IN THE SUPREME COURT OF THE

STATE OF NEVADA

CLARK NMSD, LLC,

Appellant,

vs

JENNIFER GOLDSTEIN,

Respondent.

Supreme Court Case No. 84623

District Court Case No. A-15-728510-B

Volume I

APPENDIX OF EXHIBITS IN SUPPORT OF APPELLANT'S EMERGENCY MOTION FOR STAY OR INJUNCTION

LAW OFFICE OF MITCHELL STIPP
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144 Telephone: 702.602.1242 mstipp@stipplaw.com
Counsel for Appellant

DATED this 5th day of December, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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Counsel for Appellant

EXHIBIT 1

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Senior Deputy Attorney General
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Attorneys for State of Nevada, ex rel. Cannabis Compliance Board

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: NUVEDA, LLC, a Nevada limited liability company, Debtor(s).	BK-22-11249-abl Chapter 11 (Subchapter V)

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an ORDER granting the Stipulation By STATE OF NEVADA, EX REL. CANNABIS COMPLIANCE BOARD and Between MITCHELL D. STIPP on behalf of NUVEDA, LLC, A NEVADA LIMITED LIABILITY COMPANY Filed by EMILY NAVASCA BORDELOVE on behalf of STATE OF NEVADA, EX REL. CANNABIS COMPLIANCE BOARD was filed in this matter on August 26, 2022, a copy of which is attached hereto.

DATED this 26th of August, 2022.

By: _____
Emily N. Bordelove an employee of the Office of the Nevada Attorney General

Honorable August B. Landis
United States Bankruptcy Judge

Entered on Docket
August 26, 2022

AARON D. FORD
Attorney General
Ashley A. Balducci (Bar No. 12687)
Senior Deputy Attorney General
Emily N. Bordelove (Bar No. 13202)
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	BK-22-11249-abl Chapter 11 (Subchapter V)
NUVEDA, LLC, a Nevada limited liability company, Debtor(s)	

ORDER APPROVING STIPULATION BY AND AMONG DEBTOR, THE CANNABIS COMPLIANCE BOARD, AND THE DEPARTMENT OF TAXATION

The Court, having considered the Stipulation by and among Debtor, the State of Nevada, *ex rel.* the Cannabis Compliance Board ("CCB") and the Department of Taxation ("DOT"), attached hereto as **Exhibit 1**, and good cause appearing:

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IT IS HEREBY ORDERED that the Stipulation is APPROVED as follows:

1. That 11 U.S.C. § 362(a)'s automatic stay in this matter does not apply to any action or proceeding instituted or maintained by the State of Nevada, *ex rel*. Cannabis Compliance Board or the Department of Taxation involving the Debtor, Clark NMSD, LLC ("Clark NMSD"), or Nye Natural Medicinal Solutions, LLC ("Nye Natural").

2. Upon entry by the United States Bankruptcy Judge of this Order approving said Stipulation, the CCB's Joinder to the Motion to Dismiss [dkt. 92] and Motion for Declaratory Relief [dkt. 96] shall be deemed withdrawn.

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Further, upon entry by the United States Bankruptcy Judge of this Order approving said Stipulation, the CCB and the DOT will not file an opposition in this case to the Debtor's position that Debtor does not own any interest in any cannabis establishments including, without, limitation, Clark NMSD and Nye Natural. However, the CCB reserves all rights and remedies to take any action regarding any transfers concerning the Debtor's interest in Clark NMSD and Nye Natural that violated Nevada laws and regulations which governed the same. Similarly, the DOT reserves all rights and remedies to take any action regarding any tax liabilities within the DOT's jurisdiction and collection of the same from any and all persons liable including, but not limited to, responsible persons pursuant to NRS 360.297 and successors pursuant to NRS 360.525.

IT IS SO ORDERED.

Respectfully submitted:

DATED this 23rd day of August, 2022

AARON D. FORD
Attorney General

Emily N. Bordelove (Bar No. 13202)
Senior Deputy Attorney General
Ashley A. Balducci (Bar No. 12687)
Senior Deputy Attorney General

Attorneys for State of Nevada, ex rel. Cannabis Compliance Board and Department of Taxation.

EXHIBIT “1”

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AARON D. FORD
Attorney General
Ashley A. Balducci (Bar No. 12687)
Senior Deputy Attorney General
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	BK-22-11249-abl Chapter 11 (Subchapter V)
NUVEDA, LLC, a Nevada limited liability company, Debtor(s)	

STIPULATION BY AND AMONG DEBTOR, THE CANNABIS COMPLIANCE BOARD, AND THE DEPARTMENT OF TAXATION

This stipulation ("Stipulation") is made by and between debtor NuVeda LLC ("Debtor"), by and through its counsel, Mitchell Stipp, Esq. and Nathan A. Schultz Esq., and the State of Nevada, *ex rel.* the Cannabis Compliance Board ("CCB") and the Department of Taxation ("DOT"), by and through their counsel of record, Attorney General Aaron D. Ford, Senior Deputy Attorney General Emily N. Bordelove, Senior Deputy Attorney General Ashley A. Balducci, and is predicated upon the following:

1. The CCB is the regulatory body over cannabis establishments and cannabis establishment agents in the State of Nevada.

2. The DOT regulates, imposes, and collects taxes for doing business in the State of Nevada.

3. Debtor filed its petition for bankruptcy on or about April 11, 2022. This

petition enacted an automatic stay of "the commencement or continuation, including … other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 USC § 362 (a)(1).

4. The CCB and the DOT seek to maintain their regulatory authority over cannabis establishments and cannabis establishment agents in the State of Nevada.

5. 11 USC § 362(b)(4) provides exceptions to the automatic stay under subsection (a) in pertinent part:

> (b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—
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> …
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> (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit … to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

6. The CCB agrees that, by entering into this Stipulation and upon entry by the United States Bankruptcy Judge of the associated Order approving this Stipulation, the CCB's Joinder to the Motion to Dismiss [dkt. 92] and Motion for Declaratory Relief [dkt. 96] shall be deemed withdrawn.

7. Further, the CCB and the DOT stipulate and agree that, upon entry by the United States Bankruptcy Judge of the associated Order approving this Stipulation, neither will file an opposition in this case to the Debtor's position that Debtor does not own any interest in any cannabis establishments including, without, limitation, Clark NMSD, LLC ("Clark NMSD") and Nye Natural Medicinal Solutions, LLC ("Nye Natural"). However, the CCB reserves all rights and remedies to take any action regarding any transfers which violated Nevada laws and regulations which governed the same. Similarly, the DOT reserves all rights and remedies to take any action regarding any tax liabilities within the DOT's jurisdiction and collection of the same

from any and all persons liable including, but not limited to, responsible persons pursuant to NRS 360.297 and successors pursuant to NRS 360.525.

NOW, THEREFORE, Debtor, the CCB, and the DOT stipulate as follows:

1. Debtor, the CCB, and the DOT have met, conferred, and agreed to stipulate that 11 U.S.C. § 362(a)'s automatic stay in this matter does not apply to any action or proceeding instituted or maintained by the State of Nevada, *ex rel.* Cannabis Compliance Board or the Department of Taxation involving the Debtor, Clark NMSD, or Nye Natural.

2. Upon entry by the United States Bankruptcy Judge of the associated Order approving this Stipulation, the CCB's Joinder to the Motion to Dismiss [dkt. 92] and Motion for Declaratory Relief [dkt. 96] shall be deemed withdrawn.

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3. Further, upon entry by the United States Bankruptcy Judge of the associated Order approving this Stipulation, the CCB and the DOT stipulate and agree not to file an opposition in this case to the Debtor's position that Debtor does not own any interest in any cannabis establishments including, without, limitation, Clark NMSD and Nye Natural. However, the CCB reserves all rights and remedies to take any action regarding any transfers by Debtor in Clark NMSD and Nye Natural that violated Nevada laws and regulations which governed the same. Similarly, the DOT reserves all rights and remedies to take any action regarding any tax liabilities within the DOT's jurisdiction and collection of the same from any and all persons liable including, but not limited to, responsible persons pursuant to NRS 360.297 and successors pursuant to NRS 360.525.

DATED this 23rd day of August, 2022.

LAW OFFICE OF MITCHELL STIPP, P.C.

/s/ Mitchell Stipp
MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive, #100
Las Vegas, Nevada 89144

Co-Counsel for Debtor and Debtor In Possession

DATED this 23rd day of August, 2022

AARON D. FORD
Attorney General

Emily N. Bordelove (Bar No. 13202)
Senior Deputy Attorney General
Ashley A. Balducci (Bar No. 12687)
Senior Deputy Attorney General

Attorneys for State of Nevada, ex rel. Cannabis Compliance Board and Department of Taxation.

EXHIBIT 2

Honorable August B. Landis
United States Bankruptcy Judge

Entered on Docket
October 19, 2022

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

In re:	Case No.: 22-11249-abl
NUVEDA, LLC, A NEVADA LIMITED LIABILITY COMPANY,	Chapter 11
Debtor.	Hearing Date: October 14, 2022 Hearing Time: 2:30 p.m.

ORDER GRANTING MOTION TO DISMISS

On October 14, 2022, the Court issued its oral ruling on a Motion to Dismiss Bankruptcy Case ("Goldstein Dismissal Motion") (ECF No. 69).[1] The Goldstein Dismissal Motion was filed on behalf of Creditor Jennifer M. Goldstein ("Goldstein").

At the October 14, 2022 oral ruling, attorney Mitchell D. Stipp appeared telephonically on behalf of NuVeda, LLC ("Debtor"). Attorney Edward M. Burr appeared telephonically as SubChapter V Trustee. Attorney William Novotny appeared telephonically on behalf of Creditor Goldstein. Attorney Stacy Rubin appeared telephonically on behalf of State Court Appointed Receiver, Dotan Y. Melech. Other telephonic appearances were noted on the record.

To the extent that the Court made findings of fact and conclusions of law in the course of

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of the Court.

its oral ruling on October 14, 2022, those findings of fact and conclusions of law are incorporated into this Order by this reference pursuant to FED. R. CIV. P. 52, made applicable in this contested matter pursuant to FED. R. BANKR. P. 9014(a) and (c) and 7052.

For the reasons stated on the record:

IT IS ORDERED that the Goldstein Dismissal Motion is **GRANTED** and this case is **DISMISSED**.

Copies sent to all parties via CM/ECF Electronic Filing.

# # #

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE:	Case No. 22-11249-abl
	Chapter 11
NUVEDA LLC, A Nevada Limited Liability Company,	300 Las Vegas Blvd. South
	Las Vegas, NV 89101
Debtor.	
	Friday, October 14, 2022
	2:50 p.m.

AMENDED TRANSCRIPT OF ORAL RULING RE: MOTION TO DISMISS CASE UNITED STATES TRUSTEE'S MOTION TO DIMISS CASE FILED BY U.S. TRUSTEE [111];
ORAL RULING RE: MOTION TO DISMISS CASE FILED BY BRIAN R. IRVINE ON BEHALF OF JENNIFER M. GOLDSTEIN [69];
STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION NON-INDIVIDUAL; FEE AMOUNT 1738; FILED BY MITCHELL D. STIPP ON BEHALF OF NUVEDA LLC CHAPTER 11 PLAN SMALL BUSINESS SUBCHAPTER V DUE 7/11/2022 [1]

BEFORE THE HONORABLE AUGUST B. LANDIS
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor:	Law Office of Mitchell Stipp, P.C. By: MITCHELL STIPP, P.C. 1180 N. Town Center Drive, Suite 100 Las Vegas, NV 89144
	Law Office of Nathan A. Schultz, PC By: NATHAN A. SCHULTZ, ESQ. 10621 Craig Road Traverse City, MI 49686 (310) 429-7128

APPEARANCES CONTINUED.

Audio Operator:	Andrea Mendoza, ECR
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

TELEPHONIC APPEARANCES (Continued):

For the U.S. Trustee:	Office of U.S. Trustee By: EDWARD MCDONALD, ESQ. 300 Las Vegas Blvd. South, Ste. 4300 Las Vegas, NV 89101 (702) 388-6600
For the Subchapter V Trustee:	Mac Restructuring Advisors By: EDWARD BURR, ESQ. 10191 E. Shangri La Blvd. Scottsdale, AZ 85260 (602) 418-2906
For the Receiver:	Holley Driggs By: STACY RUBIN, ESQ. 300 South 4th Street, Suite 1600 Las Vegas, Nevada 89101 (702) 791-0308
For Dotan Melech:	Mushkin & Coppedge By: JOE COPPEDGE, ESQ. 6070 S. Eastern Ave., Suite 270 Las Vegas, NV 89119 (702) 454-3333
For Jennifer Goldstein:	Dickinson Wright By: WILLIAM NOVOTY, ESQ. 3883 Howard Hughes Pkwy., Suite 800 Las Vegas, NV 89169 (602) 285-5006

(Proceedings commence at 4:45 p.m.)

THE CLERK: We're live, Your Honor.

THE COURT: Outstanding. All right. We're here for the matters on my 2:30 calendar. There are two of them. They're in the same case. Chapter 11 Number 22-11249, Subchapter V case, NuVeda LLC, a Nevada Limited Liability Company, debtor.

Item Number 1 on the calendar is a motion to dismiss this case, filed by the United States Trustee, which is at ECF Number 111 in that case. The second matter is the motion to dismiss filed by Creditor Jennifer M. Goldstein, ECF Number 69 in the NuVeda LLC bankruptcy, Number 22-11249.

We'll take those in reverse order. We'll start with the motion to dismiss the case that was filed by Creditor Goldstein. But before I dig into the oral rulings here, I need to make appearance known for the record. So we'll start with the appearance for Movant Jennifer Goldstein.

