

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

December 19, 2024 at 11:30 a.m.

1. [24-23905](#)-E-12
[GG-1](#)

DEAVER RANCH, INC., A
CALIFORNIA CORPORATION
David Goodrich

CONTINUED MOTION TO USE CASH
COLLATERAL
9-3-24 [\[5\]](#)

Items 1 thru 2

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court's calculation, 15 days' notice was provided. The court set the final hearing for September 19, 2024. Dckt. 33.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Motion for Authority to Use Cash Collateral is XXXXXX.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Deaver Ranch, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession is a California certified sustainable vineyard located in Amador County, California. Debtor in Possession owns the vines which produce wine grapes. In addition to the vines, the Debtor owns cows and sheep that are used primarily for weed control. The land on which the vineyard is situated is owned by the Debtor in Possession’s principals, Kenneth Deaver and Mary Jean Deaver. Debtor in Possession also owns various motor vehicles, equipment and tools.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 6. The first budget is a proposed 13-week budget, and the second budget is a proposed year budget. Over 13 weeks the total projected income is \$204,500, and over a year the projected income is \$1,265,000. Ex. 1 at 3-4, Docket 6. The total expenses over the 13-week period are projected to be \$156,492, and over the one year period are projected to be \$1,238,322. *Id.* The budgets account for general operating expenses of the business, including paying employees, rent, and utilities.

Debtor in Possession argues no adequate protection is needed because the collateral will only decrease in value marginally, if at all. Mem. 5:13-21, Docket 8.

Debtor in Possession submits four Declarations in support. Dockets 7, 9, 27, and 28. Mr. Goodrich, Debtor in Possession’s attorney, testifies at Dockets 7 and 27 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits.

Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 9. Mr. Deaver testifies that other than the annual sale of grapes to wine makers, the value of the Debtor’s assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted. *Id.* at ¶ 9. Mr. Deaver also testifies that the value of the grapes after harvest will be depressed because of an over saturation of the wine market for 2024. Mr. Deaver estimates the sale of grapes harvested in 2024 will yield less than \$300,000 over the fall and winter months. *Id.* at ¶ 11.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor’s farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

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

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

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

(b)(2) Hearing

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

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the vineyard and farm business operations and generating income to fund a Chapter 12 plan.

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

SEPTEMBER 25, 2024 HEARINGS (10:00 a.m. and 2:30 p.m.)

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court's review of the Docket on September 24, 2024, no stipulation has been filed with the court.

A stipulation for the use of cash collateral has been reached with AgWest, documented, and is being filed on September 25, 2024. Dckt. 53. The terms were reviewed on the record. In paragraph 7, a

super priority unsecured claim is provided for AgWest for the adequate protection payments to be made under the Stipulation.

Upon review of the Stipulation, the court and Parties concluded that a separate Motion to Approve a Compromise/Settlement between the Debtor in Possession and AgWest needs to be filed in light of the terms of the Stipulation.

The Parties agreed to further extending the Interim Order authorizing the use of Cash Collateral, and pursuant thereto authorize the payment of the salaries and the rents to the principals of the Debtor.

The hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Time).

Counsel for the Debtor in Possession and/or Counsel for AgWest shall prepare an order consistent with the above Ruling, and lodge the proposed order with the court.

October 24, 2024 Hearing

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 58. Nothing new has been filed under this Docket Control Number, although Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 71.

At the hearing, the Parties agreed to extend the previously authorized used of cash collateral on the same terms and conditions as this court's prior interim order, Dckt. 58, through and including December 31, 2024. This is to allow for further meetings to occur and negotiations relating to the proposed Stipulation for the use of cash collateral.

The hearing is continued to 11:30 a.m. on December 5, 2024.

December 5, 2024 Hearing

The court continued the hearing on this Motion, having granted the use of cash collateral on an interim basis through December 31, 2024. Order, Docket 125. The court expressed concerns over various terms of the proposed Stipulation between Debtor in Possession and AgWest at Docket 53. On November 15, 2024, Debtor in Possession submitted a new Stipulation with AgWest to the court. Docket 141. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Deaver Ranch grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest's pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest's pre-petition liens**, and all proceeds and products thereof,

arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, the “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Deaver Ranch’s use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments. AgWest’s Super Priority Claim shall at all times be senior to the rights of Deaver Ranch and its creditors or in any successors-in-interest to Deaver Ranch, including, without limitation, any statutory committee, for Deaver Ranch in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

Deaver Ranch represents it is seeking a waiver for any unpaid, pre-petition rent obligations to the Deavers, its principals and the debtors in a related case, if needed, a deferral of rent owed to after the repayment plan is completed. Deaver Ranch warrants it will keep its ongoing rent obligations current or, if possible, obtain further abatements of rent, and, as a form of additional adequate protection, will use its best efforts to obtain a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation. Deaver Ranch will provide AgWest with a written form of the lease for its premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the revised Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new

amended stipulations in not only the Deaver Ranch case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-21, Docket 153.

2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-14.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:19-21.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the collateral of Prudential. *Id.* at 5:17-28. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 6:14-16.

At the hearing, counsel for Prudential identified a new issue concerning the use of cash collateral. It is not just Ag West's cash collateral, but cash collateral of multiple parties is being used.

Additionally, Debtors in Possession are developing updated budgets.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;
 1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion for Authority to Use Cash Collateral to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Use of Cash Collateral filed by Deaver Ranch, Inc., as 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 for Authority to Use Cash Collateral is
XXXXXXX.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s attorney, Chapter 12 Trustee, attorneys of record, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 3, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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.

The Motion for Approval of Compromise is XXXXXXX.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

Deaver Ranch, Inc. , Debtor in Possession, (“Movant”) requests that the court approve a compromise with AgWest Farm Credit, PCA (“AgWest”). The claims and disputes to be resolved by the proposed settlement involve the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here, identified by the paragraph number in the Stipulation (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 74):

1. Cash Collateral Use. AgWest consents to Deaver Ranch's further use of cash collateral ("Cash Collateral"), subject to the Agreement and pursuant to the Budget.
2. Term; Extensions. Upon approval of the Agreement by the Court, Deaver Ranch is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.
3. DIP Account. Deaver Ranch shall collect and deposit all Cash Collateral into a debtor-in-possession account ("DIP Account").
4. Budget. Deaver Ranch may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.
5. Replacement Liens. As a grant of adequate protection, Deaver Ranch grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, any and all of Deaver Ranch's rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor's pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Deaver Ranch shall owe AgWest not less than \$500.00 per month, as set forth in the Emergency Motion for Cash Collateral ("Adequate Protection Payments"), commencing on October 1, 2024. Payment of Adequate Protection Payments accrued shall be paid on or before December 14, 2024.
7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments.

8. Reporting. Deaver Ranch shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Deaver Ranch shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest's Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Deaver Ranch shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or *Pari Passu* Liens. Deaver Ranch shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or *pari passu* with AgWest's security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Deaver Ranch shall permit access to (a) Deaver Ranch's books, records, and assets, (b) the personnel of Deaver Ranch who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add "all creditors." It adds a further provision stating that no other creditors may seek to challenge AgWest's lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 74, and see Motion, 4:22-6:23, Docket 71. Mr. Deaver submits his Declaration in support. Docket 73. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and

if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 3, Docket 73.

CREDITOR PRUDENTIAL’S OPPOSITION

Creditor the Prudential Insurance Company of America (“Prudential”) filed an Opposition on October 21, 2024. Docket 108. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession’s real and personal property. Prudential only subordinated its lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:10-21.
2. The proposed compromise violates Prudential’s lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:15-6:21.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 7:25-28.
4. Prudential objects to this Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 8:1-11.
5. In paragraph 10, Debtor and Ag West, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:12-9:14.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:15-10:4.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 10:9-14.
8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest’s liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 10:25-11:11.

9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:12-18.
10. There is no reason for limited relief from the automatic stay for AgWest to “record” any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 11:19-22.
11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 11:23-27.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 12:18-27.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 7:15-22, Docket 74. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

OCTOBER 24, 2024 HEARING

On October 24, 2024, the court considered Motion to Approve Comprises for cash collateral Stipulations between the Debtors in Possession in the Deaver Ranch, Inc., Shenandoah Investment Properties, Inc, and the Kenneth and Mary Deaver Chapter 12 Cases and AgWest Farm Credit, PCA. Opposition was filed to the Motions as addressed above.

At the hearing several suggested resolutions of the oppositions were discussed. The Parties requested that the court continue the hearing to allow them to meet and confer, and then file supplemental pleadings and an amended stipulation.

The hearing on the Motion to Approve Compromise is Continued to 11:30 a.m. on December 5, 2024. The Debtor in Possession shall file and serve Supplemental Pleadings and an Amended Stipulation, if any, on or before November 15, 2024. Supplemental Opposition/Response Pleadings shall be filed and served on or before November 25, 2024.

