay going into effect with respect to the property for a two year period following the entry of the order granting 11 U.S.C. § 362(d)(4) relief.

The hearing on the Motion for Relief From the Stay is set for 10:00 a.m. on January 9, 2025.

### **Adversary Proceeding**

The United States Trustee for Region 17 has commenced Adversary Proceeding 24-02212, against the Debtor from filing a bankruptcy case for a period of two years without first obtaining authorization from the Chief Bankruptcy Judge in the District where Debtor seeks to file another bankruptcy case. The U.S. Trustee notes in the Complaint that such a judgment has been entered against Vera Holdings, LLC, for which Vishal V. Kaura is the person signing the petition and commencing the bankruptcy cases for Vera Holdings, LLC.

### **DECISION**

At the hearing, **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 AK investments, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Items 10 thru 14

**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 the parties in interest on November 25, 2024. By the court’s calculation, 24 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
-----.

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

Hardave Singh Dulai and Sukhbinder Kaur Dulai, Debtor in Possession, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with FCA US, LLC, Hoblit Chrysler Dodge Jeep Ram (“Settlor”). The claims and disputes to be resolved by the proposed settlement s settles the lemon law lawsuit filed by Debtors against Defendants regarding their 2017 Dodge Ram (VIN: 1C6RR7NM9HS875876) (“Dodge Ram”).

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 1 in support of the Motion, Dckt. 235):

a. Defendants will pay Debtors \$124,170.00 to repurchase the Dodge Ram.

b. Defendants agree to also pay Debtors' attorneys' fees, costs and expenses in an amount to be determined by noticed motion to the California Superior Court and Defendants agree Debtors' are the prevailing party.

c. Strategic Legal Practices, APC, has agreed to accept thirty percent (30%) as their contingency fee; or 30% of \$106,940.08 = \$32,082.02. If this compromise is approved an Application for Approval of Compensation for Strategic Legal Practices, APC, will be filed and set for hearing.

d. Within fourteen (14) days of accepting/approval of the Settlement Agreement, Plaintiffs will provide Debtors' counsel with outstanding loan payoff information and amount for the Dodge Ram. (Claim No. 7 \$2,510.72)

e. Within (60) days of Plaintiffs' providing the loan payoff information for the Dodge Ram, Plaintiffs will transfer possession of the Dodge Ram to Debtors with no liens or encumbrances, other than any outstanding loan payoff, and Plaintiffs' will execute such documents as are necessary to transfer possession of and clear title to the Dodge Ram to Defendants on a mutually agreeable date and time at the mutually agreeable authorized Defendant dealership.

f. No later than two (2) business days after the transfer of possession of the Dodge Ram and execution of transfer documents as set forth in Paragraph 4, Defendants will send a check via overnight mail to Plaintiff's counsel of record for the amount set forth in Paragraph 1 (minus the loan payoff amount), made out to "Strategic Legal Practices, APC Attorney-Client Trust Account, attorneys for Dave Dulai." (Check total; \$121,659.28).

Mot. 3:5-27, Docket 232.

### **Settlor's Responsibility to Pay Legal Fees**

The Motion states that the "total Settlement Amount is \$124,170.00," directing the court to the Settlement Agreement which is provided as Exhibit 1. Motion, ¶ B; Dckt. 232. However, in another part of the Motion it is stated that the \$124,170.00 is to "repurchase the Dodge Ram," *Id.*, p. 3:5, and then in addition to that the Defendants also agree to pay the Debtors' attorneys' fees and costs, *Id.*, p. 3:6-18. Thus, it appears the total Settlement Amount is \$124,170.00, plus the attorney's fees and costs awarded Debtor by the State Court judge.

Exhibit 1, Dckt. 235, is a Statutory California Code of Civil Procedure § 998 offer, which has been accepted. The Plaintiff in that State Court Action is "Dave Dulai." On the Amended Petition, the name "Dave Dulai" is listed as a name used by Debtor Hardave Singh Dulai. Dckt. 42 at 1.