MR. NOVOTNY: Good afternoon, Your Honor. (Audio interference) Dickinson Wright, PLLC, (audio interference) for Jennifer Goldstein.

THE COURT: Good afternoon. And for Debtor NuVeda, LLC?

MR. STIPP: Good afternoon, Your Honor. This is Mitchell Stipp appearing on behalf of the debtor, together with Nathan Schultz, co-counsel of record.

THE COURT: Good afternoon, Counsel, and thank all of you for your patience with the Court.

Other appearances as it relates to the oral ruling on this motion to dismiss filed by Creditor Goldstein?

MR. MCDONALD: Edward McDonald, Department of Justice for the U.S. Trustee. Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. McDonald.

Other appearances in NuVeda LLC before I start in on this oral ruling?

MR. BURR: Good afternoon, Your Honor.

THE COURT: Oh. I should have asked for the Subchapter V trustee. Mr. Burr, I apologize. Go ahead. I heard your voice.

MR. BURR: Good afternoon, Your Honor. Ted Burr, the Subchapter V trustee.

THE COURT: Good afternoon. And I heard a female voice out there.

MS. RUBIN: Good afternoon, Your Honor. I apologize. Good afternoon, Your Honor. Stacy Rubin on behalf of the court-appointed receiver of (audio interference) NuVeda LLC, Dotan Y. Melech.

THE COURT: All right. Good afternoon, Ms. Rubin.

Other appearances?

MR. COPPEDGE: Yes, Your Honor. This is Joe Coppedge for the state court plaintiffs, Shane Terry and Philip Ivey,

and the Receiver, Dotan Melech, and Mr. Melech is also on the line, Your Honor.

THE COURT: All right, very well. Anyone else? Going once? Don't be shy if you're out there. Going twice.

All right. Hearing none, this is the date and time for the Court's oral ruling on the motion to dismiss this Chapter 11 Subchapter V bankruptcy case. The matter before me pends in NuVeda LLC, a Nevada Limited Liability Company, Chapter 11 Number 22-11249. Appearances have been noted on the record and as I see it, the best way I could -- as best I could distill it, there are two issues.

The first is whether cause exists to dismiss the Chapter 11, Subchapter V bankruptcy case filed by debtor NuVeda, LLC, and I'll call that entity the debtor today, under 11 U.S. C Section 1112(b).

The second issue is an alternative; whether the interest of creditors and the debtor would be better served if this case were dismissed or further proceedings in it were suspended under 11 U.S.C. Section 305(a).

In order to understand the Court's decision today, it's necessary to appreciate the record I considered in reaching it, and I will tell you extensive is probably an understatement. But in preparing for this ruling, the Court has carefully reviewed the docket in the debtor's Chapter 11 Subchapter V bankruptcy case and takes judicial notice of its

docket as well as the related claims register. I do that pursuant to and to the extent permitted by Federal Rules of Evidence 201(b) and (c).

And in particular, the Court reviewed, and this is without limitation, the following papers and the exhibits that are attached to them.

First is debtor's voluntary Chapter 11, Subchapter V petition dated April 11th, 2022 at ECF Number 1.

Next is a notice of incomplete and or deficient filing as amended April 12th, 2022 filing date ECF Numbers 4 and 5.

Notice of appointment of Subchapter V trustee Edward Burr. So, Mr. Burr, you see I didn't ignore the fact that you were here today. April 14th, 2022 filing date; it's at ECF Number 10.

Debtor's bankruptcy schedules, filed on April 25th, 2022, ECF 17. Debtor's statement of financial affairs docketed April 25th, 2022 as well at ECF Number 18.

Status report of Subchapter V debtor under 11 U.S.C. Section 1188(c), docketed May 11th, 2022 at ECF 24.

The debtor's monthly operating report for April of 2022, docketed on May 20th, 2022, at ECF Number 30; the debtor's monthly operating report for the month of May of 2022, docketed June 21st, 2022, at ECF 62.

The pending motion to dismiss the bankruptcy case was

filed on behalf of creditor Jennifer M. Goldstein. I'll call that the Goldstein dismissal motion, and when I say Goldstein today, that's who I mean, is Jennifer M. Goldstein.

This motion to dismiss was docketed on June 29th, 2022. It's at ECF Number 69. The declaration of Brian R. Irvine in support of the Goldstein dismissal motion, docketed June 29th, 2022, it's at ECF Number 70.

The exhibit appendices to the declaration of the Brian R. Irvine in support of the Goldstein dismissal motion, docketed June 29th, 2022. ECF Numbers 72 and then 74 through 80, and there are literally thousands of pages encompassed in those ECF entries.

The joinder to the Goldstein dismissal motion filed on behalf of Dotan Melech, receiver for CW and NuVeda LLC. Shane Terry and Philip Ivey, and I'll call that the general joinder, docketed on July 11th, 2022, at ECF 85.

The declaration of Shane Terry in support of that general joinder documented July 11th, 2022, ECF 86. The declaration of Dotan Melech in support of the general joinder, docketed June -- July 11th, 2022, ECF 87.

The declaration of L. Joe Coppedge in support of the general joinder, docketed that same day, July 11th, 2022, at ECF 88.

The debtor's plan of reorganization for a small business under Chapter 11, docketed that same day, July 11th,

2022, at ECF 89.

The limited joinder to the Goldstein dismissal motion, I'll just call that the limited jointer filed by the State of Nevada, ex rel the Cannabis Compliance Board, the CCCB [sic] is what I'll call that entity, docketed July 18th, 2022, ECF 92.

The declaration of Emily Inn Bordelove, B-O-R-D-E-L-O-V-E, Esquire, in support of the CCB's limited joinder, documented that same day July 18th, 2022, ECF 94.

The debtor's monthly operating report for June of 2022 docketed July 21st, 2022, at ECF 104.

The United States Trustee's motion to dismiss the case; I'll call that the U.S.T.'s dismissal motion, docketed on August 4th of 2022, ECF 111.

Debtor's omnibus objection to the Goldstein dismissal motion, the general joinder, and the limited joinder, was docketed on August 8th of 2022, ECF 118.

The reply in support of the Goldstein dismissal motion was docketed not quite two weeks later, August 21st, 2022, at ECF 137.

The debtor's objection to the U.S.T. dismissal motion docketed August 24th, 2022, ECF 130. The reply in support of the U.S.T. dismissal motion docketed August 31st, 2022, ECF 138.

The supplemental declaration of Brian R. Irvine in

support of the reply docketed September 2nd, 2022, ECF 141.

Still more exhibit appendices to the supplemental declaration of Brian R. Irvine in support of the reply, docketed September 2nd, 2022, at ECF 142 and 143.

Debtor's monthly operating report for the month of July 2022 docketed on September 5th, 2022, at ECF 144. Debtor's monthly operating report for the month of August, 2022 docketed July [sic] 6th, 2022, ECF 145. And debtor's first amended plan of reorganization for a small business under Chapter 11, docketed September 6th, 2022, ECF 146.

The Court has also considered the arguments of counsel at the September 7th, 2022 hearing on the contested Goldstein dismissal motion. The Court's fully advised as to the issues that are pending for resolution and enters the following findings of fact and conclusions of law.

We'll start with findings of fact; and for clarity and avoidance of doubt, the findings of fact that I'm about to recite will apply both to the motion to dismiss filed by Ms. Goldstein as well as to the United States Trustee. I don't want to have to recite them twice.

The parties to the Goldstein dismissal motion are well familiar with the facts of this case by virtue of extensive pre-bankruptcy litigation between them, and the pleadings and papers now before the Court in connection with this contested dismissal motion.

Certain facts warrant mention here, and I'm going to do it chronologically to the best of my ability, starting in 2014.

Debtor's creation and business purpose; the creation of subsidiaries of the debtor and the issuance of related marijuana certificates. On July 9th of 2014, debtor's original operating agreement was executed. The operating agreement is in the record at ECF 72, Pages 29 through 51 of 253.

Debtor's seven original members and their percentage ownership interests in the debtor were identified in the original operating agreement as follows; Pejman, P-E-J-M-A-N, Bady, 46.5 percent interest. Pouya, P-O-U-Y-A, Mohajer, 21 percent ownership interest; Shane Terry, 21 percent interest; Jennifer Goldstein, a 7 percent non-dilutable interest; Joe Kennedy, a 1 percent non-dilutable interest; John Pender is 1.75 percent non-dilutable interest. And last but not least, Ryan Windmill at 1.75 percent non-dilutable interest. ECF 72, Page 51 of 253.

The business purpose behind the creation of the debtor is expressly stated in the original operating agreement just like this. Quoting from the operating agreement.

"Article 1: Organization. Section 1.6 purpose of company. The purpose of the company is to engage in all lawful activities, including, but not limited to the following activities; the research, design, creation, management,

licensing, advising and consulting regarding the legal medical marijuana industry. As such, matters shall be lawfully allowed under the applicable State laws. Such purpose shall be broadly read to include providing management or other professional services to any individual, group or entity that is lawfully licensed or seeking to become lawfully licensed under any state statutory scheme providing for the legal cultivation, processing or dispensing of medical marijuana."

Notably absent from the debtor's original operating agreement is any discussion of how the purpose for creating the debtor squared with the Federal Controlled Substances Act, 21 U.S.C. Section 801 et sequitur.

Contemporaneously with creation of the debtor and to carry out debtor's stated business purpose, debtor's members created three subsidiary companies that were wholly owned by the debtor. The first is Clark County NMSD, LLC. And I'll call that entity simply Clark. Second is Clark Natural Medicinal Solutions, LLC. And I'll call that Clark Medicinal. And third Nye -- Nye, N-Y-E, Natural Medicinal Solutions, LLC. I'll call that entity Nye. And collectively with Clark and Clark Medicinal, they are the debtor's subsidiaries. ECF 74, Pages 249 and 250 of 259.

Around November 4th of 2014, the State of Nevada notified debtor that through the debtor's subsidiaries, debtor had been awarded a total of six medical marijuana certificates.

Two dispensary certificates issued to Clark; one is in the city of North Las Vegas. The other is in the city of Las Vegas, proper.

One cultivation certificate and one production certificate to Clark Medicinal. And one cultivation certificate and one production certificate to Nye. ECF 74, Page 250 of 259 and Pages 76 through 81 of 259.

Next, by way of topic in the chronological order, 2015, internal disputes arise between debtor's members and state court litigation commences. During November of 2015, a dispute arose between debtor's members as to how to finance the cannabis operations that were to be carried out through the debtor and the debtor's subsidiaries in keeping with the express purpose of the company in Article 1, Section 1.6 of the operating agreement.

Any issue as to whether or not that dispute arose is dispelled by ECF 72, Page 8 of 253. What happened is two opposing factions emerged among the debtor's members. The first is a faction that held a combined 68.5 percent majority interest in the debtor. The owners of that 68.5 percent majority interest are Baty, 46.5 percent; Mojaher, 21.0 percent, and Kennedy 1.0 percent, and I'll call them collectively the majority faction. And the opposing faction was a faction that held a combined 28 percent interest in the debtor consisting of Terry, 21.0 percent and Goldstein, 7.0

percent nondilutable. ECF 72, Page 8 of 253.

The majority faction wanted to pursue a financing proposal from CWNevada, LLC and I'll call that entity CWNevada or Nevada. Sorry about that. CWNevada at ECF 72, Page 8 of 253. It's noteworthy that CWNevada filed a separate bankruptcy case in the course of which Judge Nakagawa addressed a variety of issues that are presented when a debtor involved in the marijuana trade seeks bankruptcy relief, and he ultimately dismissed that case on its abstention grounds. In re CWNevada, LLC 602 B.R. 717 (Bankr. D. Nev. 2019).

The minority faction wanted to pursue a financing proposal from an entity called Numerical Forefront, LLC and I'll call that entity Forefront; ECF 72, Page 8 of 253. On November 23rd of 2015, the majority faction voted on and approved through corporate resolutions a letter of intent to move forward with the financing proposal offered by CWNevada, at ECF 72, Page 9 of 23.

Also on November 23rd, 2015, the majority faction voted to remove the members comprising minority faction as officers of the debtor, ECF 72 Page 9 of 253.

Debtor along with the subsidiary entities Clark and Nye, then executed the membership interest purchase agreement with CWNevada in a to be formed entity identified as CWNV LLC. I'll call that entity CWNV for short, with an effective date of December 6th of 2015. And I'll call that membership interest

purchase agreement the MIPA. ECF 74, Page 250 of 259.

Pursuant to the MIPA, debtor's subsidiaries Clark and Nye were to transfer the two dispensary licenses, one production license and one cultivation license to the to be formed entity known as CWNV. In exchange, debtor would own 35percent of the new CWNV entity, with CWNevada owning the other 65 percent of CWNV. ECF 74, Page 250 of 259.

Generally dissatisfied with how things were going forward as it relates to the debtor's business operations, on December 3rd, 2015, debtor's minority faction Terry and Goldstein filed a suit in the Nevada District Court of Clark County. I'll call that the state court. Commencing the lawsuit styled NuVeda LLC, a Nevada Limited Liability Company, Shane M. Terry, an individual, and Jennifer M. Goldstein, an individual, plaintiffs, v. Pejman Baty, an individual, Pouye Mohajer, an individual, does Roman Numeral I through X, inclusive, and Rows Number 1 through 10 -- Roman Numerals I through X, inclusive defendants. Case A-15-728510-B, and I'll call that the state court lawsuit. ECF 72, Page 9 of 253. ECF 74, page 259.

At the inception of the state court lawsuit, debtor's minority faction unsuccessfully sought to enjoin the debtor from transferring any of its assets and in particular, the assets that were the subject of the MIPA. ECF 75 Pages 82 through 86 of 188.