December 5, 2024 Hearing

The court continued the hearing on these related matters to allow the Parties to address some of the court’s concerns surrounding the original Stipulation. On November 15, 2024, Debtor in Possession

submitted a new Stipulation with AgWest to the court. Docket 141. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Deaver Ranch grants AgWest valid, enforceable, and perfected replacement liens (“Replacement Liens”) on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest’s pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest’s pre-petition liens**, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, the “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Deaver Ranch’s use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments. AgWest’s Super Priority Claim shall at all times be senior to the rights of Deaver Ranch and its creditors or in any successors-in-interest to Deaver Ranch, including, without limitation, any statutory committee, for Deaver Ranch in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

Deaver Ranch represents it is seeking a waiver for any unpaid, pre-petition rent obligations to the Deavers, its principals and the debtors in a related case, if needed, a deferral of rent owed to after the repayment plan is completed. Deaver Ranch warrants it will keep its ongoing rent obligations current or, if possible, obtain further abatements of rent, and, as a form of additional adequate protection, will use its best efforts to obtain a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation. Deaver Ranch will provide AgWest with a written form of the lease for its premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new amended stipulations in not only the Deaver Ranch case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-21, Docket 153.
2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-14.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:19-21.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the collateral of Prudential. *Id.* at 5:17-28. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 6:14-16.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;

1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion to Approve Compromise to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Deaver Ranch, Inc., as 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 Approve Compromise is **XXXXXXX**.

Items 3 thru 4

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

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

Local Rule 9014-1(f)(3) 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 12 Trustee, and Office of the United States Trustee on September 4, 2024. By the court’s calculation, 15 days’ notice was provided. The court set the final hearing for September 19, 2024. Dckt. 32.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Motion for Authority to Use Cash Collateral is XXXXXXX.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

Shenandoah Investment Properties, Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral. Debtor in Possession sells approximately 2,500 - 3,000 cases of wine annually, primarily through its operation of a tasting room and through a wine club which has approximately 1,000 members (“Business”). The Debtor in Possession’s assets consist of bulk wine, bottled wine, gift bag

supplies, equipment, barrels and tumblers. Although Debtor in Possession's wine club is lucrative, the delivery of wine is a prerequisite to payment from its club members. Mot. 4:4-9, Docket 10.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the two proposed budgets at Exhibit 1. Docket 13. The first budget is a proposed year budget, and the second budget is a proposed 13-week budget. The budgets propose adequate protection payments of \$1,000 per month to the Small Business Administration ("SBA") and \$500 a month to AgWest Farm Credit ("AgWest"). *Id.* SBA's lien is estimated to be in the amount of \$773,614 and AgWest's lien is estimated to be in the amount of \$1,200,000. Mot. 4:20-28, Docket 10. The budgets account for general operating expenses of the business, including paying employees, for insurance and permits, and utilities.

Debtor in Possession submits four Declarations in support. Dockets 11, 12, 29, and 30. Mr. Goodrich, Debtor in Possession's attorney, testifies at Dockets 12 and 30 as to the facts alleged in the Motion, as well as authenticating the attached Exhibits. Mr. Deaver, one of the principals of Debtor in Possession, further authenticates the facts alleged in the Motion. Docket 11. Mr. Deaver testifies:

Debtor makes wine seasonally. During the next several months, the Debtor's wine inventory (bulk and bottled) will decrease because of sales. Debtor will purchase additional supplies, including grapes, and produce more wine to be sold in the future. If cash collateral use is not permitted, the Debtor will be unable to produce additional wine and the value of the Debtor's lucrative wine-making business will be lost. The value of the Debtor's assets will not change significantly during the bankruptcy case - unless cash collateral use is not permitted.

Id. at ¶ 9.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

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

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

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

(b)(2) Hearing

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

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the winery business and generating income to fund a Chapter 12 plan.

At the hearing, counsel for the Debtor in Possession reported that a Stipulation has been reached for the use of cash collateral and it will be filed shortly. The Parties requested that the hearing be continued to allow for the court to review the Stipulation and conduct a hearing, if the court believes it necessary.

The hearing on the Motion for Authority to Use Cash Collateral is continued to 10:00 a.m. on September 25, 2024.

SEPTEMBER 25, 2024 HEARINGS (10:00 a.m. and 2:30 p.m.)

The court continued the hearing on this Motion as counsel for Debtor in Possession reported at the prior hearing that a stipulation on use of cash collateral was in the works. As of the court's review of the Docket on September 24, 2024, no stipulation has been filed with the court.

A stipulation for the use of cash collateral has been reached with AgWest, documented, and is being filed on September 25, 2024. The terms were reviewed on the record. In paragraph 7, a super priority unsecured claim is provided for AgWest for the adequate protection payments to be made under the Stipulation.

Upon review of the Stipulation, the court and Parties concluded that a separate Motion to Approve a Compromise/Settlement between the Debtor in Possession and AgWest needs to be filed in light of the terms of the Stipulation.

The Parties agreed to further extending the Interim Order authorizing the use of Cash Collateral, and pursuant thereto authorize the payment of the salaries and the rents to the principals of the Debtor.

The hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Time).

Counsel for the Debtor in Possession and/or Counsel for AgWest shall prepare an order consistent with the above Ruling, and lodge the proposed order with the court.

October 24, 2024 Hearing

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 58. Nothing new has been filed under this Docket Control Number, although Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 71.

At the hearing, the Parties agreed to extend the previously authorized used of cash collateral on the same terms and conditions as this court's prior interim order, Dckt. 58, through and including December 31, 2024. This is to allow for further meetings to occur and negotiations relating to the proposed Stipulation for the use of cash collateral.

The hearing is continued to 11:30 a.m. on December 5, 2024.

December 5, 2024 Hearing

The court continued the hearing on these related matters to allow the Parties to address some of the court's concerns surrounding the original Stipulation. On November 15, 2024, Debtor in Possession submitted a new Stipulation with AgWest to the court. Docket 130. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Shenandoah Investment Properties grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest's pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest's pre-petition liens**, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, the "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Shenandoah Investment Properties's use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments. AgWest's Super Priority Claim shall at all times be senior to the rights of Shenandoah Investment Properties and its creditors or in any successors-in-interest to Shenandoah Investment Properties, including, without limitation, any statutory committee, for Shenandoah Investment Properties in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

Shenandoah Investment Properties represents prepetition rent obligations as well as stub rent for August 2024 and rent for September 2024 has been, or will be, waived or deferred to the end of the bankruptcy repayment plan by the landlord and no pre or post-petition rent claim for the period before the petition date and through the signature date of Shenandoah Investment Properties' bankruptcy counsel on this stipulation will be claimed by Shenandoah Investment Properties' landlord. Shenandoah Investment Properties warrants it will keep its rent obligations current or, if possible, obtain further abatements of rent, and, as a form of additional adequate protection, will use its best efforts to obtain a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation, which will include that AgWest is not responsible for any pre-petition or deferred rent. Shenandoah Investment Properties will provide AgWest with a written form of the lease for its premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new amended stipulations in not only the Shenandoah Investment Properties case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the

amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-21, Docket 133.

2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-21.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:23-5:2.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the collateral of Prudential. *Id.* at 5:21-6:13. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 7:3-6.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;
 1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion for Authority to Use Cash Collateral to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Use of Cash Collateral filed by Shenandoah Investments, Inc., as 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 for Authority to Use Cash Collateral is
XXXXXXX.

4. 24-23909-E-12 GG-6	SHENANDOAH INVESTMENT PROPERTIES, INC. A CALIFORNIA CORPORATION David Goodrich	CONTINUED MOTION TO COMPROMISE CONTROVERSY/ APPROVE SETTLEMENT AGREEMENT WITH AGWEST FARM CREDIT, PCA 10-3-24 [70]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 12 Trustee, attorneys of record, parties who have filed a request for notice, all creditors and parties in interest, and Office of the U.S. Trustee on October 3, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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. Opposition was presented.

The Motion for Approval of Compromise is XXXXXXX.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming. At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Shenandoah Investment Properties, Inc., Debtor in Possession, (“Movant”) requests that the court approve a compromise with AgWest Farm Credit, PCA (“AgWest”). The claims and disputes to be resolved by the proposed settlement involve the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 74):

1. Cash Collateral Use. AgWest consents to Shenandoah Investment Properties’ further use of cash collateral (“Cash Collateral”), subject to the Agreement and pursuant to the Budget.
2. Term; Extensions. Upon approval of the Agreement by the Court, Shenandoah Investment Properties is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.
3. DIP Account. Shenandoah Investment Properties shall collect and deposit all Cash Collateral into a debtor-in-possession account (“DIP Account”).
4. Budget. Shenandoah Investment Properties may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.
5. Replacement Liens. As a grant of adequate protection, Shenandoah Investment Properties grants AgWest valid, enforceable, and perfected replacement liens (“Replacement Liens”) on, and security interests in, any and all of Shenandoah Investment Properties’ rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor’s pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Shenandoah Investment Properties shall owe AgWest not less than \$500.00 per month, as set forth in the Emergency Motion for Cash Collateral (“Adequate Protection Payments”), commencing on

October 1, 2024. Payment of Adequate Protection Payments accrued shall be paid on or before December 14, 2024.

7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments.

8. Reporting. Shenandoah Investment Properties shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Shenandoah Investment Properties shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest’s Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Shenandoah Investment Properties shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or *Pari Passu* Liens. Shenandoah Investment Properties shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or *pari passu* with AgWest’s security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Shenandoah Investment Properties shall permit access to (a) Deaver Ranch’s books, records, and assets, (b) the personnel of Deaver Ranch who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add “all creditors.” It adds a further provision stating that no other creditors may seek to challenge AgWest’s lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 74, and see Motion, 4:21-6:22, Docket 70. Mr. Deaver submits his Declaration in support. Docket 72. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 3, Docket 72.

CREDITOR PRUDENTIAL'S OPPOSITION

Creditor the Prudential Insurance Company of America ("Prudential") filed an Opposition on October 21, 2024. Docket 104. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession's real and personal property. Prudential only subordinated its lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:11-21.
2. The proposed compromise violates Prudential's lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:12-7:12.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 7:16-19.
4. Prudential objects to Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 7:20-8:2.
5. In paragraph 10, Debtor and AgWest, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:3-9:5.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:6-23.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to

prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 9:28-10:15.