Under the terms of the § 998 Settlement, the Defendant FCA-US, LLC ("FCA") is obligated to pay the following:

1. \$124,170.00 "to repurchase the 2017 Ram 1500 . . . that is the subject of this action."

2. “In addition, FCA agrees to also pay Plaintiff’s attorney’s fees, costs and expenses in an amount to be determined by noticed motion to the Court. . . .”

Cal. C.C.P. § 998 Settlement, ¶¶ 1, 2; Exhibit 1, Dckt. 234

However, inconsistent with this Settlement Agreement, the Debtor in Possession requests that the court divert \$32,082.02 to the State Court Attorney for legal fees, without the State Court having determined such fees and costs, and those being paid by FCA.

It is unclear how this court can allow fees and costs which, by the clear terms of the Settlement, must be determined by the State Court judge.

At the hearing, **XXXXXXX**

## **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 Settlement Agreement. While the Debtors’ contend that they would prevail in any litigation concerning the Lemon Law Lawsuit, potential drawn out litigation makes the probability of success ultimately unknown. Importantly, as noted below, absent the Settlement Agreement, the Debtors’ would have to litigate what portion of any recovery based upon the defects in the Dodge Ram versus personal damages is cost prohibitive. Such litigation does not make sense and be better left to agreement in the underlying proceeding. Mot. 4:19-26, Docket 232.

### **Difficulties in Collection**



This factor is neutral. Assuming Defendants are solvent any agreed upon settlement amount should be collectable. *Id.* at 4:27-5:1.

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

This factor supports the Settlement Agreement. The Lemon Law Lawsuit only involves the Dodge Ram, the litigation is particularly complex, the estate would incur a fair amount of expense litigating the dispute and likely would exceed the 30% Strategic Legal Practices, APC, agreed to accept pending this Court's approval. The Debtors' would have to litigate what portions of any potential recovery are attributable to pain and suffering, which would also be inconvenient. *Id.* at 5:2-8, Docket 232.

### **Paramount Interest of Creditors**

This factor heavily weighs in favor of the Settlement Agreement. The Debtors believe that the Settlement Agreement is in the best interest of the estate because the Settlement Agreement avoids the need for litigation and provides a sure return to the estate. *Id.* at 5:9-19.

### **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 Debtor in Possession will recover sufficient funds for the work truck that will allow Debtor in Possession to purchase as new replacement work truck. 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 Hardave Singh Dulai and Sukhbinder Kaur Dulai, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and FCA US, LLC, Hoblit Chrysler Dodge Jeep Ram ("Settlor," "Defendants") 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 1 in support of the Motion (Dckt. 235). The essential terms of the settlement are as follows:

- a. Defendants shall pay Debtors \$124,170.00 to repurchase the Dodge Ram.

b. Defendants agree to also pay Debtors' attorneys' fees, costs and expenses in an amount to be determined by noticed motion to the California Superior Court and Defendants agree Debtors' are the prevailing party.

~~c. Strategic Legal Practices, APC, has agreed to accept thirty percent (30%) as their contingency fee; or 30% of \$106,940.08 = \$32,082.02. If this compromise is approved an Application for Approval of Compensation for Strategic Legal Practices, APC, will be filed and set for hearing.~~

d. Within fourteen (14) days of accepting/approval of the Settlement Agreement, Plaintiffs will provide Debtors' counsel with outstanding loan payoff information and amount for the Dodge Ram. (Claim No. 7, \$2,510.72)

e. Within (60) days of Plaintiffs' providing the loan payoff information for the Dodge Ram, Plaintiffs will transfer possession of the Dodge Ram to Debtors with no liens or encumbrances, other than any outstanding loan payoff, and Plaintiffs' will execute such documents as are necessary to transfer possession of and clear title to the Dodge Ram to Defendants on a mutually agreeable date and time at the mutually agreeable authorized Defendant dealership.

f. No later than two (2) business days after the transfer of possession of the Dodge Ram and execution of transfer documents as set forth in Paragraph 4, Defendants will send a check via overnight mail to Plaintiff's counsel of record for the amount set forth in Paragraph 1 (minus the loan payoff amount), made out to "Strategic Legal Practices, APC Attorney-Client Trust Account, attorneys for Dave Dulai." (Check total; \$121,659.28).