Next up, by way of topic and in the chronological analysis of the facts here is the fact that the state court lawsuit gets submitted to arbitration and that covers the period from 2016 through 2017.

On March 10th of 2016, a meeting of debtor's officers was held in which one of the debtors minority faction, Mr. Terry, was expelled from the debtor as a member. ECF 72, Pages 65 through 152. In June of 2016, debtor's minority faction, Terry and Goldstein, filed a demand for arbitration in the state court lawsuit. ECF 72, Page 11 of 253.

Resultantly, the claims advanced by the debtor's minority faction were referred to the American Arbitration Association's Commercial Arbitration Tribunal. So the claims from the state court lawsuit went to the arbitration. During the pendency of the arbitration, Mr. Terry sold his 21 percent interest in the debtor, assigned his claims in the arbitration proceedings to an entity known as BCP Holding 7 LLC. I'll call that entity BCP. BCP then substituted into the arbitration proceedings and dismissed all claims against the debtor's majority faction with prejudice, leaving Goldstein as the remaining plaintiff in the arbitration. ECF 74, Page 250 of 259.

Following Mr. Terry's exit, the arbitration -- the American Arbitration Association identified the arbitration proceedings spawned from the state court lawsuit in this way;

in the matter of the arbitration Jennifer M. Goldstein and NuVeda LLC, AAA Case Number 01-15-005-8574, and I'll call that the arbitration proceeding. ECF 74, Pages 249 and 250 of 259.

On August 8th, 2017, while the arbitration proceeding was pending, debtor's majority faction voted to expel Goldstein from the debtor. ECF 72, Pages 159 through 186 of 253. ECF 74, Page 154 -- or excuse me, Page 251 of 259. That's ECF 74, page 251 of 259.

Pursuant to Section 6.2 of the debtor's operating agreement, Goldstein's expulsion entitled her to, quote,

"Receive from the company," the debtor, "in exchange for all of the former members ownership interest, the fair market value of that member's ownership interest, adjusted for profits and losses to the date of the expulsion." ECF 72, Page 39 of 253. ECF 74, Page 251 of 259.

On November 15th of 2017, Goldstein filed a second amended arbitration claim against the debtor, Baty and Mohajer, asserting a variety of wrongdoings. ECF 74, Page 253 of 259.

Next by way of topic, and the next touch point in the chronology is 2018. The arbitration proceedings move forward with a focus on the proper value of Goldstein's 7 percent ownership interest in the debtor. The record before the Court plainly shows that in the course of the arbitration proceeding, extensive and competing expert reports and related testimony were submitted to the arbitrator, Nikki L. Baker, as to the

value of the debtor and Ms. Goldstein's 7 percent ownership interest in the debtor, when she was expelled from the debtor on August 8th of 2017. A review the expert reports and testimony, and they are legion, reveals that those experts uniformly based their evaluation calculations on all of the debtor's assets, including the cannabis licenses issued by the State of Nevada and the revenue generated by the cannabis assets through the debtor's share of the MIPA.

Next touch point in the chronology of events is 2019 and 2020, during which period the arbitrator issued an interim and final award in favor of Goldstein; debtor executed confessions of judgment in favor of insiders. Debtor filed a $45 million claim in a receivership action over CWNevada and the arbitration award is ultimately upheld on appeal.

During the course of the arbitration proceeding, by agreement of the parties, the issues for resolution by the arbitrator were narrowed significantly. As the arbitrator noted, quote, "On January 10th of 2019, the parties reached an agreement," quote, "That the only issue that remains is the valuation of Ms. Goldstein's shares as of August 8th of 2017, and whether Ms. Goldstein is entitled to her attorney's fees, because she was never offered the actual fair market value of her shares as of that date." Closed quote.

"In this regard, NuVeda, the debtor, conceded that Ms. Goldstein should be compensated for her 7 percent

membership interest. This agreement was confirmed both in emails and on the record at the final hearing. As a result of the parties' agreement, any and all claims for relief asserted by Ms. Goldstein against individual respondents Dr. Baty and Dr. Mohajer were dismissed. Additionally, Ms. Goldstein abandoned any argument that she was wrongfully expulsed from NuVeda, the debtor. In exchange, Dr. Baty and Dr. Mohajer agreed to waive any claim to recover attorney's fees and costs against Ms. Goldstein.

Finally, during the final hearing, Ms. Goldstein abandoned any claim to recover attorney's fees and costs from Dr. Baty and Dr. Mohajer individually." That quote comes from ECF 74, Page 253 of 259.

On February 7th of 2019, the arbitrator in the arbitration proceedings issued an interim award of arbitrator regarding value. I'll call that the interim arbitration award. It's at ECF 74, Pages 249 through 259 of 259. In which the arbitrator, Miss Baker, stated this; "This means that I must decide the fair market value of the debtor based on reasonable" -- excuse me -- "based on certain relevant facts as of August 8th, 2017, such as (i), the MIPA was still in effect, and NuVeda," the debtor, "owned 35 percent of CWNV in exchange for transferring four licenses, despite that the licenses had not yet been transferred. (ii) The Third Street and North Las Vegas dispensaries were operational and generating sales from

both medicinal and recreational marijuana, and (iii) NuVeda had no plan to liquidate its assets, and (iv), the Apex agreement was still in effect." ECF 74, Page 256 of 259.

The arbitrator explained the Apex agreement that she referred to this way; "pursuant to the Apex agreement, Clark Medicinal contributed its cultivation license and its production license to Apex Operations, LLC in exchange for other entities loaning approximately $6 million in financing. Mr. Kennedy testified that approximately $9 million in the loans were ultimately provided. Once the loans are repaid, Clark Medicinal will receive a 40 percent interest in the net income received by Apex Operations, LLC. Doctor Baty testified that the Apex agreement was in effect at the time Ms. Goldstein was exposed." ECF 74, Page 251 of 259.

For reasons that are apparent from a review of the text of the interim arbitration award, the arbitrator fixed the fair market value of Goldstein's 7 percent ownership interest in the debtor when she was expelled on August 8th of 2017 at $2,051,215.38. The predicate for that evaluation included in large part, but without limitation, the various cannabis licenses held by the debtor through the debtor's subsidiaries, as well as the value of the MIPA with CWNevada. ECF 74, Pages 258 and 259 of 259.

Finding that Goldstein was the prevailing party arbitrary, Baker set a schedule for Goldstein to submit

evidence as to the amount of her attorney's fees and for the debtor to respond. ECF 274, Page 259 of 259.

On March 19th of 2019, Arbitrator Baker entered the final award in the arbitration proceedings and awarded Goldstein the following sums; $2,051,215.38 as the fair market value of Goldstein's 7 percent ownership interest in the debtor when she was expelled on August 8th of 2017. $222,655.07 in prejudgment interest covering the period from August 8th of 2017 through March 19th of 2019. $152,293.35 in attorney's fees, costs and expenses under Section 12.10 of the debtor's original operating agreement, yielding a total award of $2,426,163.80, together with post-judgment interest at the applicable statutory rate from March 2019 until paid in full. So the judgment continues to accrue post-judgment statutory interest at the present time. ECF 75, Pages 5 through 9 of 188.

On March 27th of 2019, just eight days after the final award was entered in the arbitration proceeding, debtor executed a $1,462,300 confession of judgment in favor of 2013 Investors, LLC, which is a Nevada limited liability company owned by Joseph Kennedy, one of the debtor's principals.

On April 2nd, 2019, just 14 days after the final award was entered in the arbitration proceeding, debtor executed another separate $1,114,257.12 confession of judgment in favor of three of the debtor's principals, Baty, Mohajer,

and Kennedy.

On June 12th, 2019, less than 90 days after the final award was entered in the arbitration proceeding, debtor entered into a membership interest exchange and contribution agreement with the newly formed nondebtor Delaware company called NuVeda DE. I'll call that the NuVeda DE agreement. Pursuant to which debtor ostensibly, quote, "Hereby redeems all of the right title and interest of Kennedy, Baty, and Mohajer and debtor in exchange for the membership interest of Debtor in Clark and Nye." Kennedy, Baty, and Mohajer purportedly conveyed all of their right, title, and interest in Clark and Nye to NuVeda DE in exchange for membership interest in NuVeda DE, and it provided that the transaction would, quote, "fully release and discharge debtor, Clark, Nye, and NuVeda DE from all judgments which any of the foregoing has as of June 12th of 2019." ECF 75, Pages 154 through 163 of 188.

On June 17th of 2019, debtor filed a motion to vacate Arbitrator Baker's final award in the arbitration proceedings. The motion to vacate was filed in the state court lawsuit. So, to be clear, on June 17th, 2019, in the state court lawsuit, debtor filed a motion to vacate Arbitrator Baker's final award. The motion was denied in the state court lawsuit by order dated September 6th, 2019. ECF 75 Pages 88 through 97 of 188.

Following the dismissal of the bankruptcy case that had been filed by CWNevada, on July 10th of 2019, a receiver

for CWNevada was appointed by the state court in a case styled CWNevada, LLC, a Nevada Limited Liability Company, and NuVeda, LLC, a Nevada Limited Liability Company, plaintiffs, versus Number 4 Front Advisors LLC, defendant, Number A-17-755479-C. I'll call that the CWNevada receivership.

Goldstein in the meantime successfully sought additional attorney's fees for having to defend the motion to vacate the final award that had been entered in the arbitration proceeding. The state court received her motion favorably and entered a November 15th, 2019 order in judgment for the following sums; $2,426,163.80 as the amount of the final award then due and owing. $112,168.53 in post-judgment interest and $26,944.08 in additional attorney's fees and costs for a total of $2,565,276.41, which continues to accrue post-judgment interest at the statutory rate from and after October 31st of 2019 until paid in full. ECF 75 Pages 99 through 101 of 188.

On March 6th of 2020, debtor filed a $45 million receivership proof of claim in the CWNevada receivership, asserting claims against CWNevada predicated upon alleged breaches of the MIPA. ECF 80, Pages 73 through 146 of 153.

Disgruntled with its lack of success in seeking to avoid the final arbitration award, debtor appealed the denial of its motion to vacate the final arbitration award and the state court's confirmation of that award to the Nevada Supreme Court. Once again, Debtor was unsuccessful and on October 15th

of 2020, the Nevada Supreme Court entered its order of affirmance. ECF 75, Pages 104 through 109 of 188. That's 104 through 109 of 188.

The Supreme Court's judgment affirming the state court's confirmation of the final arbitration award in favor of Goldstein and against the debtor was docketed on November 16th of 2020. ECF 75, Page 103 of 188.

Next, by way of topic and time frame in connection with the analysis here is between 2020 and April 11th of 2022. During that period of time, Goldstein began to seek to collect her $2.5 million judgment against the debtor, sought a state court receiver for the debtor, and the debtor filed this bankruptcy case.

In order to assist in collecting the judgment that followed the arbitration proceeding, Goldstein sought the appointment of a receiver over the debtor in the state court lawsuit that had spawned the arbitration proceeding in the first instance. That is state court Case Number A-15-728510-B.

The related hearing on Goldstein's receivership motion was set for April 12th, 2022 at 8:30 a.m. ECF Number 80, Page 153 at 153.

On April 11th of 2022, which is the last day before the scheduled hearing on Goldstein's receivership application in the state court lawsuit, NuVeda filed its Chapter 11 Subchapter V petition with the Court; ECF 1.

Two weeks later, on April 25th, 2022, that's April 25th, 2022, debtor filed its bankruptcy schedules and statement of financial affairs. ECF Numbers 17 and 18.

Debtor's schedule, signed under oath by Baty as the debtor's manager and filed with the Court, show these things there are no cash assets for the debtor. There were no bank accounts for the debtor. The Debtor owned CWNV LLC and CWNV One LLC, valued at an unknown amount. Claims against CWNevada totaling $45 million is the only asset with a value ascribed to it. ECF 17, Pages 2 through 9 of 16. No secured debts. No priority unsecured claims, and a total of four unsecured claims, the CWNevada litigation claim listed in an unknown amount, Goldstein for her money judgment in the amount of $2,565,276.0.41. The Philip Ivey litigation claim in an unknown amount and the Shane Terry litigation claim in an unknown amount. ECF 17, Pages 10 through 13 of 16.

Debtor's statement of financial affairs, also signed under oath by Baty as the debtor's manager and filed with the Court, shows these things; no business income during the two-year period prior to the debtor's bankruptcy filing. Nothing about the confessions of judgment in favor of its insiders. That CWNV, LLC and CWNV One LLC were holding companies for the failed joint venture with CWNevada. ECF Number 18.

None of the debtor's monthly operating reports show

any income from operations or assets from which income could be derived. ECF number 30, 62, 104, 144, and 145. Only one of those monthly operating reports shows the debtor had any money at all; $100 in the debtor-in-possession bank account at Bank of the West. ECF 145.

On those facts, the Court has to resolve the contested Goldstein dismissal motion. The fact of the matter is that as it relates to the issues pending before here, the Court has jurisdiction; 28 U.S.C. Section 1334(a), 157(a) and Local Rule 1001(b)(1) as to the debtor's Chapter 11 Subchapter V bankruptcy case. Venue of the debtor's Chapter 11, Subchapter V bankruptcy case is appropriate in the District of Nevada; 28 U.S.C. Section 1408(1).

This motion, this contested motion to dismiss filed by Ms. Goldstein, the Goldstein dismissal motion, is a core proceeding; 28 U.S.C. Section 157(b)(2)(A) and (O).

Here, the Court finds that the dismissal motion is a constitutionally core proceeding as well. It's statutorily core proceeding, 28 U.S.C. Section 157(b)(2)(A) and (O), but it's constitutionally a core proceeding because it arises under the Bankruptcy Code. It specifically seeks to dismiss this bankruptcy case under Section 1112(b)(1).