8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest's liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 10:16-11:2.
9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:3-9.
10. There is no reason for limited relief from the automatic stay for AgWest to "record" any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 11:10-13.
11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 11:14-18.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 12:8-17.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 7:20-28, Docket 74. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

OCTOBER 24, 2024 HEARING

On October 24, 2024, the court considered Motion to Approve Comprises for cash collateral Stipulations between the Debtors in Possession in the Deaver Ranch, Inc., Shenandoah Investment Properties, Inc, and the Kenneth and Mary Deaver Chapter 12 Cases and AgWest Farm Credit, PCA. Opposition was filed to the Motions as addressed above.

At the hearing several suggested resolutions of the oppositions were discussed. The Parties requested that the court continue the hearing to allow them to meet and confer, and then file supplemental pleadings and an amended stipulation.

The hearing on the Motion to Approve Compromise is Continued to 11:30 a.m. on December 5, 2024. The Debtor in Possession shall file and serve Supplemental Pleadings and an Amended Stipulation,

if any, on or before November 15, 2024. Supplemental Opposition/Response Pleadings shall be filed and served on or before November 25, 2024.

December 5, 2024 Hearing

The court continued the hearing on these related matters to allow the Parties to address some of the court's concerns surrounding the original Stipulation. On November 15, 2024, Debtor in Possession submitted a new Stipulation with AgWest to the court. Docket 130. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Shenandoah Investment Properties grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest's pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest's pre-petition liens**, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, the "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Shenandoah Investment Properties's use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments. AgWest's Super Priority Claim shall at all times be senior to the rights of Shenandoah Investment Properties and its creditors or in any successors-in-interest to Shenandoah Investment Properties, including, without limitation, any statutory committee, for Shenandoah Investment Properties in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

Shenandoah Investment Properties represents prepetition rent obligations as well as stub rent for August 2024 and rent for September 2024 has been, or will be, waived or deferred to the end of the bankruptcy repayment plan by the landlord and no pre or post-petition rent claim for the period before the

petition date and through the signature date of Shenandoah Investment Properties' bankruptcy counsel on this stipulation will be claimed by Shenandoah Investment Properties' landlord. Shenandoah Investment Properties warrants it will keep its rent obligations current or, if possible, obtain further abatements of rent, and, as a form of additional adequate protection, will use its best efforts to obtain a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation, which will include that AgWest is not responsible for any pre-petition or deferred rent. Shenandoah Investment Properties will provide AgWest with a written form of the lease for its premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new amended stipulations in not only the Shenandoah Investment Properties case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-21, Docket 133.
2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-21.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:23-5:2.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the

collateral of Prudential. *Id.* at 5:21-6:13. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 7:3-6.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;
 - 1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion to Approve Compromise to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Shenandoah Investment Properties, Inc., as 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 Approve Compromise is **XXXXXXX**.

Items 5 thru 6

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

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 parties requesting special notice, Chapter 12 Trustee, other parties in interest, and Office of the United States Trustee on September 9, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

The Motion for Authority to Use Cash Collateral was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

The Motion for Authority to Use Cash Collateral is **xxxxxxx**.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming. At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an order approving the use of cash collateral generated from the following encumbered assets:

REAL PROPERTY

Lienholder	Collateral/Real Property Address	Estimated Parcel Value	Loan Balance	Payment Terms
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Prudential Bank & Trust FSB	a) 21643 Shenandoah School Road, Plymouth, CA 95669 Amador County (88 acres w/vineyards and residence)	\$2,000,000	\$4,256,115 (secured by multiple properties)	\$155,000 semi-annually
	b) 19940 Shenandoah School Road, Pleasant Grove, CA 95668 (41.87 acres w/vineyards and 2 modular homes)	\$1,050,000		
	c) 21424 Shenandoah School Road, Pleasant Grove, CA 95668 (108.3 acres w/vineyards, house, barn and pasture)	\$1,900,000		
	d) 19944 Shenandoah School Road, Plymouth, CA 95669 (40 acres w/vineyards and 6-8 acres of pasture)	\$875,000		
	e) 11850 Shenandoah Road, Plymouth, CA 95669 (raw land)	\$350,000		
Stonetree	17705 State Hwy. 49, Plymouth, CA 95669 (9.69 acres leased to Ace Hardware, StoreStorage Unit, and Shenandoah Vet Clinic); owned jointly with Gerry Ninnis, who is making payments and receiving rental income	\$3,250,000	\$2,500,000	
Totals:		\$9,425,000	\$6,756,115	

Decl. 5:8-25, Docket 39.

PERSONAL PROPERTY

Lienholder	Priority	Collateral	Loan Balance	Debtors and Codebtors
Prudential Insurance Company	1 UCC File Number: 187638891768 entered on 03/19/2018	All personal property located on or used in operation of real property, including crops, equipment, water rights and intangibles	\$4,256,115	Deaver Ranch Inc. Kenneth Deaver Mary Jean Deaver Shenandoah Investment Properties, Inc.

United States of America, Acting Through the Farm Service Agency – Stockton, CA	2 UCC File Number: 187675962061 entered on 10/15/2018	Includes crops, livestock, equipment, proceeds, intangibles	Unknown	Kenneth Deaver Deaver Ranch Amador Flower Farms Shenandoah Investment Propertis [sic] Inc.
NXGEN Capital	3 UCC File Number: 207774231457 entered on 04/21/2020	Accounts, goods, work in progress, etc., and general intangibles	Unknown. Debtors believe this UCC secured a loan Kapitius that has been paid in full	Amador Flower Farm Deaver Vineyards Kenneth Deaver Shenandoah Investment Properties, Inc.
AgWest Farm Credit, PCA	4 UCC File Number: U210040219527 with an initial lien financing statement entered on 09/21/2020	Farm products, crops, livestock, equipment, inventory, general intangibles, etc.	\$1,200,000	Amador Flower Farm Deaver Ranch Inc. Kenneth Henry Deaver Mary Jean Deaver Shenandoah Investment Properties Inc. The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012

Farm Credit West, PCA – Tulare, CA	5 UCC File Number U200020600411 recorded on 09/21/2020	Existing and after-acquired goods, crops livestock, offspring, equipment, accounts, etc.	\$0	Amador Flower Farm Deaver Ranch, Inc. Mary Jean Deaver Shenandoah Investment Properties, Inc. The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012
C T Corporation System as Representative	6 UCC File Number: U220240228730 Recorded on 11/01/2022	Accounts, contract rights, chattel paper, general intangibles, etc.	\$50,000.00	Amador Affordable Housing Amador Affordable Housing Inc. Deaver Ranch Deaver Ranch Inc. Kenneth Deaver Dever [sic] Vineyards Rancho Del Oro Park LP Shenandoah Investment Properties, Inc.
C T Corporation System as Representative	7 UCC File Number: U220240859435 recorded on 11/01/2022	All assets owned or hereafter acquired, including accounts and general intangibles	Unknown	Deaver Ranch Inc Shenandoah Investment Properties Inc
Corporation Service Company, as Representative for Prosperum Capital Partners LLC	8 UCC File Number U240037112828 recorded on 04/29/2024	Accounts, AR, etc., and general intangibles	\$32,000	Deaver Vineyards Kenneth Deaver Shenandoah Investment Properties

(collectively, “Collateral”). Decl. 6:1-7:28, Docket 39. The UCC-1 Financing Statements depicting the secured transactions of the various items of Personal Property are included as authenticated Exhibits 3-10, at Docket 40.

Proposed Use of Cash Collateral Budgets

Debtor in Possession proposes to use cash collateral for the following expenses, submitting two proposed budgets:

Ex. 1, Docket 40.

Debtor in Possession proposes another cash collateral budget at Exhibit 2, titled “Ken & Jeanne Deaver - 13 Week.” *Id.* at 6. However, the budget is not complete, and the image of the chart cuts off after week 11. What is provided is as follows:

KEN & JEANNE DEAVER - 13 WEEK												
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24
INCOME												
DEAVER RANCH RENT			20,000					20,000				
FLOWER FARM PAYROLL												
DEAVER VINEYARDS PAYROLL	2,537	2,537	2,037	2,537	2,537	2,537	2,537	2,037	2,537	2,537	2,537	
SHEEP GOATS COWS												
SOCIAL SECURITY (KEN & JEANNE)	3,354				3,354			3,354				
TOTAL INCOME	\$5,891	\$2,537	\$22,037	\$2,537	\$5,891	\$2,537	\$2,537	\$25,391	\$2,537	\$2,537	\$2,537	\$
HOUSEHOLD EXPENSES												
BANK FEES	30	30	30	30	30	30	30	30	30	30	30	30
FUEL - GASOLINE	100	100	100	100	100	100	100	100	100	100	100	100
INSURANCE - MEDICAL EXPENSES		652					652				652	
INSURANCE - LIFE			2,300					2,300				
INSURANCE PKG INC LIABILITY, FIRE, ETC			3,000					3,000				
INSURANCE VEHICLES			121					121				
MAINTENANCE & REPAIRS		300				300					300	
MEDICAL EXPENSES			260					260				
FOOD AND MISC PERSONAL EXPENSES	500	250	250	250	500	250	250	250	500	250	250	
PROPERTY TAXES												
SHEEP GOAT COW EXPENSE			7,000					2,000				
UTILITIES			3,000					3,000				
TELEPHONE		300					300				300	
PROPANE	300				300				300			
TOTAL HOUSEHOLD EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$
PRUDENTIAL												
TOTAL NON-HOUSEHOLD EXPENSE	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$
TOTAL EXPENSES	\$930	\$1,632	\$16,061	\$380	\$930	\$680	\$1,332	\$11,061	\$930	\$380	\$1,632	\$
BEGINNING CASH	\$5,000	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$
NET CASH FLOW	\$4,961	\$905	\$5,976	\$2,157	\$4,961	\$1,857	\$1,205	\$14,330	\$1,607	\$2,157	\$905	\$
ENDING CASH	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$46,021	\$

