

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Wednesday, December 18, 2024

Hearing Room 5D

9:00 AM

9: -

Chapter

#0.00 Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 5D in the Santa Ana Division at the Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, California 92701** by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

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Docket 0

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Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Wednesday, December 18, 2024

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9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#1.00 HearingRE: [13] Motion to Use Cash Collateral Emergency Motion for Use Of Cash Collateral; Memorandum of Points And Authorities In Support Thereof, with Proof of Service

Docket 13

Tentative Ruling:

December 18, 2024

Appearances required.

Background

Adelaida Cellars, Inc. (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code on December 13, 2024. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Before the Court are three (3) motions, which motions the Court set for hearing on an emergency basis pursuant to this Court's Local Rule 9075-1(a); (1) *Emergency Motion for Use of Cash Collateral* (the "Cash Collateral Motion"); (2) *Emergency Motion to Pay Prepetition Payroll and To Honor Paid Time Off* (the "Payroll Motion"); and (3) *Debtor's Emergency Motion for Order: (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Deeming Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366* (the "Utilities Motion," and collectively with the Cash Collateral Motion and the Payroll Motion, the "Motions"). *See* Docket Nos. 13, 14 and 17, respectively.

Notice

As the Motions were filed, and are being heard on an emergency basis, the Court obligated the Debtor to afford telephonic and written notice of the emergency hearings concerning the Motions to the Office of the U.S. Trustee and all secured creditors by December 16, 2024, at noon, and that the moving papers be filed and served on the Office of the U.S. Trustee and all secured creditors by noon on December 17, 2024. On December 16, 2024, at 1:19 p.m., the Debtor filed that *Notice of Hearing on*

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Emergency Motion for: (1) Use of Cash Collateral; (2) Authorization to Pay Prepetition Payroll and Continue to Honor Paid Time Off; and (3) An Order (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Determining Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366 (the "Notice"). See Docket No. 9. The twenty largest unsecured creditors were served with the Notice via priority mail. See Docket No. 10, Supplemental Proof of Service. Telephonic notice of the hearings and an email of the Notice were provided by the Debtor on December 16, 2024, prior to noon. See Docket No. 11, Declaration of Ja'Nita Fisher Regarding Telephonic Notice of Hearing on Emergency Motions. The Motions were served via email and NEF on the Office of the U.S. Trustee and secured creditors on December 17, 2024. See Docket Nos. 13, 14 and 17, at Proof of Service of Document.

Notice substantially comports with the Court's instructions.

Preliminary Matters

The Court will firstly want to learn from the Debtor as to whether it is subject to any growers or producer's liens, or PACA claims. If so, the Court will mean to understand how any such lien(s)/trust(s) affect the Motions.

As the Motions are being heard on an emergency basis, any approval will be for such time and for such relief as is essentially needed to maintain the business through and including January 15, 2025.

The Court ought to note here that it has some unease with the viability of this case. The Debtor burns through most of its cash through at least the first 14 weeks of the case. See Docket No. 12, Exhibit 3. Perhaps there is some seasonality to the Debtor's business that is not readily apparent in reviewing the first 14 weeks of the year, but the Court at this occasion maintains some apprehension about a business that is projected to lose \$700,000 over the coming months. During the time of this operational loss, the Debtor appears to be paying rent to insider landlords, and acting as the purchasing arm, at least in part, for crops of insider vineyards. See Docket No. 12, p. 2, lines 26-28. These are plain observations at the moment, but significant to raise at present.