With that in mind, the question is what to do here. The fact of the matter is that the Court has to start its analysis with the statute under which relief is requested, and

I'll begin with the dismissal motion as opposed to the abstention piece.

The analytical framework that is required when relief is requested under Section 1112(b) is reasonably well established within the 9th Circuit, and the starting point is the statutory text that governs this particular issue. And again, that's Section 1112(b) of the Bankruptcy Code. And that's because the starting point in discerning congressional intent is the existing statutory text. It's well established that when the language of the Code is plain, the sole function of the Court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms. Dale v. Maney (In re Dale), 505 B.R. 8, 11 (B.A.P. 9th Cir. 2014), citing Lamie v. United States Trustee, 540 U.S. 526, 534 (2004).

A motion seeking conversion or dismissal of a Chapter 11 bankruptcy proceedings are governed by Section 1112(b). Section 1112(b)(1) reads in relevant part:

> "On request of a party in interest and after noticing and a hearing, the Court shall convert a case under this chapter to a case under Chapter 7, or dismiss the case under this chapter, whichever is in the best interest of creditors and the estate for cause. Unless the Court determines that the appointment under Section 1104(a) of a trustee or an examiner is

in the best interests of creditors and the estate."

Section 1112(b)(2) provides, however, that a bankruptcy court quote, "may not," closed quote, convert or dismiss a Chapter 11 case if the Court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that Paragraph A; there is a reasonable likelihood that a plan will be confirmed within the time frame established in sections 1121(e) and 1129(e) of this title; or if such sections do not apply within a reasonable period of time, and;

Paragraph B. The grounds for converting or dismissing the case include an act or omission of the debt or other than under Paragraph 4(a)(i), for which there exists a reasonable justification for the act or omission, and (ii) that will be cured within a reasonable period of time fixed by the Court.

So next issue is what exactly is caused for relief under Section 1112(b)(1)? Bankruptcy courts have broad discretion in determining what constitutes cause for conversion or dismissal under Section 1112(b)(1). Sanders v. United States Trustee (In re Sanders), 2013 WL 1490971 at *6 (B.A.P. 9th Cir. Apr. 11, 2013) citing Pioneer Liquidating Corporation v. the United States Trustee (In re Consolidated Pioneer

Mortgage Entities) 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000).

Cause for conversion or dismissal is not defined by the Code. Instead, the Code contains a nonexclusive list of examples of cause in Section 1112(b)(4). That's to afford the Court flexibility in determining whether to fashion relief under Section 1112(b) under all of the facts of the case. Serron Invs., Inc. v. Pacifica L22 LLC (In re Serron Invs., Inc.). Serron is spelled S-E-R-R-O-N. 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012) citing Marsch, M-A-R-S-C-H, v. Marsch (In re Marsch,) 36 F.3d 825, 828 (9th Cir. 1994). See also Warren v. Young (In re Warren), 2015 WL 3407244, at *5. (B.A.P. 9th Cir. May 28, 2015), citing In re Consolidated Pioneer Mortgage Entities 248 B.R. at 375.

Accordingly, a court may consider other factors as they arise and use its powers to reach appropriate results in individual cases. Loop Corp. v. United States Trustee, 379 F.3d 511, 515 Note 2 (8th Cir. 2004), quoting In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990).

Although not enumerated in Section 1112(b)(4), courts have also overwhelmingly held that a lack of good faith in the filing of the Chapter 11 petition constitutes cause. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1047 (9th Cir. 2013) citing Marsch, again M-A-R-S-C-H, 36 F.3d 828; Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014) and Grego versus -- Grego spelled G-R-E-G-O, Grego

v. U.S. Trustee (In re Grego), 2015 WL 3451559 at *5 (B.A.P. 9th Cir. May 29, 2015).

There's an analysis in determining whether bad faith exists when bad faith is cited as cause under Section 1112(b). The 9th Circuit Bankruptcy Appellate Panel recently summarized the analytical course bankruptcy courts are to follow in resolving Section 1112(b) motions to convert or dismiss where bad faith is cited as cause.

In seeking to determine whether a petition was filed in good faith, the debtor's subjective intent is not determinative (In re Marsch, 36 F.3d 828). Rather, the good faith inquiry focuses on the manifest purpose of the petition filing and whether the debtor is seeking to achieve thereby objectives outside the legitimate scope of the bankruptcy laws. (Marsch, 828).

Put another way, a bankruptcy court making a finding whether a Chapter 11 petition was filed in good faith must ascertain whether the debtor is attempting to unreasonably deter and harass creditors or is attempting to affect the speedy, efficient reorganization on a feasible basis. Again, that's the Marsch case at 828, citing Idaho Department of Lands v. Arnold (In re Arnold,) 806 F.2d 937, 939 (9th Cir. 1986). That summary comes from the Grego case, 2015 WL 3451559 at *5.

So what are our indicia of bad faith generally? In addressing the issue of whether bad faith exists such that

relief under Section 1112(b) is warranted, courts have identified certain recurring but nonexclusive patterns that often exist when bad faith is present in the bankruptcy case. Those factors include the following: first, the debtor has one asset, such as a tract of undeveloped or developed real property.

Second, the secured creditors leans encumber this tract.

Third, there are generally no employees except for the principals, little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments pursuant to 11 U.S.C. Section 361, 362(d)(1), 363(e), or 364(d)(1). Typically, there are only a few, if any, unsecured creditors whose claims are relatively small.

Next, the property has usually been posted for foreclosure because of arrearages on the debt and the debtor has been unsuccessful in defending actions against the foreclosure in state court. Alternatively, the debtor and one creditor may have proceeded to a standstill in state court litigation and the debtor has lost or has been required to post a bond which it cannot afford.

Next, bankruptcy offers the only possibility of forestalling loss of the property. Next is there are sometimes allegations of wrongdoing by the debtor or its principals and

in some cases the presence of new debtor syndrome, in which one asset entity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors.

Those factors are laid out in case of Little Creek Development Company v. Commonwealth Mortgage Corporation (In re Little Creek Development Company), 779 F.2d 1068, 1072-1073 (5th Cir. 1986), adopted in a 9th Circuit through Idaho Department of Lands v. Arnold (In re Arnold,) 806 F.2d 937, 939 (9th Cir. 1986). The Marsch case, 36 F.3d 828 and 29. See also ECV Development, LLC v. Emerald Bay Financial Inc. (In re ECV Development, LLC,) 2007 WL 7540960 at *4 (B.A.P. 9th Cir. June 15, 2007). Also the Marshall case, 721 F.3d 1047-1049. Also In re St. Paul Self Storage Ltd. Partn., 185 B.R. 580, 582, 583 (B.A.P. 9th Cir. 1995), where the Bankruptcy Appellate Panel here in the 9th Circuit noted that courts examine whether, one, the debtor has only one asset. Two, the debtor has an ongoing business to reorganize. Three, there are any unsecured creditors. Four, the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments, and five, the case is essentially a two-party dispute capable of prompt adjudication in state court.

Dismissal or conversion of a Chapter 11 case must be granted under Section 1112(b) if the moving party demonstrates

cause for that relief and if the Court finds that exceptions under Section 1112(b)(1) and (2) do not apply.

So what factors are counter to a bad faith finding in Chapter 11 cases? Well, in addition to identifying various factors that are indicative of bad faith, the 9th Circuit Court of Appeals has also acknowledged factors that may support a finding in a -- that a particular Chapter 11 case was not filed in bad faith. In its Marshall decision, the Circuit noted that moreover, we agree with the bankruptcy court that perhaps the most compelling grounds for denying the motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation. A debtor's showing that a plan of reorganization is ready for confirmation essentially refutes a contention that the case is filed or prosecuted in bad faith. The bankruptcy court properly considered the viability of the debtor's proposed plan, is weighing heavily against dismissal. That's the Marshall case, 721 F.3d 1049.

Bad faith findings have to be made on a case-by-case basis and they have to be predicated upon an amalgam of factors and not by a single specific fact. The issue of whether bad faith exists warranting relief under Section 1112(b) must be resolved on a case-by-case basis and there's no talismanic list of factors that must be present in each case in order to find bad faith. The weight given to any particular factor depends

on all of the circumstances of the individual case. That's the Grego case. 2015 Westlaw 3451559 at *6, citing Laguna Associates Limited Partnership v. Aetna Casualty and Surety Company (In re Laguna Associates Ltd. Partnership,) 30 F.3d 734 (6th Cir. 1994). See also de la Salle v. U.S. Bank, N.A. (In re de la Salle), 461 B.R. 593, 605 (9th Cir. BAP 2011), holding that at least in Chapter 13 cases, bankruptcy courts must consider the totality of the circumstances before making a bad faith determination.

Ultimately, as the 9th Circuit Court of Appeals explained in Marshall, the question of the debtor's good faith depends on an amalgam of factors and not upon a specific fact. Marsch, 36 F.3d 828 quoting Arnold, 806 F.2d 939. The courts may consider any factors which evidence and intent to abuse the judicial process and the purposes of the reorganization provisions. Phoenix Piccadilly, Ltd. v. Life Insurance Company of Virginia (In re Phoenix Piccadilly, Ltd),849 F.2d 1393, 1394 (11th Cir. 1988) quoting Albany Partners, Ltd. v. Westbrook, 749 F.2d 670, 674 (11th Cir. 1984). And that summary comes from the 9th Circuit's Marshall case, 721 F.3d 1048. Also in accordance is 15375 Memorial Corp. v. Bepco, B-E-P-C-O LP (In re 15375 Memorial Corp.), 589 F.3d 605, 618 (3d Cir. 2009).

So how does the burden of proof work when the motion is filed under Section 1112(b), and specifically, what's the burden of proving that cause exists under Section 1112(b), and

who bears it? The party seeking relief under Section 1112(b), and in this case that would be Goldstein, bears the initial burden of proving by preponderance of the evidence the cause for such relief exists. Warren v. Young (In re Warren), in 2015 WL 3407244 at *4, quoting Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014).

When bad faith is relied upon and established as cause for relief under Section 1112(b) debtor bears the burden of proving that the petition was filed in good faith. Marshall, 721 F.3d 1048 quoting Leavitt v. Soto (In re Leavitt), 209 B.R. 935, 940 (B.A.P. 9th Cir. 1997).

So knowing what the legal standards are now in the context of bad faith, at least under Section 1112(b), and understanding who bears the burden of proof, the question becomes how does the statute work? The general rule is that when cause is proven, the Court must convert or dismiss a bankruptcy case in the context of Section 1112(b). If a bankruptcy court finds that cause exists, Section 1112(b)(1) generally requires the Court to take action. The Court shall either dismiss the case or convert to proceedings under Chapter 7 of the Code, whichever is in the best interests of creditors and the estate. Serron Invs., Inc. v. Pacifica L22 (In re Serron Invs., Inc.). 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012), where the Court noted thus if cause is present, the Court must grant relief and determine whether dismissal,

conversion, or appointment of a trustee or an examiner is in the best interests of creditors and the estate. See also Keeley, K-E-E-L-E-Y, and Grabanski Land Partnership, 460 B.R. 520, 535 (Bankr. D.N.D. 2011), where the Court noted absence is showing of unusual circumstances. If the moving party establishes the cause exists, it's the Court's obligation to dismiss or convert a Chapter 11 case. Also In re Orbit Petroleum, Inc., 395 B.R. 145, 148 (Bankr. D.N.M. 2008), where the court noted once cause has been demonstrated, the court must convert or dismiss unless the court specifically identifies unusual circumstances that establish that such relief is not in the best interest of creditors and the estate.

So that's what I call the converter dismissed mandate under Section 1112(b)(1), and it is the general rule, when cause is proven, the court shall convert or dismiss the case. But like all general rules, there are exceptions and in this case, the Code provides for two exceptions to the convert or dismiss mandate of Section 1112(b)(1) once cause has been established.

The first exception is under the text of Section 1112(b)(1) itself. Section 1112(b)(1) mandates conversion or dismissal, once cause is found to exist unless the Court determines either that the appointment of a Chapter 11 trustee or the appointment of an examiner under Section 1104(a) is in the best interests of creditors and the estate. The second

exception to the convert or dismiss mandate general rule is found in Section 1112(b)(2) of the Code. Section 1112(b)(2) provides that even if cause is found to exist, a bankruptcy court may not convert or dismiss the case where unusual circumstances have been identified by the Court establishing that conversion or dismissal is not in the best interests of creditors and the estate and the debtor or another party in interest has established all of the following.

First, there is a reasonable likelihood of plan confirmation within the time frames established by the Code or within a reasonable time. And if the motion cites cause other than as defined under Section 1112(b)(4)(A), that there is just -- reasonable justification for the act or omission cited, and last, that the act or admission constituting cause other than as defined by Section 1112(b)(4)(A) will be cured within a reasonable time. See generally Warren, 2015 WL 3407244 at star 4, where the Court noted if the bankruptcy court finds the cause exists to grant relief under Section 1112(b)(1), it must then, one, decide whether dismissal, conversion, or the appointment of a trustee or an examiner is in the best interests of creditors and the estate; and two, identify whether there are unusual circumstances that establish that conversion or dismissal is not in the best interest of creditors and the estate. Citing Sullivan, 522 B.R. 612, and Shulkin, S-H-U-L-K-I-N Hutton Inc. PS v. Treiger, T-R-E-I-G-E-

R, (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009).