AMADOR FLOWER FARM -13 WEEK													
8/18/24 8/25/24 9/1/24 9/8/24 9/15/24 9/22/24 9/29/24 10/6/24 10/13/24 10/20/24 10/27/24 11/3/24 11/10/24													
INCOME													
SHOP SALES	2,000	2,000	2,000	3,500	4,000	4,000	3,000	3,100	2,100	2,100	2,100	2,100	2,100
PUMPKIN SALES							11,000	15,000	14,000	16,000	13,000	500	200
SALES TAX	-155	-155	-155	-271	-310	-310	-233	-240	-163	-163	-163	-163	-163
TOTAL INCOME	\$1,845	\$1,845	\$1,845	\$3,229	\$3,690	\$3,690	\$13,768	\$17,860	\$15,937	\$17,937	\$14,937	\$2,437	\$2,137
SHOP EXPENSES													
ADVERTISING			200	300		500		200	200	200	200	100	
BANK CHARGES	75	75	75	75	75	75						75	75
DUCK FOOD							200						
FOOD / LODGING / TRAVEL							10	10	10				
INVENTORY PURCHASED		1,000		1,000		1,000	7,500	7,500	7,000		5,000	1,000	
DON POTTER (INVENTORY)										30,000			
LIABILITY INSURANCE			700						700				
MAINTENANCE & REPAIRS													
MERCHANT FEES	16	16	18	20	30	30	300	300	300	300	300	25	25
STAFF PAYROLL (reimb. by Deaver Ranch)	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250
POSTAGE	30	30	30	30	30	30	30	30	30	30	30	30	30
OUTSIDE SERVICES (MARKETING, ETC.)					302			302		302			
SHIPPING (UPS)						30				30			30
UTILITIES - ELECTRICITY					650				650				650
UTILITIES - PROPANE													
UTILITIES - TELEPHONE			250					250				250	
TOTAL SHOP	\$2,371	\$3,371	\$3,523	\$3,675	\$3,337	\$3,915	\$10,290	\$10,842	\$11,140	\$33,112	\$7,780	\$3,730	\$3,060
TOTAL EXPENSES	\$2,371	\$3,371	\$3,523	\$3,675	\$3,337	\$3,915	\$10,290	\$10,842	\$11,140	\$33,112	\$7,780	\$3,730	\$3,060
BEGINNING CASH	\$5,000	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934
NET CASH FLOW	-\$526	-\$1,526	-\$1,678	-\$446	\$353	-\$225	\$3,478	\$7,018	\$4,797	-\$15,175	\$7,157	-\$1,293	-\$923
ENDING CASH	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934	\$6,011

Debtor in Possession seeks authorization for the court to approve both proposed cash collateral budgets in Exhibit 1 and Exhibit 2. Of importance, the court ruled on the interim cash collateral motions of Deaver Ranch Inc., a California Corporation, Case no. 24-23905, and Shenandoah Investment Properties, Inc., a California Corporation, Case no. 24-23909, ruling that those related debtors may not distribute payments to Debtor in Possession in this case in the interim period. *See* Order, Docket 35, Case no. 24-23905; Order, Docket 34, Case no. 24-23909. As such, Debtor in Possession proposes using the income generated by Amador Flower Farm in Exhibit 1 to pay allowed living and business expenses until the court approves payment to Debtor in Possession generated from the related cases. Mot. 12:22-27, Docket 37.

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category. Mot. 2:25, Docket 37.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

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

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

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

(b)(2) Hearing

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

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the various business operations and generating income to fund a Chapter 12 plan.

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period through and including October 14, 2024. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral from the Collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

All creditors with claims secured by cash collateral, are granted replacement liens on the property of the Bankruptcy Estate in the same types of assets acquired and the same extent, validity, and priority as their pre-petition liens the extent that the use of cash collateral results in a diminution of the value of such creditor’s collateral.

The hearing is continued and the final hearing on this Motion shall be conducted at 10:30 a.m. on October 3, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before three days after the entry of the order granting this relief. Oppositions, if any, shall be filed and served on or before September 24, 2024, and Replies presented orally at the hearing.

October 3, 2024 Hearing

The court set the final hearing on this Motion for October 3, 2024, having granted the Motion on an interim basis. The court set the deadline of September 24, 2024 for parties in interest to file any oppositions. Order, Docket 54. On September 24, 2024, creditor AgWest Farm Credit, PCA (“AgWest”) filed a Response on September 24, 2024. Docket 55. AgWest states:

1. The parties are actively working on a consensual cash collateral stipulation to submit to the Court. AgWest hopes to submit the stipulation to the Court prior to the next hearing date. Resp. 2:8-9, Docket 55.
2. Flower Farm is and always has been a separate entity. Debtors, however, want to claim Flower Farm is a sole proprietorship so that they can have it fall under the auspices of this case, with its assets protected by the automatic stay, meanwhile stripping the cash of the entity to pay the Debtors’ personal expenses to the detriment of Flower Farm’s creditors. *Id.* at 2:15-19. Trying to modify the rights and obligation of the flower farm under this current case is improper.

AgWest submits the declaration of Darian Moreno in support of their Response. Docket 57. Mr. Moreno authenticates the attached Exhibits. The Exhibits submitted in support of the Response are three “Certificates of General Partnership to Borrow or Lease.” Exhibits. 1-3, Docket 56. These Exhibits show Debtor in Possession has represented Amador Flower Farm as a General Partnership, not a sole proprietorship.

Exhibit 1 is a Certificate dated September 17, 2020, and is signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. Dckt. 56 at 4-5. Exhibit 2 is a Certificate of Partnership dated March 23, 2022, that this signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. *Id.* at 7-8. Exhibit 3 is a Certificate of Partnership dated October 16, 2023, that is signed by Ken Deaver and Mary Jean Deaver as partners of the Amador Flower Farm partnership. *Id.* at 17-18. The signatures are made using the DocuSign program.

On Schedule A/B Flower Farm is not listed as a partnership in which Debtor has an interest. Dckt. 1 at 16. Schedule A/B does list Amador Flower Farm as a sole proprietorship run by Debtor. *Id.* at 19. On the Statement of Financial Affairs, ¶ 27, Debtor states that Amador Flower Farm is a sole proprietorship that Debtor has operated from “1990 - current.” *Id.* at 58-59.

On September 24, 2024, Debtor in Possession submitted a Supplemental Pleading. Debtor in Possession states that they are in negotiations with AgWest for a cash collateral budget and believe they are close to an agreement. Docket 59.

At the hearing, counsel for the Debtor in Possession reported that this is being further investigated with Creditor and the financial professionals to determine if there are issues to be addressed.

It is reported that a stipulation with AgWest to use the cash collateral has been reached. The terms are the same as the Stipulation in the two related Bankruptcy Cases; Deaver Ranch, Inc. (24-23905) and Shenandoah Investment Properties, Inc. (24-23909).

The Debtor in Possession will file a Motion for Approval of a Compromise to address various terms in the Stipulation that go beyond the normal adequate protection, and set the hearing on the Motion for 11:30 a.m. on October 24, 2024.

The Motion for Authority to Use Cash Collateral is granted on a further interim basis, and the use is authorized through and including October 31, 2024.

The continued hearing on the Motion to Use Cash Collateral is continued to 11:30 a.m. on October 24, 2024 (Specially Set Day and Time), to be conducted in conjunction with other related proceedings.

Counsel for the Debtor in Possession shall prepare and lodge with the court a proposed order consistent with the above Ruling and setting the continued hearing for 11:30 a.m. on October 24, 2024.

October 24, 2024 Hearing

The court continued the Motion on this hearing, having granted the use of cash collateral on an interim basis through October 31, 2024. Order, Docket 58. Nothing new has been filed under this Docket Control Number, although Debtor in Possession has filed a Motion to Approve Compromise with AgWest to be heard on this same day and time. Docket 71.

At the hearing, the Parties agreed to extend the previously authorized use of cash collateral on the same terms and conditions as this court's prior interim order, Dckt. 58, through and including December 31, 2024. This is to allow for further meetings to occur and negotiations relating to the proposed Stipulation for the use of cash collateral.

The hearing is continued to 11:30 a.m. on December 5, 2024.

December 5, 2024 Hearing

The court continued the hearing on these related matters to allow the Parties to address some of the court's concerns surrounding the original Stipulation. On November 15, 2024, Debtor in Possession submitted a new Stipulation with AgWest to the court. Docket 126. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Deaver grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest's pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest's pre-petition liens**, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, the "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral. For the avoidance of doubt, these Replacement Liens do not extend to real property assets.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Deaver's use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments. AgWest's Super Priority Claim shall at all times be senior to the rights of Deaver and their creditors or in any successors-in-interest to Deaver, including, without limitation, any statutory committee, for Deaver in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

As further adequate protection, for their lease to Deaver Ranch, Inc., Deaver will provide a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation, which will include that AgWest is not responsible for any pre-petition or deferred rent. Deaver will provide AgWest with a written form of the lease for the Deaver Ranch, Inc. premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent. Deaver is hereby authorized to enter into such landlord consent agreement with AgWest without further approval of the Court.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new amended stipulations in not only the Shenandoah Investment Properties case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-22, Docket 131.