**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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, Creditor, equity security holders, and Office of the United States Trustee on October 31, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Opposition was presented.

<p><b>The Motion to Value Collateral and Secured Claim of HD Owner, LLC</b> <b>(“Creditor”) is <span style="color: red;">XXXXXXX</span>.</b></p>
--

#### **December 19, 2024 Hearing**

On December 5, 2024, and December 9, 2024, Creditor filed their Opposition and supporting pleadings with the court. Dockets 250-267. Creditor states:

1. Creditor submits the appraisal report of Benjamin E. Holt in support of a total valuation of \$3,930,000. Opp'n 6:11-16, Docket 250.
2. Mr. Holt appraised the properties and divided them as follows:
  - a. “Live Oak Property;” APN: 010-180-037; 38.84 acres located in unincorporated Sutter County (Ex. 5 of Mr. Kurz's appraisal);
  - b. “Gridley Property;” APN: 024-130-019; 024-130-020; 024-130-021; Total of 27.77 acres located in unincorporated Butte County (Ex. 1, 3, and 4 of Mr. Kurz's appraisal);

- c. “Dulai Property;” APN: 027-220-072; 64.22 acres located in Butte County (Ex. 2 of Mr. Kurz’s appraisal).
3. In Mr. Holt’s opinion, Mr. Kurz’s selection of comparable sales disregards the actual comparability of the properties in favor of an emphasis on current sales, which is the primary reason for the significant differences in their valuations of the Live Oak Property and the Dulai Property. *Id.* at 7:6-9.
4. Mr. Kurz’s valuation of the Live Oak Property does not take into consideration the building site potential. This property is in close proximity to Yuba City, with large estate homes in the immediate area and recent sales of open land at \$25,000 per acre. *Id.* at 7:10-12.
5. Mr. Kurz categories of comparable sales do not take into account the agricultural components of the properties:
  - a. Mr. Kurz’s valuation of the Dulai Property does not incorporate any analysis of the effect of pistachio sales on value and utilized sales of inferior orchard types to value a young pistachio orchard.
  - b. Mr. Kurz’s valuation of the Gridley Property did not incorporate sales of kiwi vineyards, which command value well above land value, even if the kiwi vineyards are older or are in poor condition.
  - c. Mr. Kurz’s valuation of the Live Oak Property does not take into consideration localized sales in the immediate market area which does not capture the site value, and does not take into account the demand for peach orchard acreage which is evident by the recent development of peach orchards on the property.
6. *Id.* at 7:13-24.

### **Debtor in Possession’s Reply**

Debtor in Possession filed a Reply on December 13, 2024. Docket 271. Debtor in Possession states:

1. Creditor fails to address that farmland property prices have decreased significantly in the last twelve-months. HD Owner has not provided any evidence or explanation of how the collateral increased in value \$1.65 million dollars since the filing of this case and HD Owner’s first filed claim, Claim No. 16, filed on April 1, 2024. *Id.* at ¶ 1.
2. Mr. Holt is not a local appraiser and does not know the region in which the Debtors’ real property collateral is located. Mr. Kurz provides a detailed explanation as to how he arrived at his values for the real property collateral based upon precise and regional market dynamics and local comparable sales. *Id.* at ¶ 5.

3. The Declaration of Douglas C. Kurz in Support of Reply provides more detail as to how HD Owner arrives at a value that is far higher than their first filed Claim No. 16. HD Owner's appraiser, Mr. Holt, did not use regional comparable sales and bracketing to reach the value of HD Owner's real property collateral. Instead, not comparable sales were used from properties hundreds of miles away from the Debtors real property collateral at issue in this case. *Id.* at ¶ 6.
4. Declaration of Hardave Dulai in Support of this Reply provides a sampling of recent articles that area public record regarding the status of values of farmland in California and why these land values have and are decreasing. *Id.* at ¶ 8.
5. On January 23, 2024, HD Owner foreclosed on part of Debtors' farmland with a per acre value of \$13,571.43. It is disingenuous and a fraud on this Court and to argue Debtors' similar farmland is somehow worth \$1.6 million or more than HD Owner bid and believed themselves comparable farmland is worth when they themselves had to value Debtors' foreclosed comparable farmland. *Id.* at ¶ 9.