So once cause is shown, who bears the burden of proving an exception to the convert or dismiss mandate under Section 1112(b)(1)? Well, once cause for relief under section 1112 b one has been established the burden of proof shifts to the debtor or other party opposing relief. The debtor or other party opposing relief must prove by a preponderance of the evidence that one of the two exceptions that I just discussed applies under the facts of the case. Warren, 2015 WL 3407244 at *4, where the court noted once the movant has established cause, the burden shifts to the respondent to demonstrate by evidence the unusual circumstances that establish the dismissal or conversion is not in the best interest of creditors and the estate. Quoting Collier on Bankruptcy. Also Serron Invs., Inc. v. Pacifica L22 (In re Serron Invs., Inc.) 2012 WL 2086501, at *4 (B.A.P. 9th Cir. June 8, 2012), where the Court noted again, once cause has been established under Section 1112(b)(2), the burden shifts to the party opposing conversion, dismissal or appointment of a trustee or an examiner.

So that's the statutory framework, the burden of proof how the provisions of Section 1112(b) are to be applied to the facts of a particular case. It's clear that it's necessary to walk through the amalgam of factors in order to determine whether or not relief is appropriate under Section

1112(b)(1).

Following the controlling guidance found in the authorities that I just referenced, the question of whether cause in the form of bad faith exists in this case in the context of Section 1112(b) requires consideration of an amalgam of factors with no single fact controlling the Court's calculus. The trek through the amalgam goes like this in this particular case.

We'll start with the Little Creek and St. Paul Self Storage factors. Determining whether the debtor is filing for relief is in good faith depends largely upon the bankruptcy courts on the spot evaluation of the debtor's financial condition, motives, and local financial realities. Findings of lack of good faith in proceedings based on Section 1112(b) have been predicated on certain recurring but nonexclusive patterns I referenced previously, and they are based on a conglomerate of factors rather than on any single data point. Several, but not all of the following conditions usually exist.

Starting through the Little Creek factors. First, the debtor has one asset, such as a tract of undeveloped or developed real property. Well, in this case, debtor's schedules and monthly operating reports show debtor doesn't have any assets at all aside from the litigation claim in the CWNevada receivership case, which involves, of course, cannabis business operations.

Second, the secured creditor's lien encumbers this tract. Again, this is not a single asset real estate case that involves a bankruptcy that was filed to forestall a pending foreclosure. But again, in this particular case, the bankruptcy was filed the day before a hearing on a state court receivership application that was filed by Creditor Goldstein in an attempt to collect her $2.5 million judgment.

Third, there are generally no employees except for the principals, little or no cash flow and no available sources of income to sustain a plan of reorganization or to make adequate protection payments pursuant to 11 U.S.C. Sections 361, 362(d)(1), 1363(e) or 364(d)(1). That's exactly the situation here. There are no employees revealed in the debtor's bankruptcy papers, including their monthly operating reports. None of the debtor's monthly operating reports show any income from operations or assets from which income could be derived. That's true for the two years prior to the filing of the bankruptcy case when you look at the statement of financial affairs. But the monthly operating reports are at ECF Numbers 30, 62, 104, 144 and 145. Of those, only one of the statement shows the debtor has any money at all, $100 in a bank account at Bank of the West, ECF 145. Given that Goldstein's judgment alone is scheduled at over $2.5 million and that her proof of claim is for $2,921,656.55, there's simply no evidence in this record that debtor has any available sources of income to

sustain a plan of reorganization or to make adequate protection payments as contemplated by the Bankruptcy Code.

Next factor. Typically, there are only a few, if any, unsecured creditors whose claims are relatively small. A total of four unsecured claims in this case are scheduled. Three claims have been filed and the only claim to which debtor's schedules describe a value is Goldstein's judgment claim. But again, having considered all of the facts in this case, the Court notes that Goldstein filed a proof of claim for $2,921,656.55, Claim 1-1.

That the receiver for CWNevada, Shane Terry and Philip Ivey, filed a collective claim for $5,050,000, Claim 1-2; and the Tap Root Labs has filed a claim for $27,290.39, Claim 1-3.

Next, by way of topic in the Little Creek factors is the property has usually been posted for foreclosure because of arrearanges on the debt and the debtor has been unsuccessful in defending actions against the foreclosure in state court. Again, this is not a single asset real estate case involving a pending foreclosure. But the fact certainly is that the debtor was unsuccessful in defending actions against it in state court. That's how the Goldstein judgment was entered in the first place. It's approaching $3 million.

Fourth, as an alternative, the debtor and one creditor may have proceeded to standstill in state court

litigation, and the debtor has lost or has been required to post a bond which it cannot afford. And that is precisely the situation here. Goldstein holds a final non-appealable judgment against the debtor for better than $2.5 million, approaching 3 million with interest. Debtor has lost not just once, but at every turn in seeking to avoid that judgment. And its schedules show absolutely no assets for use in posting a bond to support any sort of injunction against Goldstein's collection actions.

Next factor is bankruptcy offers the only possibility of forestalling loss of the property. Well, here, the totality of the circumstances show that the debtor's only hope of forestalling Goldstein's collection efforts generally, and the appointment of a state court receiver for the debtor in particular, was the filing of this bankruptcy case, which happened the last day before the hearing on Goldstein's receivership application in the state court lawsuit.

Next, there are sometimes allegations of wrongdoing by the better or its principals. Here, the record is replete with allegations of wrongdoing by the debtor. First and foremost, operating a cannabis business in violation of the Controlled Substances Act. Next, executing confessions of judgment in favor of the debtors insiders for millions of dollars just days after the final award was entered in the arbitration proceedings, entering into a membership interest

exchange and contribution agreement with a newly formed nondebtor Delaware company called NuVeda DE, the NuVeda DE agreement that I referenced previously, that effectively stripped the debtor of all of its assets, transferred the assets to a newly formed entity with the same insiders retaining their respective ownership interest through the new entity, i.e. NuVeda DE, at ECF 75, Pages 154 through 163 at 188. And last but not least, the new debtor syndrome, in which one asset entity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors exemplifies, although it does not uniquely categorize bad faith cases. This factor simply isn't borne out by a preponderance of the record evidence.

But when I look at the entirety of the record that's pending in connection with this motion, with no single fact or factor controlling my calculus, I do conclude that Goldstein has carried the burden of the showing by a preponderance of the evidence that the majority of the Little Creek factors are applicable to the facts that are present in the debtor's case.

The same is true when you look at the St. Paul Self Storage factors. They're a little bit more focused on situations like the one here. Little Creek is more focused on a secured issue, secured claim kind of focused. St. Paul's Self Storage doesn't focus on a secured claim. When you look at the factors under St. Paul's Self Storage, the first factor

is whether the debtor has only one asset. In this particular case, it has exactly one asset, and it is the contested unliquidated litigation claim in the amount at least asserted of $45 million against CWNevada and its receivership estate.

The second St. Paul's Self Storage factor is that the debtor has -- whether -- focus is whether the debtor has an ongoing business to reorganize, and it does not.

Third is whether there are any unsecured creditors. There are a total of four of them.

Fourth, the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments. It doesn't. Any argument to the contrary on that is belied by the monthly operating reports filed with the Court under oath in connection with this case from the inception of it until now. None of those monthly operating reports made a plug nickel during the pendency of this case much less than two years before the case was filed.

And fifth of the case is essentially a two-party dispute capable of prompt adjudication in state court. It is, and a receivership proceeding would assist Goldstein in collecting her final non-appealable $2.5 million plus judgment. And again, for clarity and avoidance of doubt, we'll talk a little bit more about the two-party dispute piece. But that is only one factor in the amalgam. It is not outcome determinative.

Next by way of topic, consideration of other relevant factors in the amalgam. Viewing the record as a whole, this is essentially a two-party dispute between the debtor and Goldstein. To be clear, and for the avoidance of doubt, again, this is just one of the various factors in the amalgam considered by the Court in its bad faith analysis. It's not outcome determinative. Petitions in bankruptcy arising out of a two-party dispute do not per se constitute a bad faith filing by the debtor. In re Stolrow's, S-T-O-L-R-O-W'-S Inc., 84 B.R. 167, 171 (B.A.P. 9th Cir. 1988). Courts that find bad faith based on two-party disputes do so when it is apparent -- it is an apparent two-party dispute that can be resolved outside of the bankruptcy court's jurisdiction. Oasis at Wild Horse Ranch v. Shoals (In re Oasis at Wild Horse Ranch, LLC,) 2011 WL 4502102 at *10 (Bankr. D. Ariz. Aug. 26, 2011), citing North Central Development Company v. Landmark Capital Company (In re Landmark Capital Company) 27 B.R. 273, 279 (Bankr. D. Ariz. 1983).

This Court's view, given the fact that there's a final non-appealable judgment already been entered in the state court proceedings, what remains of the dispute between debtor and Goldstein could easily be resolved through state court receivership proceedings without causing the federal courts to be concerned about whether they are somehow assisting in an enterprise that violates the Controlled Substances Act.

So reorganization considerations are next in the slog through the amalgam.

The Court's mindful that the 9th Circuit has held that perhaps the most compelling grounds for denying the motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation. That's because the debtor showing that a plan of reorganization is ready for confirmation essentially refutes a contention that the case is filed or prosecuted in bad faith. In the case that this quote comes from the bankruptcy court properly considered the viability of the debtor's proposed plan is weighing heavily against dismissal. That's the Marshall case, Marshall v. Marshall (In re Marshall), 721 F.3d 1032 (9th Cir. 2013).

Here, the Court's mindful that the debtor has filed and amended a Subchapter V plan of reorganization, ECF Numbers 89 and 146. But the debtor has not generated any money at all from operations during the pendency of the case. It has no scheduled assets or business operations from which we could fund a plan. And cause for dismissal may also exist under Section 1112(b)(4)(A) as the administrative expenses being incurred here constitute a continuing loss to or diminution of the estate and there is absolutely not one nickel of offsetting income.

So having considered the amalgam of factors with no single fact or factor controlling its calculus the Court

concludes the cause for relief under Section 1112(b)(1) does exist because this case was filed in bad faith.

Ultimately, the issue before the Court is whether the debtor is attempting to unreasonably deter and harass Goldstein and the debtor's other creditors, or is attempting to affect a speedy, efficient reorganization on a feasible basis. That's the Grego case, 2015 WL 3451559 at *5, citing Marsch, M-A-R-S-C-H, 36 F.3d 828, and Arnold, 806 F.2d 939.

Having carefully considered the amalgam of relevant facts and factors identified by the authorities that I just cited, and with no single fact or factor controlling the calculus, the Court concludes that Goldstein has met her burden of proving by a preponderance of the evidence that by filing this case the debtor was, and is attempting to first, unreasonably deter and harass Goldstein and its other creditors; second, to impede the exercise of Goldstein's state court collection rights and remedies; and third, debtor has no assets or income to support a feasible plan.

The Court finds further that the debtor is not attempting to affect the speedy, efficient reorganization on a feasible basis, but is instead attempting to achieve delay on other objectives outside the legitimate scope of the bankruptcy laws.

On the entire record before it, the Court concludes that the debtor's bankruptcy petition was not filed in good

faith and not only because it involves a business that is cannabis related. As a result, the Court finds that cause exists for relief under Section 1112(b).

So the next issue is what's the appropriate relief under Section 1112(b). Having determined that cause exists, Section 1112(b)(1) generally requires the Court to take action. Before taking action, however, it's necessary for the Court to determine whether the debtor has carried the burden of proving that one or more of the exceptions to the convert or dismiss mandate under Section 1112(b)(1) exists. As the Bankruptcy Appellate Panel for the 9th Circuit has explained, if the bankruptcy court finds that cause exists to grant relief under Section 1112(b)(1), it must then first decide whether dismissal, conversion, or the appointment of a trustee or an examiner is in the best interests of creditors and the estate and second, identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interests of creditors and the estate. That's the Warren case, 2015 WL 3407244 at *4, citing Shulkin Hutton Inc. PS v. Treiger (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009).

Courts must also ascertain the impact on the creditors and on the estate of each of the options. Rolex Corporation v. Associated Materials Inc. (In re Superior Siding Window, Inc.), 14 F.3d 240, 243 (4th Cir. 1994). This component of the analysis requires consideration of the best interests of all of

the creditors, not just the largest and most vocal creditor. Sullivan, 522 B.R. 612 and 13. Owens 552 F.3d 961. Courts must consider the Code's fundamental policy of achieving equality among creditors, and that is not accomplished by merely tallying the votes of the unsecured creditors and yielding to the majority interest. Sullivan 522 B.R. 613, citing Superior Siding and Window, 14 F.3d 243.

We'll begin with the analysis of the appropriate relief under Section 1112(b), cause having been established in the form of bad faith, with the Chapter 11 trustee option as an exception to the convert or dismiss mandate. Again, the Chapter 11 trustee option that has to be considered under Section 1112(b)(1) has an exception to the convert or dismiss mandate of that same section.

In this case, there is no substantive business that requires reorganization or oversight. Debtor's schedules show no substantive assets, and its monthly operating reports and statement of financial affairs show no income not only during the penalty of this case, but for years prior to the filing. The judgment claim held by Goldstein comprises the bulk of all scheduled claims and those that have been filed. Debtor has not sought to use cash collateral, so preservation of an accounting for cash collateral is not an issue that has been raised as concerned by any of the creditors in this case. And in the absence of any meaningful business to reorganize, and

there isn't one, there is little reason to incur administrative expenses in the form of Chapter 11 trustee fees, trustee attorney fees, and quarterly fees, all of which would have to be paid before distributions would reach the bulk of the claims scheduled by the debtor. Given the size of the outstanding claims, specifically the Goldstein judgment approaching $3 million, and the absence of any available income to offset administrative expenses, there is little hope that a Chapter 11 trustee could propose a feasible Chapter 11 plan of reorganization in any event.