Cash Collateral

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It is not entirely evident to the Court what portion of the Debtor's cash on hand the Debtor supposes to be subject to liens, but the Debtor does seem to intimate that some of its cash on hand may possibly be subject to certain liens, avoidable or otherwise. Of the cash collateral sought to be utilized, approximately \$5,812.83 relates to pre-petition obligations to vendors, service providers, and taxing and licensing authorities. *See* Docket No. 13, p. 9, lines 5-13. The Debtor states that it "believes that having these checks returned by the bank will cause more disruption than it is worth given the minimal dollar amount." *See id.* at lines 11-12. The Court does not follow, at least wholly. If the Court appreciates the Cash Collateral Motion correctly, these are pre-petition claims that the Debtor seeks to pay post-petition. The use of the term "disruption" suggests that these claims represent, in part, critical vendors of the Debtor. Has the Ninth Circuit not rejected, other than in railroad cases, the "necessity of payment rule" under which most courts in the country have relied on in granting critical vendor requests? *See In re B & W Enterprises, Inc.*, 713 F.2d 534 (9th Cir. 1983); *see also In re MacMillan*, 652 B.R. 812 (Bankr. D. Or. 2023). Even if the Ninth Circuit had not spoken on this subject, it is not clear to the Court why payment of these claims is critical to the Debtor's survival in this case. The Court strains to find in the Motion the appropriate grounds to allow the payment of these pre-petition claims.

The budget included with the moving papers provides a line item for "503(b)(9)/Adequate Assurance" payments totaling \$9,947. *See* Docket No. 12, *Exhibit 3*. Perhaps these payments are explained in the Motion, but at first glance the Court does not place a discussion about these claims, and the justification to pay pre-petition administrative expense claims prior to plan confirmation.

Payroll Motion

The Court presupposes but will verify that no insiders are included in the request to pay pre-petition wages of employees through the Payroll Motion preceding compliance with the Office of the U.S. Trustee's insider compensation procedure.

Pursuant to this Court's Local Rule 2081-1(a)(6)(A), regarding a motion to pay prepetition payroll, "[t]he motion must be supported by evidence that establishes [t]he employees are still employed." The Debtor provides that it "terminated four employees on December 13, 2024." *See* Docket No. 14, p. 3, lines 26-27. The Court

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finds no analysis as to why it would be appropriate to pay these terminated employees their priority claims post-petition, and prior to a plan being confirmed. However, it appears to the Court that the Debtor may have in-fact paid these employees without prior Court approval. *See id.* at p. 4, lines 1-2 ("These four employees have received their checks. The total paid to them was \$20,352.22..."). The Court will hear from the Debtor to confirm or correct the Court on this point, but if these employees were in-fact paid post-petition on the part of pre-petition claims, would a chief restructuring officer not have recognized this as an issue and halted such payments prior to their being made?

The Debtor requests that its winemaker be reimbursed for \$2,500 that they paid to one of the Debtor's vendors, pre-petition. It is not clear to the Court how this expense fits within the confines of 11 U.S.C. § 507(a)(4). The aforementioned expense does not comprise "wages, salaries, or commissions." This, it seems to the Court, is a prepetition general unsecured non-priority obligation. The Court will hear from the Debtor on this point.

Orders

Assuming the Court grants the Motions, approval will be on an interim basis, with continued hearings to be held on January 15, 2025, at 1:00 p.m., with notice to be served of the continued hearings, as well as all of the Motions on or before December 24, 2024.

Party Information

Debtor(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Kyra E Andrassy

Movant(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Kyra E Andrassy
Kyra E Andrassy

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9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#2.00 HearingRE: [14] Emergency motion Emergency Motion to Pay Prepetition Payroll and to Honor Paid Time Off; Memorandum of Points and Authorities, with Proof of Service

Docket 14

Tentative Ruling:

December 18, 2024

See Matter 1.

Party Information

Debtor(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Kyra E Andrassy

Movant(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Kyra E Andrassy
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9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#3.00 HearingRE: [17] Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b) Debtor's Emergency Motion for Order: (A) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service; (B) Deeming Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366; Memorandum of Points and Authorities, with Proof of Service

Docket 17

Tentative Ruling:

December 18, 2024

See Matter 1.

Party Information

Debtor(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Kyra E Andrassy

Movant(s):

Adelaida Cellars, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Kyra E Andrassy
Kyra E Andrassy