### **Analysis of the Appraisal Reports**

The court has reviewed both Mr. Kurz's and Mr. Holt's appraisals.

#### **Debtor in Possession Appraisals**

943 Center Avenue, Gridley, CA ; Exhibit 1. For the real property commonly known as 943 Center Avenue, Gridley, CA 95948, Mr. Kurz arrives at the valuation of \$907,000 by listing five comparable properties, making adjustments based on overall acreage, location, view and design, age, condition, room count and living area square footage, as well as other buildings or structures on the properties. Ex. 1, Docket 196. After adjustments, the comparables range from \$882,030 to \$967,985.

1076 Cox Lane, Oroville, California; Exhibit 2. For the real property commonly known as 1076 Cox Lane, Oroville, CA, APN 027-220-072-000 Lot Sq. Ft. 2,797,423 or 64.22 Acres, Mr. Kurz arrives at the valuation of \$674,000 by listing four comparable properties, making adjustments based on location, the acreage of the agricultural land, and any other notable improvements. After adjustments, the comparable properties range from \$514,700 to \$861,271. Ex. 2, Docket 197.

Pcl 21 Center Avenue , Gridley, California; Exhibit 3. For the real property commonly known as Pcl 21 Center Avenue APN 024-130-021-000, 9.78 Acres; Pasture, Mr. Kurz arrives at the valuation of \$219,000 by listing six comparable properties, making adjustments based on location, the acreage of the agricultural land, and any other notable improvements. After adjustments, the comparable properties range from \$205,000 to \$241,840. Ex. 3, Docket 198.

Pcl 19 Center Street , Gridley, California; Exhibit 4. For the real property commonly known as Pcl 19 Center Street APN 024-130-019-00 8.94 acres, Mr. Kurz arrives at the valuation of \$200,000 by listing six comparable properties, making adjustments based on location, the acreage of the agricultural land,

and any other notable improvements. After adjustments, the comparable properties range from \$176,081 to \$242,847. Ex. 4, Docket 199.

Pcl 37 & 38 Broadway, Live Oak, California; Exhibit 5. For the real property commonly known as Pcl 37 & 38 Broadway, Live Oak, California; APN 010-180-037-000 and 010-180-038-000, 40 acres; Mr. Kurz arrives at the valuation of \$477,000 by listing three comparable properties, making adjustments based on location, the acreage of the agricultural land, and any other notable improvements. After adjustments, the comparable properties range from \$376,305 to \$618,772. Ex. 5, Docket 200.

Adding these valuations, the aggregate amount for the Properties as determined by Mr. Kurz is \$2,477,000.

### Creditor Appraisals

Mr. Holt's appraisal spans from Dockets 252 through 267. Mr. Holt's appraisal involves a holistic approach, considering myriad factors that may influence the market conditions. Mr. Holt made his comparisons considering real property rights transferred, financing terms, sale conditions, immediate expenditures made, market conditions, location, and physical characteristics. Ex. 1 at 74-76, Docket 258. Regarding physical characteristics, Mr. Holt considered access, size, shape, topography, soils (soil quality, soil suitability, and soil limitations), water supply (surface water supplies and entitlements, water sources, groundwater supplies, and water costs), irrigation distribution system, land use (varieties and production methods, age and condition of permanent plantings), economic characteristics, use, and non-realty components of value.

There are some comparable sales of land offered in support of this methodology as well. *Id.* at 89; Ex. 1 at 97-99, Docket 259. Mr. Holt makes the claim:

Location is certainly important, as it is in any real estate. However, it is often less important than the quality of the ground itself. Location is an indicator of water cost, which can be one of the biggest inputs in a property. Farms in locations with reliable, less expensive water supplies tend to sell for higher prices. Much of the Sacramento Valleys enjoys good supplies of less expensive (sometimes even "cheap") water, and values are often stronger in these areas. Properties near Live Oak and Yuba City have higher homesite demand, which impacts the price paid. As such, those properties near Yuba City, particularly near the subject Live Oak Property and south of the city are considered superior to more remote parcels.