On the record before it, the Court concludes that the appointment of a Chapter 11 trustee is not in the best interests of creditors or the estate, and the attendant expense is simply not warranted by the facts of this case.

Next is the examiner option, also under Section 1112(b)(1), it's the second exception to the convert or dismiss mandate general rule. Appointment of an examiner is warranted where an investigation of the debtor is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor, 11 U.S.C. Section 1104(c).

As I noted previously, this case does not involve a substantive business that requires reorganization, oversight or review. Same is true with respect to assets; the debtor

doesn't have any except for a potential litigation claim. An examiner, in any event, is not vested with the power to take control over estate assets, but it's only to investigate and provide a report of his or her findings to the Court.

Given the limited income available for the estate, the size of the known judgment claim held by Goldstein, and mindful of all of the information already available to creditors, parties in interest and the Court on the docket I -- the summary that I've stated in reaching my findings and conclusions here, little purpose would be served by hiring an expensive professional to confirm what the Court and parties in this case already know about the debtor's financial condition and the reasons why debtor resorted to bankruptcy court when it did. It wanted to forestall the appointment of a receiver in state court proceedings.

When the record here is considered as a whole, the Court concludes that the appointment of an examiner is neither in the best interests of creditors or the estate.

The remaining exception is unusual circumstances under Section 1112(b)(2). The Code does not define the phrase unusual circumstances in the context of motion is predicated on Section 1112(b)(2). See In re Draiman, D-R-A-I-M-A-N, 450 B.R. 777, 826 (Bankr. N.D. Ill. 2011). Courts have concluded that the term contemplates conditions that are not common in most Chapter 11 cases. Draiman, 450 B.R. 826. In re LG Motors Inc

422 B.R. 110 (Bankr. N.D. Ill. 2009). In re Miell, M-I-E-L-L, 419 B.R. 357, 367 (Bankr. N.D. Iowa 2009). In re Pittsfield Weaving Co., 393 B.R. 271, 274 (Bankr. D.N.H. 2008). In re 1031 Tax Group LLC -- again. In re 1031 Tax Group, Llc., 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007). Where the Court noted that although a finding of unusual circumstances is within the Court's discretion, the word unusual contemplates facts that are not common to Chapter 11 cases generally. Moreover, the unusual circumstances must establish that dismissal or conversion is not in the best interest of creditors and the estate. In re LG Motors, Inc., 422 B.R. 110, 117 (Bankr. N.D. Ill. 2009). In re Van Eck, that's V-A-N, space, E-C-K. 425 B.R. 54, 63 (Bankr. D. Conn. 2010). In re Triumph Christian Ctr., Inc., 493 B.R. 479, 496 (Bankr. S.D. Tex. 2013).

Bankruptcy courts have significant discretion in making the determination as to whether unusual circumstances exist that should prevent conversion or dismissal. In re 1031 Tax Group, Llc., 374 B.R. 93 (Bankr. S.D.N.Y. 2007), the unusual circumstances analysis is necessarily factually intensive.

In this Court's view, it's true that this is a cannabis case, but that's not uncommon. In fact, Judge Nakagawa's decision in CWNevada I referenced previously, walks through largely all of the issues that are pending before me in this particular matter. It's not a new or novel issue any

longer here in the Bankruptcy Court for the District of Nevada when a cannabis company files for relief under Chapter 11.

The Court is satisfied, too, that the filing of a bankruptcy to forestall collection efforts and specifically to forestall the appointment of the state court receiver following the entry of the six figure state court judgment against the debtor is not at all unusual and certainly not enough to constitute unusual circumstances in the context of Section 1112(b)(2).

If there's anything at all that's unusual about this case, and I find that there is nothing that is satisfies the unusual circumstances in the context of Section 1112(b)(2), it's that the debtor claims to be in position to reorganize without assets and without business income. That's unusual, but that doesn't suggest that conversion or dismissal is not in the best interests of creditors -- to the contrary, that is information and evidence that indicates that conversion or dismissal is in the best interest of creditors and the estate.

On the record here, having considered all of the evidence before me, I find that there are no unusual circumstances that exist that should prevent conversion or dismissal. The fact of the matter is that this is a case that was filed to forestall state court collection actions in the form of the appointment of a receiver after the entry of a six figure judgment by a debtor that doesn't have a dime worth of

income that it's generated during the pendency of this case or two years prior to the filing of it, or any assets to assist in connection with that business operation.

When I look at this, there's simply not enough evidence here to support a finding that there are unusual circumstances in the context of Section 1112(b)(2), and I find that there are not any such unusual circumstances here.

Next, even if unusual circumstances were present, the Court is satisfied that the debtor has failed to prove the other elements required to trigger the exception under Section 1112(b)(2) to the convert or dismiss mandate under Section 1112(b)(1). Assuming for analytical purposes only that unusual circumstances did exist in this case, and for clarity and avoidance of doubt, I find that is not the situation. Unusual circumstances do not exist here. It's still not the end of the Section 1112(b)(2) inquiry. In order for the Section 1112(b)(2) exception to the convert or dismiss mandate to apply, debtor would also be required to prove by a preponderance of the evidence that there is a reasonable likelihood of plan confirmation within a reasonable time; that the cause shown for conversion or dismissal is reasonably justified; and that the cause for conversion or dismissal can be cured within a reasonable time. 11 U.S.C. Section 1112(b)(2)(A) and (B). But there's no cure for bad faith filing in the -- filing of a bankruptcy case. That's a bell

that can't be unrung.

Also in connection with this case, when I look at the question of unusual circumstances and I look at whether or not there is likelihood of a plan confirmation within a reasonable period of time, not only is confirmation of a plan unlikely for confirmation of a business cannabis related for the reasons that have been cited by Ms. Goldstein in her papers, the fact of the matter is, is that there isn't a plan in this particular circumstance that could cure either the fact that this case was filed in bad faith or the fact that this is a business that relates to cannabis operations that would be violative of the Controlled Substances Act.

Bottom line, there is no reasonable likelihood of plan confirmation within a reasonable period of time given debtor's limited income, sizable judgment debt obligations, absence of any assets, and the nature of its business. So to summarize, debtor has failed to demonstrate by a preponderance of the evidence that unusual circumstances exist such that conversion or dismissal in this case would not be in the best interest of creditors or the estate.

Even if that burden had been met, debtor has not carried the burden of proving the rest of the elements needed to trigger the 1112(b)(2) exception to the convert or dismiss mandate under Section 1112(b)(1). As a result, the Section 1112(b)(2) exception to the convert or dismiss mandate is not

applicable in this case. Appointment of a Chapter 11 trustee or an examiner would not be in the best interest of creditors or the estate either. That leaves the sole remaining question as whether the case should be converted or dismissed.

On the record before it, the Court concludes that when the totality of the debtor's financial circumstances are carefully considered with no single factor or factor controlling its calculus, dismissal is the appropriate remedy under Section 1112(b)(1).

The Bankruptcy Appellate Panel for the 9th Circuit has plainly stated that regardless of the party's arguments, the bankruptcy court has an independent obligation under Section 1112 to consider what would happen to all creditors on dismissal and in light of its analysis, whether dismissal or conversion would be in the best interests of creditors. That's the Grego case, 2015 WL 3451559 at *8, quoting Sullivan 522 B.R. 612, 613.

The Court's having addressed the question of whether dismissal or conversion is in the best interest of the creditors or the estate. I've looked at a variety of factors to guide their analysis. I call them the Rand factors. Generally, you can find them in Colliers on Bankruptcy, for example, Collier on Bankruptcy, Paragraph 1112.04 Bracket 7, at Page 1112-39-1112-40.

Those factors, and again they come from a case called

Rand here within the 9th Circuit are these; first, whether some creditors received preferential payments and whether equality of distribution would be better served by conversion rather than dismissal.

On the facts that are present here, I see no preferential payments to creditors. Equality of distribution would not be better served by conversion rather than dismissal. In fact, this Court believes state court proceedings in order to collect and enforce the judgment that was entered in the state court lawsuit are a just fine option and there haven't been preferential payments. Quality of distribution would not be served by conversion rather than dismissal, and there are only a limited number of creditors in any event, a total of four. So the first factor weighs in favor of dismissal over conversion.

Second is whether there would be a loss of rights granted in the case if it were dismissed rather than converted. Well, here no plan has been proposed or confirmed. That's not true. No plan has been confirmed. A plan has been filed and amended, as I indicated previously. The Court has not issued, though, any substantive rulings as to cash collateral, adequate protection or of any other sort in connection with this case.

In summary, no substantive rights have been confirmed by the Court at this stage of the case that would be lost if it were dismissed rather than converted. The second factor weighs

at least slightly in favor of dismissal over conversion.

Third is whether the debtor would simply file a further case upon dismissal. Well, if this case is dismissed, the Court finds, based upon the litigation history of the parties, the reason for filing the case and the timing of it, refiling for further delay following dismissal is certainly possible. That's possible in every case, though. The third factor is either neutral in the calculus or weighs only slightly in favor of conversion as opposed to dismissal.

Fourth is the ability of the trustee in a Chapter 7 case to reach assets for the benefit of creditors. The challenge in this case is that conversion would put a Chapter 7 trustee in the unenviable position of having to liquidate the assets of a business that not only was created for purposes of cannabis related business operations, but is continuing to pursue claims in the CWNevada receivership estate that derived directly from those business operations. See Burton v. Maney (In re Burton), 610 F.3d 633 (B.A.P. 9th Cir. 2020). And in that regard, the Burton case said, "Against this backdrop, the Bankruptcy Court dismissed the Burtons' Chapter 13 case." It was Chapter 13, not an 11, but the analysis is simply the same from this perspective in terms of deciding whether to convert or dismiss the case.

> "In finding that their ownership interest in Agricann constituted cause for dismissal because the continuation

of the case would likely require the trustee or the Court to become involved in administering the proceeds of the Agricann litigation, which the Court implicitly found would be tainted as proceeds of an illegal business. The Bankruptcy Court did not err in this finding, nor did it abuse its discretion in dismissing the case on those grounds. Moreover, the Court sufficiently articulated the legal and factual basis for its ruling. It was undisputed that the Burtons own an interest in Agricann, an entity that was engaged in a business that is illegal under federal law, and that interest became property of the estate when they filed their Chapter 13 petition. Whether Agricann is currently actively engaged in growing or selling marijuana is irrelevant, given that Agricann is a plaintiff in litigation seeking to recover damages consisting at least in part of profits lost as a result of breaches of contracts related to the growing and selling of marijuana. As such, any proceeds received from the litigation would represent profits from a business that is illegal under federal law."

That's -- on all fours, in this Court's view, with the situation that's pending here, the Goldstein judgment arose directly from that sort of a scenario, and not only that, the debtor's only identified asset in its schedules and statements is a claim against CWNevada as a result directly of the

cannabis business operations of both of those businesses, the debtor on the one hand, and CWNevada on the other. I look at the Burton case and its analysis and I find that it's compelling here.

And the fact of the matter is that even if a trustee could reach assets for the benefit of creditors, putting that trustee in that unenviable position of having to liquidate the assets of a business that not only was created for purposes of cannabis related business operations, but is continuing to pursue those claims in the CWNevada receivership estate, is enough to have the fourth factor militate in favor of dismissal rather than conversion.

Fifth is whether conversion or dismissal of the estate would maximize the estate's value as an economic enterprise. If the case is converted to Chapter 7, it would simply be liquidated and according to the debtor's schedules and statements, there are no assets at all for creditors in connection with this case. Dismissal would result in nothing more than the debtor being no longer protected by the automatic stay. And again, no matter how you look at it, under the facts in this case and they're undisputed, debtor doesn't have any income from business operations, and hasn't for years; debtor doesn't have any assets of any consequence, scheduled or otherwise; and it really doesn't have an ongoing business operation, as was noted in the context of the Little Creek

factors, any analysis there.

The fifth factor is either neutral in the calculus or weighs only slightly in favor of dismissal rather than conversion.

Sixth is whether any remaining issues would better be resolved outside the bankruptcy forum. This Court is of the view that the substance of issues here can best be resolved through state court receivership proceedings and enforcement of the state court's judgment that has already been entered and is final in terms of its not being appealable. There isn't anything else to do in connection with the state court proceedings, other than to enforce it for purposes of collection, and that is something that the state court receivership statute works well for.

The sixth factor here under the Rand factors, the question of whether any remaining issues would be better resolved outside the bankruptcy forum weighs in favor of dismissal rather than conversion, plus there's really no business here to reorganize.

Seventh is whether the estate consists of a single asset. It doesn't really doesn't consist of any assets. This factor is either simply not relevant to the choice of remedy under Section 1112(b) in this case, or it's a neutral in that calculus.

Eighth is whether debtor is engaged in misconduct and

whether creditors are in need of a Chapter 7 case to protect their interests. The state court receiver can provide similar protections and without putting a federal bankruptcy trustee in jeopardy for administering the assets in violation of the Controlled Substances Act. This factor is either neutral in the calculus or weighs at least slightly in favor of dismissal rather than conversion.

Next factor is whether a plan has been confirmed or whether any property remains in the estate to be administered. Those are easy answers. No plan has been confirmed, nor is the plan ever likely be confirmed in this case, and there is no property in the estate that is to be administered. Debtor's schedules and statements show that, their monthly operating reports show that, there's simply nothing to be done here. This is not a debtor with an operating business that needs to be reorganized. The ninth factor weighs in favor of dismissal rather than conversion.

And last but not least, whether the appointment of a trustee is desirable to supervise the estate and address possible environmental and safety concerns. No environmental safety concerns are borne out by the record here. And again, the appointment of a trustee is not desirable to supervise this estate. It would be better to send the matter back to state court to allow the state court to assist in assessing the parties' rights and remedies as it pertains to the collection

of the judgment that was obtained by Ms. Goldstein as a result of the state court proceedings.