2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-18.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:6-22.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the collateral of Prudential. *Id.* at 5:24-6:1. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 6:12-15.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;
 1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion for Authority to Use Cash Collateral to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Use of Cash Collateral filed by Kenneth and Mary Jean Deaver., as 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 for Authority to Use Cash Collateral is **XXXXXXX**.

6. <u>24-23923-E-12</u> <u>DMW-6</u>	KENNETH/MARY DEAVER Martha Warriner	CONTINUED MOTION TO COMPROMISE CONTROVERSY/ APPROVE SETTLEMENT AGREEMENT WITH AGWEST FARM CREDIT, PCA 10-3-24 [69]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on October 3, 2024. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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. Opposition was presented at the hearing.

The Motion for Approval of Compromise is XXXXXXX.

December 19, 2024 Hearing

The Parties being close to a final stipulation, the court continued the hearing for the Parties to come to an agreement on the final language of the Order confirming.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver, (“Movant”) requests that the court approve a compromise with AgWest Farm Credit, PCA (“AgWest”). The claims and disputes to be resolved by the proposed settlement involve the use of AgWest’s cash collateral, subject to certain forms of adequate protection.

Movant and AgWest have resolved these disputes, subject to approval by the court on the following terms and conditions, summarized here (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 71):

1. Cash Collateral Use. AgWest consents to Debtor in Possession’s further use of cash collateral (“Cash Collateral”), subject to the Agreement and pursuant to the Budget.
2. Term; Extensions. Upon approval of the Agreement by the Court, Debtor in Possession is authorized to use Cash Collateral to pay its normal and ordinary operating expenses pursuant to the Budget through December 20, 2024, unless such consent is terminated or extended.
3. DIP Account. Debtor in Possession shall collect and deposit all Cash Collateral into a debtor-in-possession account, other than funds from Amador Flower Farm, which will have its own Debtor in Possession account (“DIP Account”).
4. Budget. Debtor in Possession may use Cash Collateral solely to pay expenses incurred in the ordinary course of its business pursuant to the Budget, with up to a 10% variance.
5. Replacement Liens. As a grant of adequate protection, Debtor in Possession grants AgWest valid, enforceable, and perfected replacement liens (“Replacement Liens”) on, and security interests in, any and all of Debtor in Possession’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, “Postpetition Collateral” and together with the Prepetition Collateral, “Collateral”). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest’s prepetition security interests in the Prepetition Collateral.

The court notes with respect to this provision, on the one hand it appears to say all assets of the bankruptcy estate, but then state that the replacement lien will have the same validity, priority, and extent as the pre-petition lien. The later, giving the creditor a replacement lien in post-petition assets acquired of the same kind as subject to the creditor’s pre-petition lien, to provide additional collateral for any decrease in the collateral subject to the pre-petition lien, is a common practice for creditors with secured claims.

6. Payments. As a grant of adequate protection, Debtor in Possession shall owe AgWest not less than \$250.00 per month, as set forth in the Emergency Motion for Cash Collateral (“Adequate Protection Payments”), commencing on October 1, 2024.

Payment of Adequate Protection Payments accrued shall be paid on or before December 13, 2024.

7. Super Priority Expense of Administration. AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) (“Super Priority Claim”), including for any missed Adequate Protection Payments.

8. Reporting. Debtor in Possession shall provide AgWest with monthly reports no later than 20 days after month-end, including a Monthly Operating Report, in conformance with those required in chapter 12 cases, and a line-item by line-item comparison of budgeted-to-actual receipts of Cash Collateral and incurrence and payment of Approved Expenses for the prior month.

9. Taxes & Insurance. Debtor in Possession shall pay all post-petition taxes when they come due (including any and all property taxes, sales taxes, income taxes, use taxes, and any other taxes related to its operations), maintain insurance as required by the Loan Documents, and comply with all other requirements of the Loan Documents that are necessary to preserve and maintain the value of AgWest’s Collateral, liens, and security interests, including, but not limited to, the Replacement Liens.

10. Disposition of Collateral. Debtor in Possession shall not use, lease, sell, and/or expend directly or indirectly the Collateral and/or Cash Collateral outside the ordinary course of its business without prior written consent of AgWest.

With respect to this provision, it is not clear whether the written consent of AgWest is required for a sale outside of the ordinary course of business, or whether the court can order such pursuant to 11 U.S.C. § 363. Presumably AgWest would not be seeking to invalidate that Act of Congress.

11. No Priming or Pari Passu Liens. Debtor in Possession shall be enjoined and prohibited from granting any security interests or liens, including liens created under § 364(d) of the Bankruptcy Code, which are senior to, or pari passu with AgWest’s security interests or liens in the pre-petition collateral, post-petition collateral, and/or Cash Collateral.

12. Inspection of Collateral. On reasonable advance written notice, Debtor in Possession shall permit access to (a) Debtor in Possession’s books, records, and assets, (b) the personnel of Debtor in Possession who are familiar with its assets, books, and records or the information set forth therein, and (c) such other information as AgWest may reasonably request.

14. Stipulation Binding on Successors. As one would expect, this Stipulation includes a provision stating that it is binding on successors, including bankruptcy trustees, and then expands that to add “all creditors.” It adds a further provision stating that no other creditors may seek to challenge AgWest’s lien, claim, debt, or rights.

15. Right to Challenge. Notwithstanding ¶ 14 of the Stipulation, avoidance actions under the Bankruptcy Code or similar Bankruptcy Codes provisions may be brought before and including February 17, 2025.

13, 16-27. Other Terms. The Agreement includes other terms as described therein.

Exhibit 1; Dckt. 71. Mr. Deaver submits his Declaration in support. Docket 71. Mr. Deaver testifies that the agreement is in the best interest of the estate and its creditors, and if the agreement is not approved, Debtor in Possession will be unable to operate and pay necessary expenses. Decl. ¶ 6, Docket 71.

CREDITOR PRUDENTIAL'S OPPOSITION

Creditor the Prudential Insurance Company of America ("Prudential") filed an Opposition on October 21, 2024. Docket 90. Prudential states:

1. Prudential holds a first position blanket lien on virtually all of Debtor in Possession's real and personal property. Prudential only subordinated its lien on limited personal property of the Debtor in Possession to AgWest. *Id.* at 4:10-20.
2. The proposed compromise violates Prudential's lien rights where it proposes to give replacement liens to AgWest in real property and all personal property, but Prudential holds a first position lien in that collateral. To the extent a replacement lien is sought by AgWest, it should be limited to only the same type of post- petition personal property collateral that AgWest possessed as of the petition date, and it should not alter the terms of the limited subordination. *Id.* at 5:23-8:1.
3. Debtor in Possession should be required to report to Prudential budget information and monthly reports as well, not just to AgWest. *Id.* at 8:5-8..
4. Prudential objects to Paragraph 9 of the Stipulation because it is not clear what taxes are the subject of this paragraph. *Id.* at 8:9-19.
5. In paragraph 10, Debtor and AgWest, purport to grant AgWest the sole right of consent/veto to determine whether Debtor can sell property, including property which is not even the collateral of AgWest, such as real property collateral. This provision improperly affects other parties in interest. *Id.* at 8:20-9:26.
6. Similarly, paragraph 11 is a provision restricting liens and is an attempt to restrict items of property which are not the collateral of AgWest. *Id.* at 9:27-10:17.
7. The Stipulation is essentially a *sub rosa* Plan that only gives control in the Estate to AgWest. As an example, the statute of limitations acts to prejudice the rights of others that may wish to bring claims, such as a future trustee if the case were converted. *Id.* at 10:22-11:9.

8. Paragraph 15 of the Stipulation attempts to shorten the statute of limitations to bring an avoidance action as to AgWest's liens, claims, and collateral, but shortening of the statute of limitations is simply prejudicial to the Bankruptcy Estate and contrary to the uniform application of law required by the Constitution. *Id.* at 11:10-24.
9. As with Paragraph 15, the waivers of surcharge rights in Paragraph 16 are improper and prejudicial to the Bankruptcy Estate and others. *Id.* at 11:25-12:3.
10. There is no reason for limited relief from the automatic stay for AgWest to "record" any order as provided in paragraph 17 of the Stipulation. AgWest has no interest in any real property of any of these debtors and there is no reason for AgWest to record anything in the office of any county recorder. *Id.* at 12:4-7.
11. The Stipulation cannot improperly contain findings determining lien validity and priority of a secured interest outside the context of an adversary proceeding, which is what paragraph 20 purports to do. *Id.* at 12:8-12.
12. Paragraph 25 of the Stipulation provides that upon an event of default (which includes the failure to pay the Adequate Protection Payment to AgWest), then, among other things, the automatic stay shall be deemed to have been terminated as to AgWest pursuant to 11 U.S.C. §362(d)(1) and the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) shall be deemed to have been waived. Not only is that highly prejudicial to the Bankruptcy Estate, it is highly prejudicial to Prudential and other secured creditors and deprives these secured creditors from challenging AgWest's actions. *Id.* at 13:3-12.
13. The Stipulation violates Local Bankruptcy Rule 4001-1(c)(3) where it does not recite whether the proposed cash collateral agreement contains any provision described in Local Bankruptcy Rule 4001-1(c)(3), and the Stipulation does not identify any such provision.
14. Prudential demands adequate protection of its interests.

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).