Ex. 1 at 96, Docket 259.

Mr. Holt breaks the Properties down into three category groups:

The "Live Oak Property"

APN: 010-180-037  
38.84 acres located in unincorporated Sutter County  
Valuation.....\$1,030,000;

For the Broadway Properties in Live Oak, California, Mr. Kurz identifies two parcels, APN 010-180-037-000 and 010-180-038-000, totaling 40 acres, with a combined value of \$477,000.

The “Gridley Property”

APN: 024-130-019; 024-130-020; 024-130-021

Total of 27.77 acres located in unincorporated Butte County;

Valuation.....\$1,300,000;

For the property in Gridley, California, Mr. Kurz identifies two parcels by the APNs and the other by the City, and states an aggregated value of \$1,326,000.

and

“Dulai Property”

APN: 027-220-072

64.22 acres located in Butte County.

Valuation.....\$1,300,000.

For the property in Butte County, APN 027-220-072-000 , Mr. Kurz states a value of \$676,000.

The aggregate value of the Properties as determined by Mr. Holt is \$3,930,000, as compare to the aggregate value of \$2,477,000 as determined by Mr. Kurz.

For the property in Gridley, the two appraisers are in agreement as to value.

However it is for the Butte County Properties and the Live Oak Properties that Mr. Holt’s valuations are double those of Mr. Kurz’s valuations.

### **Valuation of Properties**

Debtor and Creditor’s experts have substantially different numbers to support the valuation of the Properties, being approximately \$1.5 million apart. It may be the Parties need an evidentiary hearing to determine the value, given the complex nature of appraising agricultural land and the value of these Properties, but only in the event the Parties are unable to reach an agreement as to value.

At the hearing, **XXXXXXX**

### **REVIEW OF MOTION**

The Motion to Value filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) to value the secured claim of HD Owner, LLC (“Creditor”) is accompanied by the Declaration

of Douglas C. Kurz, a licensed agricultural real estate appraiser. Declaration, Docket 195. Debtor in Possession is the owner of the following parcels of real property:

- A. Exhibit “1” Subject Property 943 Center Avenue, Gridley, CA 95948 – Primary Residence/Shop/Land: 3 Parcels; Primary Residence, Shop, Thresher Planted: Walnuts, Peaches and Kiwis APN 024-130-019, 024-130-020; 024-130-021. Value: \$907,000.00.
- B. Exhibit “2” Subject Property 1076 Cox Lane APN 027-220-072-000 Lot Sq. Ft. 2,797,423 or 64.22 Acres; Pasture (“Cox Lane Appraisal”). At Lone Tree, Palermo Road and Cox Land and Railway Tracks 64.22 Acres Planted: Pistachios. Value: \$674,000.00.
- C. Exhibit “3” Subject Property Pcl 21 Center Avenue APN 024-130-021-000 9.78 Acres; Pasture; See the Pcl 21 Center Avenue appraisal (“21 Center Appraisal”) attached as Exhibit “3” to the Exhibits Pleading filed concurrently hereto and incorporated herein by reference. Value: \$219,000.00.
- D. Exhibit “4” Subject Property Pcl 19 Center Street APN 024-130-019-00 8.94 acres; See the Pcl 19 Center Street appraisal (“19 Center Appraisal”) is attached as Exhibit “4” to the Exhibits Pleading filed concurrently hereto and incorporated herein by reference. Value: \$200,000.00.
- E. Exhibit “5” Subject property Pcl 37 & 38 Broadway APN 010-180-038-000 and 010-180- 038-000 40 acres; See the Pcl 37 & 38 Broadway appraisal (“37 & 38 Broadway Appraisal”) is attached as Exhibit “5” to the Exhibits Pleading filed concurrently hereto and incorporated herein by reference. Value: \$477,00.00.