When I look at all of the facts of this case with no single fact or factor controlling my calculus, the Court concludes on the record before it that the relief requested in Ms. Goldstein's motion is warranted and that this case should be dismissed, not converted for cause pursuant to 11 U.S.C. Section 1112(b)(1) and (b)(4).

Having reached that conclusion, the Court need not and therefore does not reach the issue of dismissal through abstention under 11 U.S.C. 305(a). For avoidance of doubt, if it had been necessary to reach that issue after considering the relevant factors, you can see those relevant factors in the RNK Realty case, 2021 WL 4047472 (Bankr. M.D. Pa. Sept. 3 2021).

Under all the factors of -- facts of this case, the Court would have dismissed this case under Judge Nakagawa's analysis in CWNevada 602 B.R. 717. And again, for clarity and avoidance of any doubt, when you look at the RNK case that I cited here, the relevant factors to be considered when deciding whether to dismiss or abstain are these; first, economy and efficiency of administration. Second is whether another form is available to protect the interests of both parties or there is already a pending proceeding in the state court. There is.

Third, whether federal proceedings are necessary to reach a just and equitable solution. They are not. Not only

that, the federal court is to avoid creating a difficulty in connection with cannabis related businesses, if you can.

Fourth is whether there is an alternative means of achieving the equitable distribution of assets. The receivership process would work. Fifth is whether the debtor and the creditors are able to work out a less expensive out of court arrangement which better serves all interests in the case. Certainly could be done through mediation, perhaps in a receivership case.

Sixth is whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process. That is exactly true here. All you have to do is conduct a review of the docket that was bought forward in this motion to dismiss and you'll see that that's the case, and the purpose for which bankruptcy jurisdiction has been sought. And that is, as I indicated, to delay the inevitable in connection with the exercise of Ms. Goldstein's state court remedies in support of her judgment. She ought to be able to collect it going forward.

Those facts come again from the RNK Realty case, 2021 WL 4047472. You can find those factors at star -- got to find the star on my page here. Four. Sorry about that, Counsel.

The Court is mindful here too, when the Court -- in the analysis of the amalgam of the factors, there's a question

the parties talked about in their papers about unclean hands. The Court's mindful of what the 9th Circuit has said in connection with unclean hands and the calculus here, and I'd be loath -- I would be remiss if I didn't at least acknowledge it. North Bay Wellness Group Inc. v. Beyries, B-E-Y-R-I-E-S, 789 F.3d 956. When you look at Page 960, the circuit makes it clear that in that particular case, which was similar in terms of the facts of what I'm facing here, the bankruptcy court failed to conduct the required balancing, instead concluding solely from the fact that North Bay had engaged in wrongful activity that the doctrine of unclean hands applied. In so doing, the bankruptcy court made an error of law and thus abused its discretion.

Well, here I'm not finding unclean hands directly, but certainly the facts would warrant such a finding if you do the appropriate balancing. And unclean hands would also support and bolster the Court's finding of cause. What the court in North Bay Wellness Group observed is that, had the bankruptcy court weighed the party's respective wrongdoing, it necessarily would have concluded that Bay Area's wrongdoing outweighed -- North Bay's, both as to harm cause to each other and as to harm caused to the public.

That balancing act in this particular case reaches that exact same conclusion. The respective wrongdoing is the debtor's operation of a business in connection with this

bankruptcy case that violated the Controlled Substances Act. The wrongdoing on the part of Goldstein is nonexistent. All she did was pursue a claim, reduce it to judgment, and then try to collect.

So when I look at the question of the harm to the public, there's nothing at all harmful about trying to -- obtaining a proper judgment and then seeking to enforce it, on the one hand, or violating the Controlled Substances Act, on the other. So to the extent that the question of unclean hands factors into the question of whether or not cause existing Section 1112(b)(2), I have considered the weighing of the parties respective wrongdoing; none on the part of Goldstein, violating the Controlled Substances Act on the other, by the debtor.

I do conclude that the debtor's wrongdoing outweighed Goldstein's, both as to the harm caused to each other; that's why Ms. Goldstein holds a $3 million almost judgment against the debtor on the one hand, and as to the harm caused to the public, the only harm that is involved in connection with this case is not the entry of and the enforcement of a proper judgment, but the operation of a business violative of this Controlled Substances Act.

I mentioned those things to ensure that on review, if there is review here, that, you know, the appellate court is aware that I've considered that aspect of the party's positions

in connection with my analysis of the question of whether or not cause exists for relief under Section 1112.

So again, for clarity and avoidance of any doubt, because I find that the relief requested in the Goldstein dismissal motion is warranted and that this case should be dismissed for cause pursuant to Section 1112(b)(1) and (b)(4), I don't have to reach Section 305(a), but if I did, I would have, after considering the relevant factors set forth in the RNK Realty case under all the facts present here, dismissed this case under Judge Nakagawa's analysis in In re CWNevada 602 B.R. 717 (Bankr. D. Nev. 2019).

Any arguments of the parties that I haven't expressly addressed in the Court's analysis on the record today have been considered by the Court as well as all of the authorities that the parties have cited; the parties' briefing was helpful.

However, the Court finds to the extent that they would be contrary to the Court's decision here today, they're unavailing and the Court would reject it in all of those arguments in connection with its decision today.

So the order for today is this; for the reasons stated on the record today, Goldstein's dismissal motion is granted, and this case is dismissed under Section 1112(b)(1). The ruling as announced on the record today will constitute the Court's findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, made applicable in this contested

matter under Bankruptcy Rule 9014 and 7052, and the Court will prepare the appropriate order.

That leaves the United States Trustee's motion to dismiss this case. And this is again in the NuVeda LLC case, Chapter 11 Number 22-11249. This is a motion to dismiss at the ECF Number 111 in the NuVeda case.

And the issue before the Court is a simple one. And again, this is a separate, distinct oral ruling now from the decision, the oral ruling the Court just issued on the Goldstein dismissal motion. This is the United States Trustee's dismissal motion. It is exhibit number -- or excuse me, it is Item Number 1 on my 2:30 calendar.

The issue before the Court in this motion is whether or not cause exists to dismiss the Chapter 11 Subchapter V bankruptcy case filed by debtor NuVeda, LLC under Section 1112(b). There is no request for dismissal in the UST motion to dismiss under Section 305(a). The scope of the analysis here is limited to the question of whether or not cause exists for relief under Section 1112(b).

The record in connection with -- that the Court considered in connection with resolving the United States Trustee's dismissal motion is the same as I recited in connection with the oral ruling on the Goldstein motion to dismiss. I will not repeat it here, but I will incorporate it into my decision on the United States Trustee's dismissal

motion as well.

The same is true with respect to my findings of fact. The findings of fact that I recited in connection with the decision on the Goldstein dismissal motion are incorporated into my analysis of the United States Trustee's dismissal motion by this reference in their entirety, and I do that simply to save time.

The fact of the matter is, these are both motions to dismiss. They are both predicated upon Section 1112(b) of the Bankruptcy Code. The facts and the record that I considered in reaching my decisions in these two matters are exactly the same.

The only real issue before the Court here as a result of those findings and the record that I considered, the findings of fact and the record that I considered, is what to do from a legal standpoint with the United States Trustee's motion.

The Court has jurisdiction over the United States Trustee's dismissal motion here in the debtors bankruptcy case. I have that under 28 U.S.C. Section 1334(a), 157(a), and Local Rule 1001(b)(1). The venue is appropriate in the District of Nevada, 28 U.S.C. 1408(1).

Again, the United States Trustee's motion to dismiss is a core proceeding; 28 U.S.C. Section 157(b)(2)(A), a statutorily core; constitutionally core because it arises under

the Bankruptcy Code and specifically Section 1112(b).

The question here, again, as it was in connection with the Goldstein motion is whether relief should be granted under Section 1112(b). Again, the analytical framework is the same, but I will go through it here as it pertains to the United States Trustee's dismissal motion. The dismissal motion here seeks relief under Section 1112(b) of the Bankruptcy Code; and when you look at the argument, it is very much like the analysis that I engaged in granting the Goldstein dismissal motion. The analytical framework is exactly the same. Whenever relief is requested under Section 1112(b), the starting point for analysis is the existing statutory text. It's well established that when the language of the Code is plain, the sole function of the Court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms. Dale v. Maney (In re Dale), 505 B.R. 8, 11 (B.A.P. 9th Cir. 2014), citing Lamie v. United States Trustee, 540 U.S. 526, 534 (2004).

A motion seeking conversion or dismissal of a Chapter 11 proceeding are generally governed by Section 1112(b). Section 1112(b)(1) provides in pertinent part; "On request of a party in interest and after noticing and a hearing, the Court shall convert a case under this chapter to a case under Chapter 7, or dismiss the case under this chapter, whichever is in the best interest of creditors and the estate for cause. Unless

the Court determines that the appointment under Section 1104(a) of a trustee or an examiner is in the best interest of creditors and the estate."

Section 1112(b)(2) provides, though, that a bankruptcy court may not convert or dismiss a Chapter 11 case if the Court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate and the debtor or any other party in interest establishes that, A., there is a reasonable likelihood that a plan will be confirmed within the time frames established in Section 1121(e) and 1129(e) of this title. Or if such sections do not apply within a reasonable period of time and, B., the grounds for converting or dismissing the case include an act of admission of the debtor other than under Paragraph 4(a), for which there exists a reasonable justification for the act of admission and (ii) that will be cured within a reasonable period of time fixed by the Court.

Cause for relief under Section 1112(b). Again, bankruptcy courts have broad discretion in determining what constitutes cause for conversion or dismissal under Section 1112(b)(1). Sanders v. United States Trustee (In re Sanders), 2013 WL 1490971 at *6 (B.A.P. 9th Cir. Apr. 11, 2013) citing Pioneer Liquidating Corporation v. the United States Trustee (In re Consolidated Pioneer Mortgage Entities) 248 B.R. 368,

375 (B.A.P. 9th Cir. 2000).

Cause for conversion or dismissal is not defined by the Code. Instead, the Code contains a nonexclusive list of examples of cause in Section 1112(b)(4). Serron Invs., Inc. v. Pacifica L22 (In re Serron Invs., Inc.), 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012) citing Marsch, M-A-R-S-C-H, v. Marsch (In re Marsch,) 36 F.3d 825, 828 (9th Cir. 1994). See also Warren v. Young (In re. Warren), 2015 WL 3407244, at *5. (B.A.P. 9th Cir. May 28, 2015), citing In re Consolidated Pioneer Mortgage Entities 248 B.R. at 375.

Accordingly, a court may consider other factors as they arise and use its powers to reach appropriate results in individual cases. Loop Corp. v. United States Trustee, 379 F.3d 511, 515 Note 2 (8th Cir. 2004), quoting In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990)

Although not enumerated in Section 1112(b)(4), the courts have also overwhelmingly held that a lack of good faith in the filing of the Chapter 11 petition constitutes cause. Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1047 (9th Cir. 2013) citing Marsch, 36 F.3d 828; also Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014). Also, Grego v. U.S. Trustee (In re Grego), 2015 WL 3451559 at *5 (B.A.P. 9th Cir. May 29, 2015).

The United States Trustee's motion is slightly different than the Goldstein motion because the United States

Trustee realized first, on general principles of federal law as mandating dismissal, and in particular the United States Trustee cites to the Controlled Substantive Act -- Substances Act, 21 United States Code Section 841. And notes also that at 21 U.S.C. Section 856(a)(2), it's unlawful to manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for purposes of unlawfully manufacturing, storing, distributing or using a controlled substance.

The United States Trustee also points out that at 21 U.S.C. Section 846, it's crime to conspire to violate 21 U.S.C. Section 841. Conspiracy to violate the Controlled Substances Act is demonstrated when there was an agreement to violate the law.

Next, the defendant knew the essential objectives of the conspiracy. Next, the defendant knowingly and voluntarily took part in the conspiracy. And last, the coconspirators were interdependent. In re Way to Grow, Inc., 597 B.R. 111, 124 (Bankr. D. Colo. 2018), subsequently affirmed by -- at 610 B.R. 388 (Bankr. D. Colo. 2019).

Here, the United States Trustee points out that the debtor violated the Controlled Substances Act because the debtor's sole purpose for creation, plainly stated in the

operating agreement, was to grow and sell cannabis as part of a joint venture with CWNevada. As such, the debtor was party to a conspiracy to distribute a controlled substance in violation of 21 U.S.C. Section 846. Citing In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799, 803-804 (Bankr. D. Colo. 2012), where the court noted the Chapter 11 debtor was engaged in an ongoing criminal violation of the Federal Controlled Substances Act under 21 U.S.C. Section 856(a)(2), by leasing space to tenants who were cultivating marijuana.

The Court agrees with the United States Trustee that the debtor's only purported assets related to its cannabis business. You can see that by reference to the schedules at ECF 17, and its only creditors, that all four of them were part of the debtor's cannabis venture. When the debtors and creditors are part of an illegal agreement, the unclean hands doctrine should be applied rigorously to bar bankruptcy relief where the public is the victim of the inequitable conduct rather than one of the parties to the contract. Casa Nova, Inc. v. Casa Nova of Lansing, Inc. (In re Casa Nova of Lansing, Inc.), 146 B.R. 370 (Bankr. W.D. Mich. 1992); relying on cases denying relief on contracts to circumvent federal financial assistance restrictions created for tax evasion purposes and created to circumvent NCAA amateur athlete eligibility long before the name, image and likeness agreements have come up more recently.