In this case, the court finds the scope of purported replacement liens to be overly broad and to improperly impair the interests of other interested parties. The Stipulation purports to grant AgWest replacement liens “on, and security interests in, any and all of Deaver Ranch’s rights, title, and/or interest in and to all of its tangible and intangible assets, existing and acquired on or after the Petition Date, which includes, but is not limited to, inventory, equipment, accounts, chattel, paper, instruments, crops, lines of credit, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, payment intangibles, general intangibles, all software, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code.” Ex. 1 at 10:4-15, Docket 71. The language surrounding the replacement liens appears overly broad and appears to give AgWest liens in collateral beyond its prepetition interests.

Moreover, where the Stipulation proposes to grant AgWest the sole authority to control whether property of the Estate can be used outside the ordinary course of business, this again is overly broad when other interest parties appear unable to participate in such a process, or at least appear to have less ability to participate. The Stipulation is similarly overly broad where it purports to limit the statute of limitations for an avoidance action, or limit surcharge rights. In the event the case has a trustee assume control as successor in interest with a right to pursue avoidance actions, such a limitation would improperly hinder the successor in interest’s efforts.

The reoccurring theme in the Opposition to this Motion is that the Stipulation appears overly broad, improperly implicating the rights of third parties who are not privy to the Stipulation. The court agrees. The Stipulation attempts to give AgWest authority in controlling collateral beyond its interest, including by giving AgWest unilateral veto power, and by apparently expanding AgWest’s lien interests.

OCTOBER 24, 2024 HEARING

On October 24, 2024, the court considered Motion to Approve Comprises for cash collateral Stipulations between the Debtors in Possession in the Deaver Ranch, Inc., Shenandoah Investment Properties, Inc, and the Kenneth and Mary Deaver Chapter 12 Cases and AgWest Farm Credit, PCA. Opposition was filed to the Motions as addressed above.

At the hearing several suggested resolutions of the oppositions were discussed. The Parties requested that the court continue the hearing to allow them to meet and confer, and then file supplemental pleadings and an amended stipulation.

The hearing on the Motion to Approve Compromise is Continued to 11:30 a.m. on December 5, 2024. The Debtor in Possession shall file and serve Supplemental Pleadings and an Amended Stipulation, if any, on or before November 15, 2024. Supplemental Opposition/Response Pleadings shall be filed and served on or before November 25, 2024.

December 5, 2024 Hearing

The court continued the hearing on these related matters to allow the Parties to address some of the court's concerns surrounding the original Stipulation. On November 15, 2024, Debtor in Possession submitted a new Stipulation with AgWest to the court. Docket 126. The new Stipulation is similar to the prior Stipulation, but the court has observed the following paragraphs with material changes made in red:

1. Paragraph 5 now states:

As a grant of adequate protection, Deaver grants AgWest valid, enforceable, and perfected replacement liens ("Replacement Liens") on, and security interests in, **property of the Estate in the same type of assets acquired post-petition that would otherwise have been encumbered by AgWest's pre-petition liens absent the bankruptcy filing to the same extent, validity, and priority of AgWest's pre-petition liens**, and all proceeds and products thereof, arising on or after the Petition Date, but excluding avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, "Postpetition Collateral" and together with the Prepetition Collateral, the "Collateral"). Such Replacement Liens shall be deemed to have attached retroactive as of the Petition Date and shall have the same validity, priority, and extent as AgWest's prepetition security interests in the Prepetition Collateral. For the avoidance of doubt, these Replacement Liens do not extend to real property assets.

2. Paragraph 7 now states:

As a grant of adequate protection, to the extent the Replacement Liens and Adequate Protection Payments are insufficient to compensate AgWest for Deaver's use of the Cash Collateral, AgWest shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(1), with the super priority status set forth in 11 U.S.C. § 507(b) ("Super Priority Claim"), including for any missed Adequate Protection Payments. AgWest's Super Priority Claim shall at all times be senior to the rights of Deaver and their creditors or in any successors-in-interest to Deaver, including, without limitation, any statutory committee, for Deaver in a case under the Bankruptcy Code, **but excluding any rights of other secured creditors as such rights pertain to their collateral, including their cash collateral.**

3. Paragraph 10 now states:

As further adequate protection, for their lease to Deaver Ranch, Inc., Deaver will provide a landlord consent agreement in favor of AgWest in a form acceptable to AgWest within thirty (30) calendar days of the execution of this Stipulation, which will include that AgWest is not responsible for any pre-petition or deferred rent. Deaver will provide AgWest with a written form of the lease for the Deaver Ranch, Inc. premises within 14 calendar days of the execution of this Stipulation, and any written documentation representing a waiver of pre-petition rent. Deaver is hereby authorized to enter into such

landlord consent agreement with AgWest without further approval of the Court.

4. Paragraph 11 now states:

[Reserved]

5. Paragraph 15 now states:

[Reserved]

Prudential submitted an Objection to confirmation of the Stipulation on November 25, 2024. Prudential states:

1. Prior to the filing of this Objection, counsel for Ag West and Prudential have been undertaking discussions and exchanging revisions to the new amended stipulations in not only the Shenandoah Investment Properties case, but also in the Shenandoah Investment Properties, Inc. ("SIP") and Kenneth Deaver and Mary Jean Deaver (the "Deavers") cases. While the amended Stipulations have not been filed, many of the issues appear to have been tentatively addressed, but one issue may remain. Opp'n 2:17-22, Docket 131.
2. Prudential objects to the language of paragraph 2 of the second proposed Stipulation that grants Debtor in Possession and AgWest authority, without a noticed hearing, to extend the terms of the Stipulation without court approval. *Id.* at 3:3-18.
3. Prudential objects to the language of paragraph 5 of the second proposed Stipulation, requesting that this paragraph be modified to confirm that no real property assets are involved and to also reflect the current multiple interests in the cash collateral and to maintain the status quo so that no other secured creditor's interests is impaired and adequate protection is provided. *Id.* at 4:6-22.
4. Prudential objects to the language of paragraph 10 of the second proposed Stipulation, arguing AgWest has no interest in any real property assets including any lease or rent. The real property assets and rents are the collateral of Prudential. *Id.* at 5:24-6:1. Prudential further requests any lease, rent concession or abatement or waiver of rent shall be presented to the Court for approval with notice and opportunity to object provided including to the Prudential Insurance Company of America. *Id.* at 6:12-15.

At the hearing, the Parties appeared to reach a consensus as to modifications to the Stipulation to use cash collateral and for entry of an order authorizing the use of cash collateral through January 31, 2025 (a court suggested date). The modifications, which may be set forth in the order approving the stipulation are summarized by the court as:

- A. All creditors get replacement liens in same type of collateral, scope, and extent as their pre-petition liens (as is provided in the court's existing interim orders):
- B. No modification of leases by the Debtors in Possession without court approval;
 - 1. AgWest is authorized to obtain a Consent Agreement with the Debtor in Possession and Landlord regarding AgWest; and
- C. Cash Collateral use must be based on budgets and court approval, and not merely the consent of a creditor (in light of their being multiple creditors with liens on differing types of cash collateral).

The court continues the hearing on the Motion to Approve Compromise to 11:30 a.m. on December 19, 2024, to afford the Parties time to finalized the amendments to the Stipulation and draft proposed orders for the court.

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 Kenneth and Mary Jean Deaver, as 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 Approve Compromise is **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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, attorneys of record, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2024. By the court's calculation, more than 70 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan 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 Confirm the Plan is XXXXXXX.

December 19, 2024 Hearing

The court continued the hearing to afford Debtor in Possession the opportunity to secure the funds that will be used to fund the proposed Chapter 12 Plan. A review of the Docket on December 17, 2024 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

REVIEW OF MOTION

Rhett Sterling Burgess ("Debtor in Possession") filed their Motion to Confirm Plan on July 25, 2024. Docket 43. The following parties all launched Oppositions to the initial Motion: Lilian G. Tsang, the Chapter 12 Trustee ("Trustee"). Docket 60.

The Plan was filed on July 25, 2024. Docket 45. The parties requested multiple extensions on this hearing, which the court granted. Orders, Docket 49, 58.

Summary of the Second Amended Plan Filed on July 25, 2024 (Docket 45)

The court provides the following summary of significant terms of the proposed Plan. This summary is not a complete statement of all terms of the proposed Plan. The Plan provides as follows:

1. The only administrative claims in Class 1 are Debtor in Possession's counsel's fees and the Chapter 12 Trustee's compensation, estimated to be \$24,614. Plan 2:23-3:3, Docket 45.
2. The only priority claim in Class 2 is the Franchise Tax Board, whose community claim is expected to be approximately \$4,500. *Id.* at 3:4-8.
3. There are two secured claims, one of Wells Fargo in the amount of \$30,070 in Class 3, and one of Deere in the amount of \$44,721 in Class 4. *Id.* at 3:9-17.
4. Class 5 is claims of various landlords for arrears, estimated to be in the amount of \$30,000. *Id.* at 3:18-24.
5. The general unsecured claims in Class 6 amount to \$5,850. *Id.* at 3:25-4:1.
6. The Plan calls for a single payment of \$146,136, which is expected to pay all claims in full, including interest. The payment will come from Debtor in Possession's Bank of Stockton account containing proceeds of the sale of community real property and proceeds from the sale of almonds grown by the Debtor in 2023. The two trustees are the attorneys involved in the dissolution of marriage action. (The balance on July 25, 2024 is \$770,229.)