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

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to set off is less than the amount of such allowed



claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

### **Proof of Claim 16-2 Filed by Creditor**

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

### **DISCUSSION**

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

The hearing on the Motion to Confirm the Chapter 12 Plan to which this Motion relates has been reset for hearing at 10:30 a.m. on December 19, 2024. This Motion is continued to that same date and time.

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

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

The Motion to Value Collateral and Secured Claim filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value Collateral and Secured Claim of HD Owner, LLC ("Creditor") is **XXXXXXX**.

Debtors' Atty: Ryan C. Wood

Notes:

Continued from 11/13/24 to be conducted in conjunction with the continued confirmation hearing.

<b>The Status Conference is <del>XXXXXXXX</del></b>
---

### DECEMBER 19, 2024 STATUS CONFERENCE

At the December 19, 2024 Status Conference,

### NOVEMBER 13, 2024 STATUS CONFERENCE

On November 7, 2024, the Debtor in Possession filed a Motion to Confirm Amended Chapter 12 Plan (Dckt. 215), which is set for hearing at 11:30 a.m. on December 19, 2024. The Amended Chapter 12 Plan was filed on October 21, 2024. Dckt. 187. The Amended Chapter 12 Plan was filed using Docket Control No. RCW-9, which is for the Motion to Confirm the prior amended Chapter 12 Plan filed. Thus, it appeared that the Amended Plan contained amendments which the Debtor in Possession would seek to have made at the November 14, 2024 hearing on that Motion to Confirm. The Debtor in Possession, HD Owner, LLC, Sutter County, and the Chapter 12 Trustee filed a Stipulation requesting that the hearing be continued to the November 14, 2024 date so that an Amended Plan could be filed, along with a Motion to Approve Compromise. Stipulation; Dckt. 162.

At the Status Conference, counsel for the Debtor in Possession reported that the Motion to Value is set for hearing tomorrow. The court addressed that matter and several other matters that were set for hearing on November 14, 2024.

The Status Conference is continued to 10:30 a.m. on December 19, 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.

**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 the parties in interest on November 25, 2024. By the court’s calculation, 24 days’ notice was provided. 14 days’ notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<b>The Motion to Incur Debt is <span style="color: red;">xxxxxxx</span> .</b>
---

Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) seeks permission to purchase a 2025 GMC Sierra 2500HD work truck (“Vehicle”), with a total purchase price of \$87,305.00. The funds to purchase the Vehicle are derived from the related Motion to Compromise heard in conjunction with this Motion.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor in Possession states the Vehicle will ensure efficient and reliable performance Debtors need to continue normal farming operations to the benefit of the estate. Moreover, Debtor in Possession need not actually incur any additional debt in order to make the purchase, using funds from the Motion to Compromise. 11 U.S.C. § 363(b) permits the Debtor in Possession to use property of the estate outside the ordinary course of business after a noticed hearing.

## Purchase of a 2025 New Vehicle

The Debtor in Possession has requested that the court authorize the use of the Settlement proceeds to purchase a brand new vehicle, paying the top dollar for an asset which will suffer great depreciation during the first three years of ownership.

Additionally, the actual work vehicle, including options, is not described to the court. Using the Kelly Blue Book website, a 2024 GMC Sierra 2500 HD Regular Cab Pro has a Fair Market Price Range of \$45,966 - \$51,075. <sup>FN.1.</sup>

-----  
FN. 1.