But the Court agrees too with the United States Trustee that Congress enacted the Bankruptcy Code to protect honest, but unfortunate debtors; Marrama v. Citizens Bank of Mass., 549 U.S. 365, 374 (2007). Also Grogan v. Garner, 498 U.S. 279, 286, 287 (1991), noting that the Court has been careful to explain that the Code limits the opportunity for a completely unencumbered new beginning to deserving debtors. In re Krueger, 812 F.3d 365, 373 (5th Cir. 2016), explaining that bankruptcy is a potent judicially enforced weapon that has no place being deployed against honest but unfortunate debtors who stand in the path of a dishonest bankrupt. In re Apte, A-P-T-E, 96 F.3d 1319, 1322 (9th Cir. 1996), where the Court noted that the dishonest debtor on the one hand will not benefit from his wrongdoing; and of course, bankruptcy proceedings are inherently proceedings in equity. Pepper v. Litton, 308 U.S. 295, 304, 305 (1939), and equity follows the law.

Courts of equity generally don't lend their judicial power to a party who seeks to invoke that power for the purpose of consummating a transaction in clear violation of the law. Johnson v. Yellow Cab Transit Company, 321 U.S. 383 at 387 (1944).

The Court's power to adjust the debtor/credit relationship goes to the essence of the Court's equitable jurisdiction and requires the Court to look at equitable factors to determine the propriety of the debtors filing. In re

Rent-Rite Super Kegs W. Ltd., 484 B.R. 799, 806 (Bankr. D. Colo. 2012).

A Chapter 11 case cannot aid parties coming to the bankruptcy court with unclean hands. A Chapter 11 petition must be filed in good faith and if not, dismissal is an appropriate remedy. In re Pacific Rim Investments, LLP v. Oriam, O-R-I-A-M, LLC (In re Pacific Rim Investments, LLP), 243 B.R. 768, 771 (D. Colo. 2000).

A bankruptcy court does have the authority to dismiss a case that's filed in bad faith not only under Section 1112(b), but also based on the Court's inherited authority to prevent access to the courts which would constitute an abuse of the judicial process. That's the Pacific Rim case, 243 B.R. 771. That includes specifically a case to benefit parties who engage in a conspiracy to violate the Controlled Substances Act. Controlled Substances Act. In re Medpoint Management, LLC, 528 B.R. 178 (Bankr. D. Ariz. 2015), vacated in part on other grounds, 2016 WL 3251581 (9th Cir. B.A.P. June 3, 2016), where the bankruptcy court dismissed a case where creditors knew that the debtor was a marijuana business, voluntarily chose to engage in that business with it, and therefore had unclean hands precluding them from obtaining relief in the federal court.

Federal courts have refused to intervene on behalf of litigants in other cases and other situations as well, and

they've repeatedly refused to entertain cases arising from illegal conduct. The United States Trustee has cited various cases in that regard as well.

The issue here, and it's interesting that the United States Trustee's motion talks about the doctrine of unclean hands, and relies on that as constituting cause for dismissal and the United States Trustee's motion also references the question of bad faith. And as I did in connection with my analysis of the Goldstein motion, this Court views the question as whether or not cause under Section 1112(b) exists for bad faith filing when the debtor has unclean hands as one of the components that must be considered in deciding whether to dismiss the case.

The fact of the matter is, the United States Trustee does mention bad faith as cause under Section 1112(b) in addition to the question of unclean hands. The 9th Circuit Bankruptcy Appellate Panel recently summarized the analytical course bankruptcy courts have to follow in resolving Section 1112(b) motions to convert or dismiss where bad faith is cited as cause.

In seeking to determine whether the petition was filed in good faith, the debtor's subjective intent is not determinative, In re Marsch, 36 F.3d 828. Rather, the good faith inquiry focuses on a manifest purpose of the petition filing and whether the debtor is seeking to achieve thereby

objectives outside the legitimate scope of the bankruptcy laws, Marsch at 828. So put another way, bankruptcy court making a finding regarding whether a Chapter 11 petition was filed in good faith must ascertain whether the debtor is attempting to unreasonably deter and harass creditors, or is attempting to affect a speedy, efficient reorganization on a feasible basis. Again, that's the Marsch case, 36 F.3d at 828, citing Idaho Department of Lands v. Arnold (In re Arnold,) 806 F.2d 937, 939 (9th Cir. 1986). It's the Grego case, 2015 WL 3451559, at *5.

And again, this is a scenario where the United States Trustee, as the Court did in the analysis of the Goldstein motion to dismiss, tracks the indicia of bad faith generally in determining whether or not cause exists under Section 1112(b). The United States Trustee did not cite to the Little Creek factors which I've identified previously. Those factors are found in the Little Creek Development Company v. Commonwealth Mortgage Corporation (In re Little Creek Development Company), 779 F.2d 1068, 1072, 1073 (5th Cir. 1986), adopted here in the 9th Circuit by Idaho Department of Lands v. Arnold (In re Arnold,) 806 F.2d 937, 939 (9th Cir. 1986). The Marsch case, 36 F.3d 828 and 29. Also ECV Development, LLC v. Emerald Bay Financial Inc. (In re ECV Development, LLC,) 2007 WL 7540960 at *4 (B.A.P. 9th Cir. June 15, 2007). Also the Marshall case, 721 F.3d 1047-1049.

Instead, the United States Trustee looked to a

similar layout of factors to consider in the bad faith -- in determining whether bad faith exists such that cause might be present to grant relief under Section 1112(b) of the Bankruptcy Code. The United States Trustee cited the St. Paul Self Storage Ltd. Partn., 185 B.R. 580, 582, 583 (B.A.P. 9th Cir. 1995), where the Court noted that courts examined whether, first, the debtor has only one asset; second, the debtor has an ongoing business to reorganize; third, whether there are any unsecured creditors. Fourth, whether the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments; and fifth, the case is essentially a two part dispute capable of prompt adjudication in state court.

As I noted previously, dismissal or conversion of a Chapter 11 case must be granted under Section 1112(b) if the moving party here, the United States Trustee, does demonstrate cause for that relief, and if the Court finds that the exceptions under Section 1112(b)(1) and (b)(2) do not apply. There are factors that are contrary to a bad faith finding in Chapter 11 cases, and I've identified them in connection with the Goldstein case. I'll reiterate them here.

In addition to identifying various factors that are indicative of bad faith, the 9th Circuit Court of Appeals has also acknowledged factors that may support a finding that a particular Chapter 11 case was not filed in bad faith. In the

Marshall decision, the circuit recognized that -- this.

"Moreover, we agree with the bankruptcy court that perhaps the most compelling grounds for denying the motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation. A debtor showing that a plan of reorganization is ready for confirmation essentially refuse a contention that the case is filed or prosecuted in bad faith. The bankruptcy court properly considered the viability of the debtor's proposed plan as weighing heavily against dismissal." Marshall, 721 F.3d 1049.

The Court is mindful here, in the context of the analysis of the United States Trustee's motion to dismiss, that bad faith findings must be made on a case by case basis and must be predicated upon an amalgam of factors and not a specific fact. The issue of whether bad faith exists warranting relief under Section 1112(b) must be resolved on a case by case basis, and there is no talismanic list of factors that must be present in each case in order to find bad faith. The weight given to any particular factor depends on all of the circumstances of the individual case. Grego, 2015 WL 3451559 at *6, citing Laguna Associates Limited Partnership v. Aetna Casualty and Surety Company (In re Laguna Associates Ltd. Partnership,) 30 F.3d 734 (6th Cir. 1994). Also in re -- also, de la Salle v. U.S. Bank, N.A. (In re de la Salle), 461 B.R. 593, 605 (9th Cir. BAP 2011), holding that in a Chapter 13

context, bankruptcy courts must consider the totality of the circumstances before making a bad faith determination.

Ultimately, as the 9th Circuit Court of Appeals explained in Marshall, the question of a doubt is good faith depends on an amalgam of factors and not upon a specific pact. Marsch, 36 F.3d 828, quoting Arnold, 806 F.2d 939.

The courts may consider any factors which evidence and intent to abuse the judicial process and the purposes of the reorganization provisions. Phoenix Piccadilly, Ltd. v. Life Insurance Company of Virginia (In re Phoenix Piccadilly, Ltd), 849 F.2d 1393, 1394 (11th Cir. 1988) quoting Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.), 749 F.2d 670, 674 (11th Cir. 1984). That summary comes from the Marshall case, 721 F.3d 1048. And in accord is the 15375 Memorial Corp. v. Bepco, LP (In re 15375 Memorial Corp.), 589 F.3d 605, 618 (3d Cir. 2009).

As I indicated previously, the burden of proving that cause exists is borne initially by the party that is seeking relief, Warren v. Young (In re Warren), in 2015 WL 3407244 at *4, quoting Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014). When bad faith is relied upon and established this cause for relief under Section 1112(b), the debtor bears the burden of proving that the petition was filed in good faith. Marshall, 721 F.3d 1048, quoting Leavitt v. Soto (In re Leavitt), 209 B.R. 935, 940 (B.A.P. 9th Cir.

1997).

Again, where the general rule is when cause is proven, conversion or dismissal is required and the fact of the matter here is that the bankruptcy court finds a cause exists, Section 1112(b)(1) generally requires the Court to take action. The court shall either dismiss the case or convert to proceedings under Chapter 7 of the Code, whichever is in the best interests of creditors and the estate. See Serron Invs., Inc. v. Pacifica L22 LCC (In re Serron Invs., Inc.) 2012 WL 2086501 at *4 (B.A.P. 9th Cir. June 8, 2012), where the court noted thus if cause is present, the court may grant relief and determine whether dismissal, conversion, or appointment of the trustee or an examiner is in the best interests of creditors and the estate. See also In re Keeley and Grabanski Limited Partnership, 460 B.R. 520, 535 (Bankr. D.N.D. 2011), where the court stated absent a showing of unusual circumstances, if the moving party establishes that cause exists, it's the court's obligation to dismiss or convert a Chapter 11 case. In re Orbit Petroleum, Inc., 395 B.R. 145, 148 (Bankr. D.N.M. 2008), where the court noted once cause has been demonstrated, the court must convert or dismiss unless the court specifically identifies unusual circumstances that establish that such relief is not in the best interest of creditors.

The fact of the matter here is that there are exceptions to that general rule, and I explained them

previously in the decision on the Goldstein motion, but I'll recite them again here. As is the case with most general rules, there are exceptions. The Code provides for two exceptions to the convert or dismiss mandate of Section 1112(b)(1) after cause has been established. The first exception is under Section 1112(b)(1) itself. The first exception is that Section 1112(b)(1) mandates conversion or dismissal once a cause is found to exist, unless the court determines either that appointment of a Chapter 11 trustee or appointment of an examiner under Section 1104(a) is in the best interest of creditors and the estate.

The next exception is under Section 1112(b)(2). The second exception that is found in that section provides that even if cause is found in exist, a bankruptcy court, quote, "may not," closed quote, convert or dismiss the case where unusual circumstances have been identified by the court establishing that conversion or dismissal is not in the best interests of creditors and the estate, and the debtor or another party in interest has established all of the following.

First, that there is a reasonable likelihood of plan confirmation within the time frames established by the Code or within a reasonable time.

Second, if the motion cites cause other than as defined by Section 1112(b)(4)(A), there is reasonable justification for the act or omission cited; and finally, that

the act or omission constituting cause other than as defined by Section 1112(b)(4)(A) will be cured within a reasonable time. See generally Warren, 2015 WL 3407244 at *4, where the court noted if the bankruptcy court finds that cause exists to grant relief under Section 1112(b)(1), it must then; one, decide whether dismissal, conversion, or the appointment of a trustee or an examiner is in the best interest of creditors and the estate; and two, identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interests of creditors and the estate. Citing Sullivan, 522 B.R. 612, and Shulkin Hutton Inc. PS v. Treiger (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009).

The burden of proving an exception to the convert or dismiss mandate at 11 U.S.C. Section 1112(b)(1) is the same in the context of the United States Trustee's motion to dismiss as it was in the context of the motion to dismiss that was filed by Ms. Goldstein. Once cause for relief under Section 1112(b)(1) has been established, the burden of proof shifts to the debtor or other party opposing relief. The debtor or other party opposing relief must prove by a ponderance of the evidence that one of the two exceptions just discussed applies under the facts of the case. Warren, 2015 WL 3407244 at *4, where the Court noted once the movement has established cause, the burden shifts to the respondent to demonstrate by evidence the unusual circumstances that dismissal or conversion is not

in the best interests of creditors and the estate. Also, Serron Invs., Inc. v. Pacifica L22 LLC (In re Serron Invs., Inc.), 2012 WL 2086501, at *4 (B.A.P. 9th Cir. June 8, 2012), where the Court noted, once the cause has been established under Section 1112(b), the burden shifts to the party opposing conversion, dismissal, or appointment of a trustee or an examiner.

So again, in this particular case, the United States Trustee relies on good faith, the absence of good faith as being a cause for relief under Section 1112(b)(1). You can see that by reference to their pleadings at section -- at ECF Number 111 in this particular case, and in consideration of the amalgam of the factors here, the Court, in analyzing the Goldstein motion to dismiss, talk about the Little Creek factors that are found in the Little Creek case that I cited previously. But the United States Trustee relies on the St. Paul's Self Storage factors to establish bad faith in the context of the facts of this particular case. And it cites to those factors in its papers, particularly at ECF 111 at Paragraph 26. The St. Paul's Self Storage factors, as I indicated previously in my ruling on the Goldstein matter establish -- tend to establish the existence of bad faith. And again, they're not talismanic. They're just factors to be considered in deciding whether or not bad faith was present, and that constitutes cause for relief under Section 1112(b) of