TRUSTEE'S OPPOSITION

On October 10, 2024, Trustee filed an Opposition to the Plan. Docket 60. Trustee's main objection to the Plan is she cannot assess its feasibility, being unable to confirm Debtor has access to the funds in the bank account. Trustee states:

Debtor's counsel has indicated that negotiations are on-going with the ex-spouse's attorney for the turnover of funds. However, the status of these negotiations is unknown, and it is also unclear whether Debtor is able to access funds that he claims to be his. The lump sum payment anticipated in the Plan requires that submission of \$146,136 plus any additional funds needed for full repayment of creditors plus interest rate of 5.01% prior to the Effective Date of the Plan. Without further clarification and confirmation that the funds are forthcoming and ready to be remitted to the Trustee, the Trustee cannot assess whether the plan complies with 11 U.S.C. § 1225(a)(1) and (a)(6) and therefore, cannot recommend its confirmation.

Id. at 2:13-21.

APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states “[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.” The term “family farmer with regular annual income” is defined in 11 U.S.C. § 101(19) as a “family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.” The term “family farmer” is defined under 11 U.S.C. § 101(18) as an:

[I]ndividual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment;

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a

5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; and

(5) subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F.3d 1209, 1220 at n. 5 (9th Cir. 1994) (“The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate’s creditors.”).

DISCUSSION

Here, the court finds that the Debtor in Possession is an eligible debtor under Chapter 12. No party in interest has contested this fact and the court finds it clear from the evidence that Debtor in Possession fulfills the definitions of “family farmer” and “family farmer with regular income” as prescribed by 11 U.S.C. §§ 109(f), 101(18) &(19).

However, if the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor’s projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor’s projected disposable income for such period.

(2) For purposes of this subsection, “disposable income” means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor’s business.

11 U.S.C. § 1225(b).

Trustee objects on the basis of whether the funds are readily available to be paid in accordance with the Plan upon confirmation. Debtor in Possession has not submitted any pleading or evidence to rebut Trustee's objection, or otherwise made a showing that the Plan complies with 11 U.S.C. § 1225(b).

OCTOBER 24, 2024 HEARING

At the hearing, Debtor in Possession says that they are close to getting the Plan funded. Counsel for the Debtor in Possession requested a continuance to 11:30 a.m. on November 14, 2024. The Chapter 12 Trustee concurred with the requested continuance.

The hearing on the Motion is continued to 11:30 a.m. on November 14, 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 to Confirm the Chapter 12 Plan filed by Rhett Sterling Burgess ("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 hearing on the Motion is **XXXXXXX**.

**BORIS A. & MARINA S.
CHECHELNITSKY, TRUSTEES OF
THE BORIS A. & MARINA S.
CHECHELNITSKY REVOCABLE
LIVING TRUST DATED JANUARY**

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, other parties in interest, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Relief from the Automatic Stay is XXXXXXX.

December 19, 2024 Hearing

On December 17, 2024, a Stipulation between David Martinez, the Debtor, and Peter Fear, the Chapter 7 Trustee, was filed. Dckt. 151. The Stipulation is quite simple. In it the Debtor irrevocably waives any exemption that he could claim in the 425 Osprey Drive, Patterson, California Property, and that he will not claim any exemption in that Property in the future.

With the exemption waived, the Trustee will proceed with the marketing and sale of that Property for the benefit of the Bankruptcy Estate. As noted below, it is the creditors whose claim that is secured by the second deed of trust are moving for relief from stay on this Property. The Debtor's claim of a homestead exemption precluded the Trustee from selling the Property, the exemption exhausting what appears to be

a six figure equity in the Property. There are only less than \$10,000 of unsecured claims, as of this point in time, to be paid in this case. Thus, as a practical economic matter, it appears that a substantial part of the formerly exempt equity will still go back to the Debtor, as well as the other parcel of real property in this Bankruptcy Estate.

At the hearing, **XXXXXXX**

COURT'S CONTINUANCE OF HEARING

On December 12, 2024, the hearing on this Motion for Relief From the Automatic Stay was conducted in conjunction with Motions by the Chapter 7 Trustee for an order compelling the Debtor, along with Debtor's counsel, to fulfill the Debtor's statutory obligation (11 U.S.C. § 334) to appear at the 341 Meeting of Creditors (Debtor and Debtor's counsel having failed to appear at the originally scheduled and the first continued 341 Meeting), and the Chapter Trustee's Motion to set a deadline for the Debtor to make any changes to claimed exemptions. For this Motion for Relief From the Stay, the court stated that it would grant the Motion.

As the court prepared its written ruling for the Civil Minutes and re-re-read the Trustee's exhibits, it appears to the court that in granting such relief the Debtor and Debtor's counsel may well not fully appreciate the impact of such relief and possible foreclosure of the property while it is property of the Bankruptcy Estate (and beyond the control of the Debtor). The Debtor must actively work to protect his claimed exemptions, and that the duties and obligations of a Chapter 7 Trustee run to the Bankruptcy Estate and not the Debtor (who in this case is represented by counsel to provide not only legal advance, but commencing such proceedings as are in the Debtor's interest to protect the Debtor's exempt assets).

In light of the grounds upon which this Motion has sought relief, the substantial equity cushion in which Debtor has claimed his three figure homestead exemption, and the email communications between Debtor's Counsel and the Chapter 7 Trustee, the court determines that conducting a continued expedited final hearing on this Motion is necessary and proper.

The court has continued this for an expedited final hearing at 11:30 a.m. on December 19, 2024, specially set in the Sacramento Division Courthouse.

The basis for such conclusion is stated below.

REVIEW OF MOTION

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitzsky and Marina S. Chechelnitzsky, Trustees of the Boris A. Chechelnitzsky and Marina S. Chechelnitzsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") seeks relief from the automatic stay with respect to David Martinez's ("Debtor") real property commonly known as 425 Osprey Drive, Patterson, California 95363 ("Property"). Movant has provided the Declaration of Chris Boulter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 120.

Movant argues Debtor has not made 17 monthly installment payments, including multiple postpetition payments, with a current payment delinquency of (\$35,872.72). Mot. 3:14-20, Docket 117; Decl. ¶ 9, Docket 120. Good through December 1, 2024, the total outstanding payoff balance on Movant's loan has increased to approximately (\$242,691.46), which consists of a principal balance of (\$181,000.00), accrued interest of (\$38,156.29), late charges of (\$4,009.38), and total fees, costs and charges in the sum of (\$19,525.79). Decl. ¶ 10, Docket 120.

Movant states that there is a debt of at least approximately (\$119,815.00) secured by a senior deed of trust that encumbers this Property. Guild Mortgage filed Proof of Claim 2-1 on January 23, 2024, which stated its secured claim to be (\$114,044.83). There were no prepetition defaults as of the time the proof of claim was filed. The monthly loan payment and the monthly escrow payment for the Guild Mortgage Claim is stated to be \$1,250.28. POC 2-1, Proof of Claim Attachment.

Movant using the Debtor's stated value for the Property of \$500,000.00, after deducting Movant's secured claim, the (\$114,044.83) Guild Mortgage secured claims stated in Proof of Claim 2-1, and estimated costs of sale of (\$40,000), which is stated to be Debtor's estimate and would equal 8% of a \$500,000 gross sale, there is \$132,448.31 in equity for the Debtor. As discussed below, the Debtor has exempted this equity pursuant to his homestead exemption. Scheduled C; Dckt. 15 at 11.

The grounds stated in the Motion note that the Chapter 7 Trustee has communicated that the Trustee will not be opposing this Motion in light of the Debtor having exempted all of the equity in this Property with his homestead exemption. Motion, p. 2:15-17; Dckt. 117. However, Debtor and his counsel have not taken any action with respect to the Property in which Debtor has his six figure homestead exemption claimed.

TRUSTEE'S RESPONSE

Peter L. Fear, the Chapter 7 Trustee ("Trustee") filed a Response on December 2, 2024, noting Debtor has failed to appear at either of the 341 Meetings in this case. Docket 137. Trustee states:

1. Debtor's schedules disclose an interest in another parcel of real property, located at 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property"), which Trustee believes has equity available for distribution to creditors of the bankruptcy estate. *Id.* at ¶ 5.
2. Trustee intends to sell the Las Palmas Property, but the bankruptcy estate would be prejudiced if the Property were foreclosed upon, and Debtor subsequently amended his exemptions to claim an exemption in the Las Palmas Property. *Id.* at ¶ 6.
3. Trustee has brought a motion (the "Exemption Motion") to limit the time for Debtor to amend his claimed homestead exemption in the Property or to amend any portion of the Las Palmas Property, which is set for hearing on December 12, 2024, at 10:30 a.m. *Id.* at ¶ 8.
4. Until the Exemption Motion is granted, Trustee believes the estate would be prejudiced if the Property was foreclosed upon. *Id.* at ¶ 9.

5. As a result, Trustee requests that the granting of the Motion be delayed unless and until the Exemption Motion is granted, and any foreclosure by Movant delayed until after the time period for the Debtor to amend his exemptions has expired pursuant to that motion. *Id.* at ¶ 10.

Homestead Exemption and Impact on Bankruptcy Estate

Peter Fear, the Chapter 7 Trustee, appeared at the hearing and has filed an informational response (Dckt. 137) to the Motion. The Trustee reports that the Debtor has elected to claim his homestead exemption in this Property. Schedule C; Dckt. 15 at 1. In the Schedules Debtor has valued the Property at \$500,000.00 (Sch. A/B; Dckt. 15 at 3), and has identified two claims secured by the Property: (1) Guild Mortgage for (\$116,278.88) and (2) Movant for (\$210,000). Sch. D, ¶¶ 2.1, 2.3; Dckt. 1 at 13, 14. Movant computes the claim to be approximately (\$242,691). Dec., ¶ 10; Dckt. 120.