<https://www.kbb.com/gmc/sierra-2500-hd-regular-cab/2025/pro/?category=pickup&color=summit%20white&intent=buy-new&options=12139971|true|12139752|true|12139761|true|12139763|true|12139765|true|12139777|true|12139787|true|12139789|true|12139793|true|12139795|true|12139797|true|12139800|true|12139803|true|12139806|true|12139808|true|12139809|true|12139810|true|12139812|true|12139814|true|12139818|true|12139820|true|12139826|true|12139829|true|12139835|true|12139837|true|12139839|true|12139841|true|12139843|true|12139847|true|12139849|true|12139852|true|12139854|true|12139857|true|12139861|true|12139864|true|12139871|true|12139873|true|12139875|true|12139877|true|12139880|true|12139881|true|12139883|true|12139884|true|12139888|true|12139890|true|12139892|true|12139899|true|12139907|true|12139908|true|12139910|true|12139912|true|12139914|true|12139927|true|12139930|true|12139932|true|12139935|true|12139936|true|12139940|true|12139945|true|12139948|true|12139950|true|12139961|true|12139963|true|12139964|true|12139979|true|12139980|true|12139981|true|12139982|true|12139983|true|12139984|true|12139985|true|12139986|true|12139987|true|12139988|true|12139989|true|12139990|true|12139991|true|12139992|true|12139993|true|12139995|true|12139996|true|12139997|true|12139999|true|12403609|true|12139943|true&vehicleid=471669>.  
-----

At the hearing, **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 Incur Debt filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

14. [24-20265](#)-E-12      HARDAVE/SUKHBINDER DULAI      MOTION TO CONFIRM CHAPTER 12  
[RCW](#)-9      Ryan Wood      PLAN  
11-7-24 [[215](#)]

**Final Ruling**

-----

**The Confirmation Hearing has been continued to January 23, 2025, at 11:30a.m. Order, Docket 253.**

15. [24-23570](#)-E-7      RICKY WOODBRIDGE AND      MOTION TO CONVERT CASE FROM  
[TLA](#)-1      FELICIA CARNEY      CHAPTER 7 TO CHAPTER 13  
Thomas Amberg      11-29-24 [[24](#)]

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on November 29, 2024. By the court’s calculation, 20 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice). Movant is one day late of the required notice period. At the hearing, **XXXXXXX**

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.**

Ricky Dean Woodbridge and Felicia Irene Carney (“Debtor”) seek to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right

of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because there is an asset of the Estate, Restricted Stock Units, which vest on a certain schedule, and they only vest if Mr. Woodbridge is still employed by Amazon on the applicable vesting date. The contingent and uncertain nature of these RSUs meant that the Debtors' Chapter 7 case could potentially stay open for a number of years, with the potential value to creditors being minimized if he were to change his employment status. Debtor would prefer a conversion to Chapter 13 and argue they are eligible to do so under 11 U.S.C. § 109(e).

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

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

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

The Motion to Convert filed by Ricky Dean Woodbridge and Felicia Irene Carney ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

# FINAL RULINGS

16. [24-24492-E-11](#)  
[AF-1](#)

TOWN & COUNTRY EVENT  
CENTER, LLC  
Pro Se

CONTINUED MOTION TO EMPLOY  
NANCY WENG AS ATTORNEY(S)  
10-19-24 [\[19\]](#)

**Final Ruling:** No appearance at the December 19, 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, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

## THE MOTION

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

Nancy Weng, an attorney at Farsad Law Office, P.C., testifies as to her experience and capabilities in representing Debtor in Possession. Decl., Docket 21. Ms. Weng testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 7. Arasto Farsad, another attorney at the firm, testifies similarly at Docket 23.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Farsad Law Office, P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement filed as an Exhibit, Dckt. 22. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The court continues the hearing to 10:30 a.m. on December 19, 2024, to allow for it to be renoticed by Movant.

#### **December 19, 2024 Hearing**

The court continued the hearing as the prior hearing on this Motion was not noticed properly, and no Certificate of Service was filed. Movant was permitted time to correct the errors. On November 15, 2024, the Motion was properly renoticed, and a Certificate of Service was properly filed, correcting both errors. Dockets 47, 48. No Opposition was filed. 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 Employ filed by Town and Country Event Center, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion to Employ is granted, effective October 7, 2024, and Debtor in Possession is authorized to employ Farsad Law Office, P.C. as Counsel for Debtor in Possession on the terms and conditions as set forth in the Letter of Engagement filed as an Exhibit, Dckt. 22.

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

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

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

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

**Final Ruling:** No appearance at the December 19, 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, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

### **December 19, 2024 Hearing**

The court continued the hearing as the prior hearing on this Motion was not noticed properly, and no Certificate of Service was filed. Movant was permitted time to correct the errors. On November 15, 2024, the Motion was properly renoticed, and a Certificate of Service was properly filed, correcting both errors. Dockets 43, 44. No Opposition was filed. The Motion is granted.