Based on Debtor's valuation, the homestead exemption claimed (the actual possible homestead exemption that can be claimed is much higher) exhausts all of the value of the Property, leaving nothing for the Chapter 7 Trustee to administer for the Bankruptcy Estate.

In his response the Trustee states that the Debtor and his counsel have now failed to appear at the first two 341 Meeting of Creditors. Con. Non Opp, ¶ 4; Dckt. 137. The Trustee also reports that he has been attempting to communicate with the Debtor's counsel concerning this Property, and by separate Motion is seeking an order to compel the attendance of the Debtor at the continued 341 Meeting and for the court to set a deadline for Debtor to file amended exemptions.

In the Trustee's Motion to Reduce Time Allowed to Amend Exemptions (Dckt. 99), the Trustee recounts the communication attempts with Debtor's counsel and to see if the Debtor wanted to proceed with the Trustee selling the exempt property. Motion to Reduce, ¶¶ 10, 11, 12, 13, 14, 15; Dckt. 99. Exhibits A, B, C, and D are copies of email communications concerning the Property and the Debtor's exemption. Dckt. 102.

In an email dated October 8, 2024, from the Chapter 7 Trustee to Debtor's counsel, Mr. Moore, the Trustee poses the following question to Debtor's counsel:

The meeting of creditors was today and there was no appearance by the debtor or his counsel. I understand that the lender on the Osprey property wants to move aggressively to foreclose. It appears to me that there is a substantial amount of exempt equity in the property. Would the Debtor prefer for me to sell the real property and work out some split of the equity so that he doesn't lose all of it in a foreclosure sale?

Exhibit A; Dckt. 102.

The Trustee states that the response to the October 8, 2024 email was a call on October 30, 2024, from Mr. Moore's assistant who connected the Trustee with another attorney in that office. Dec., ¶ 16; Dckt. 101. The Trustee further testifies that after that call he received an email from Mr. Moore and an email discussion ensued on October 30, 2024. A copy of the email discussion thread is filed as Exhibit B, Dckt. 102.

The response from Mr. Moore was that the Debtor was open to selling the Property and paying the creditors with secured claims, but Mr. Moore was unsure of the Trustee's "fees" for working out a deal to do that. *Id.*; October 30, 2024 at 3:15 p.m. email from Mr. Moore. Mr. Moore also notes that there are less than \$10,000.00 of unsecured claims in the Bankruptcy Case.

The Trustee responded with an email at 4:58 p.m. on October 30, 2024, stating that they could move forward and work to get the Osprey Property sold prior to any foreclosure sale, and that it would be likely that with the sale of the Osprey Property all claims could be paid and no other assets would need to be sold.

The Trustee testifies that later on October 30, 2024, the Trustee received a reply from Debtor's attorney, Mr. Moore, rejecting an agreement for the sale of the Property in which Debtor had exempted all of the value in excess of the liens. Dec., ¶ 18; Dckt. 101. A copy of Mr. Moore's response email at 8:13 p.m. on October 30, 2024, is provided as Exhibit C; Dckt. 102. Mr. Moore's response is:

You want me to agree to waive a 173k exemption for less than 10k in unsecured debt? That may be enough to not sell the other property? I must be reading your email incorrectly. If I am not, I will file a motion to sell the property myself if that's the case and argue the motion for relief from stay on property one. As far as property two, we will have to file motions I guess.

Id.

What appears to stand out in this response is that Debtor's counsel appears to state that the entire exemption of \$173,000 would be waived to pay only (\$10,000) in unsecured claims. Mr. Moore then states that he will file a motion himself to sell the Property and then argue against the Motion for Relief From the Stay.

It is unclear what motion Mr. Moore, as Debtor's counsel, would file with respect to the Property in which the exemption is claimed, other than a motion to have the property immediately abandoned so the Debtor could sell the Property and pocket the exempt equity in excess of the secured claims.

No motions have been filed by the Debtor and the Debtor has not opposed this Motion for Relief from the Stay so Movant can foreclose on this Property in which the Debtor has claimed his homestead exemption. It appears that Debtor and Debtor's counsel do not understand the role of a Chapter 7 trustee and that trustee's duties to the Bankruptcy Estate. The Trustee is not going to sell property in which all proceeds are claimed as exempt.

The Trustee testifies that he has heard nothing further from Debtor's counsel. Dec., ¶¶ 19, 21; Dckt. 101. He testifies that he sent a follow up email on November 4, 2024, to Mr. Moore, Debtor's counsel, as a (in the court's terminology) "last ditch effort" to see if the Property in which the exemption is claimed could be sold rather than having the automatic stay terminated and the foreclosure sale proceed. *Id.*; ¶ 20. A copy of the November 4, 2024, email from the Trustee to Mr. Moore and counsel for Movant is provided as Exhibit D, Dckt. 102, which states:

Messrs. Moore and Graff:

I have been in conversations with both of you about the property at 425 Osprey Drive. I have told Mr. Graff[Movant's counsel] that I would not oppose a stay relief motion if the Debtor refused to waive some portion of the homestead exemption, such that it made sense for me to sell the property. Mr. Moore has not yet affirmatively stated what he would do, but he seemed disinclined to advise his client to waive any portion of the homestead exemption. This has been dragging on for about a month now. I need to sell either the Las [sic] Palmas property or the Osprey Drive property, or possibly both. But I am not going to wait around any further on this.

Here are the Debtor's options:

1. Stipulate to carve-out at least \$20k from the exempt sale proceeds on Osprey for the bankruptcy estate. I will then sell the Osprey property, pay off the lender, and pay any net proceeds over \$20k to the Debtor. I will also sell Las [sic] Palmas, because that [a \$20,000 carve out] will not be enough to pay all claims in this case.
2. Not agree to waive any exemption in the Osprey property. I will stipulate to stay relief with Mr. Graff's client and will sell Las [sic] Palmas.
3. Agree to waive the entirety of the homestead exemption. I will sell Osprey, use the net proceeds to pay claims, and will turn over any surplus amount to the Debtor. I anticipate this would provide enough to not need to sell Las [sic] Palmas, so I will not list it unless something unexpected happens and Osprey does not generate enough funds to pay all claims in the case.

Debtor has delayed interacting with me about this for about a month, so he needs to act fast. If I do not have an affirmative choice from him as to either 1 or 3 no later than close of business on Thursday, November 7, I will assume he wants to do 2, and will stipulate with Mr. Graff's client for stay relief.

I look forward to hearing from you.

Exhibit D; Dckt. 102.

The statement in Paragraph 1 above is a common form of stipulation for a trustee to sell exempt property in which the debtor will take the majority of the sales proceeds. The Trustee recovers something for the estate that can be applied to the claims and expenses. The Trustee would then proceed to sell the Los Palmas property to pay the claims secured by that property, and then surplus proceeds from that sale would go to the Debtor.

The version in Paragraph 3 would be for the Debtor to waive the homestead exemption in its entirety, the Trustee would sell the Property that is the Debtor's residence, pay all claims with those proceeds, and then have the balance of the proceeds (there being under \$10,000 in unsecured claims) and the Los Palmas property abandoned back to the Debtor. ^{Fn.1.}

FN. 1. The Los Palmas property is listed on Schedule A/B as having a value of \$230,000, and on Schedule D Debtor lists it as securing only one claim in the amount of (\$110,000.00). Dckt. 15. On Schedule E/F Debtor lists owing an unsecured priority tax claim of (\$5,541.09) and general unsecured claims of (\$7,571.00). *Id.*

No proof of claim has been filed by a creditor asserting a claim secured by the Los Palmas property, no priority tax claim has been filed, and only two general unsecured claims, which aggregate \$3,812.89, have been filed in this Case.

The Debtor, though claiming an exemption in all of the value of the Property, has not filed an opposition to the Motion. The Debtor having claimed the exemption, there is no value for the Bankruptcy Estate in this Bankruptcy Case.

Though the Trustee is bringing to the attention of the court the interests of the Debtor, and the inaction of Debtor and Debtor's counsel, there is not a basis for the Trustee to oppose this Motion in light of the Debtor's homestead exemption, which exhausts all value in the Property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$242,691.46 (Declaration ¶ 10, Docket 120), while the value of the Property is determined to be \$500,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B 3, Docket 15.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Regarding Trustee's Response, the court would note Trustee has not provided any law that would support the court delaying granting such a motion. In order for a debtor to be eligible to claim the homestead exemption, the property must be that debtor's domicile, not mere residence. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.06 (discussing requirements for a "domicile" and for a "residence," noting a homestead exemption may only be applied to a debtor's domicile). It appears to the court Debtor would be unable to

simply change the homestead exemption if Movant forecloses on the Property as Debtor has testified under penalty of perjury his homestead, his domicile, is the Property. Trustee expresses concern over Debtor amending the Schedules to claim an exemption in the Los Palmas Property, but Trustee does not cite which exemption Debtor may attempt to claim. As discussed, debtor cannot claim the homestead exemption in the Los Palmas Property if it is not his domicile.

California law defines a “homestead” in which an exemption may be claimed to as follows:

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

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

At the hearing, counsel for the Movant reported that this case has been pending for more than a year, with no payments made by Debtor.

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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

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

~~The Motion for Relief from the Automatic Stay filed by Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelmitsky and Marina S. Chechelmitsky, Trustees~~

of the Boris A. Chechelnitzsky and Marina S. Chechelnitzsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

————— **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 425 Osprey Drive, Patterson, CA 95363 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

————— **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

————— No other or additional relief is granted.