### **THE MOTION**

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

Nancy Weng, an attorney at Farsad Law Office, P.C., testifies as to her experience and capabilities in representing Debtor in Possession. Decl., Docket 15. Ms. Weng testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 7. Arasto Farsad, another attorney at the firm, testifies similarly at Docket 16.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Farsad Law Office, P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement filed as an Exhibit, Dckt. 17. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

#### **NOTICE AS A MOTION UNDER LBR 9014-1(f)(1) OR (f)(2) IS UNCLEAR**

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

The court continues the hearing to 10:30 a.m. on December 19, 2024, to allow for it to be renoticed by Movant.

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

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

The Motion to Employ filed by Town and Country West, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, effective October 7, 2024, and Debtor in Possession is authorized to employ Farsad Law Office, P.C. as Counsel for Debtor in Possession on the terms and conditions as set forth in the Letter of Engagement filed as an Exhibit, Dckt. 17.

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

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

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

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

**Final Ruling:** No appearance at the December 19, 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, and Office of the United States Trustee on November 3, 2024. By the court’s calculation, 46 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Loris L. Bakken of the Bakken Law Firm, counsel of record for Chapter 7 Trustee Nikki Farris (“Applicant”), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 13, 2023 through the present. The order of the court approving employment of Applicant was entered on November 21, 2023. Dckt. 20. Applicant requests fees in the amount of \$3,080.00 and costs in the amount of \$53.16.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’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 attorney 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 an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “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 reviewing and advising the Trustee regarding a motion to compel abandonment of property of the estate, recovery of property of the estate, and assisting in a sale to the Debtors of the bankruptcy estate's interest in property of the estate. The Estate has \$9,602.20 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 6.8 hours in this category. Applicant's work included preparing Bakken's fee agreement and employment application, attending the Section 341 meeting of creditors, reviewing and discussing with Debtor's counsel the status of the bankruptcy case for the Debtors' entity and the need for amended schedules, and preparing Bakken's fee application. Mot. 2:16-21, Docket 69.

Review and Advise Trustee Regarding Motion to Compel Abandonment: Applicant spent 13.4 hours in this category. Applicant advised Trustee regarding strategy with Debtor's Motion to Compel. Applicant also had multiple communications with creditors in the case to determine what the Estate's interest was in the property subject to the Motion. *Id.* at 2:23-3:20.

Recovery of Property of The Estate: Applicant spent 5.2 hours in this category. Applicant communicated with Debtor to obtain turn over of unexempt property. *Id.* at 3:21-4:4.

Sale to Debtors of Estate's Interest in Property of the Estate: Applicant spent 7.7 hours in this category. Applicant had several communications with Debtors' counsel regarding the estate's nonexempt interest in the Vehicle and Debtors' desire to retain the Vehicle. The parties entered into negotiations and Ms. Farris reached a proposed agreement with the Debtors pursuant to which the Debtors agreed to purchase the estate's interest in the Vehicle for \$5,225.00. Bakken prepared a sale agreement and prepared and filed the motion for Bankruptcy Court approval of the sale. Bakken reviewed the tentative ruling and appeared at the hearing on the motion, which this Court granted. *Id.* at 4:6-20.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Applicant did not bill for 25.4 hours of time. 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>
Loris L. Bakken	7.7	\$400.00	<u>\$3,080.00</u>
<b>Total Fees for Period of Application</b>			\$3,080.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$53.16 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	-----	\$40.46
Copying	\$0.10	\$12.70
<b>Total Costs Requested in Application</b>		<b>\$53.16</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 \$3,080.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

first and Final Costs in the amount of \$53.16 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	\$3,080.00
Costs and Expenses	\$53.16

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 Loris L. Bakken (“Applicant”) of the Bakken Law Firm, counsel of record for Chapter 7 Trustee Nikki Farris, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$3,080.00

Expenses in the amount of \$53.16,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

**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.