



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 03, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

|               |   |                        |
|---------------|---|------------------------|
| In re:        | ) | Case No.: 19-12300-MKN |
|               | ) | Chapter 11             |
| CWNEVADA LLC, | ) |                        |
|               | ) | Date: May 15, 2019     |
| Debtor.       | ) | Time: 10:30 a.m.       |
|               | ) |                        |

**ORDER REGARDING CREDITOR 4FRONT ADVISORS LLC’S MOTION TO DISMISS BANKRUPTCY PETITION OR, ALTERNATIVELY, MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO ALLOW RECEIVERSHIP AND CONTEMPT PROCEEDINGS TO CONTINUE<sup>1</sup>**

On May 15, 2019, the court heard Creditor 4Front Advisors LLC’s Motion to Dismiss Bankruptcy Petition or, Alternatively, Motion for Relief from the Automatic Stay to Allow Receivership and Contempt Proceedings to Continue (“Dismissal Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On April 16, 2019, a voluntary petition for Chapter 11 reorganization (“Petition”) was filed by CWNevada LLC (“Debtor”). (ECF No. 1). Attached to the Petition is a “Resolution Authorizing Bankruptcy” that identifies BCP Holding 7, LLC (“BCP Holding”) as managing

<sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the instant case, or any other specifically identified case, as the documents appear on the dockets maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “Local Rule” are to the Local Rules of Practice for this bankruptcy court. All references to “FRE” are to the Federal Rules of Evidence.

1 member of the Debtor, and that authorizes BCP Holding to seek Chapter 11 relief for the Debtor.  
2 The Petition filed on behalf of the Debtor is signed by Brian C. Padgett (“Padgett”) as manager  
3 of BCP Holding, and by Michael D. Mazur, as the Debtor’s general counsel.

4 The voluntary Petition is a “skeleton” petition inasmuch as it is not accompanied by a  
5 schedule of assets and liabilities (“Schedules”), a statement of financial affairs (SOFA”), or any  
6 of the initial information required to obtain bankruptcy relief. Moreover, the Petition is not  
7 accompanied by a “creditor matrix” setting forth the names and addresses of the Debtor’s  
8 creditors. The Petition is accompanied by an unsigned List of Creditors Who Have the 20  
9 Largest Unsecured Claims and Are Not Insiders (“20 List”). (ECF No. 4). Only ten creditors are  
10 identified on the 20 List.<sup>2</sup>

11 On the same day the skeleton Petition and 20 List were filed, a Notice of Chapter 11  
12 Bankruptcy Case (“Bankruptcy Notice”) was issued by the clerk of the court informing creditors  
13 that a meeting of creditors would be held on May 16, 2019. (ECF No. 3). Because a creditor  
14 matrix was never filed by the Debtor, it appears that the Bankruptcy Notice was served only on  
15 the creditors appearing on the 20 List. (ECF No. 12).

16 On April 17, 2019, an Ex Parte Application for Order Authorizing Rule 2004  
17 Examination [“2004 Exam”] of Brian C. Padgett (“2004 Exam Request”) was filed by The  
18 CIMA Group, LLC (“CIMA Group”). (ECF No. 8). On April 19, 2019, the clerk of the court  
19 signed an order granting the request pursuant to Local Rule 5075(a)(2)(L) because the 2004  
20 Exam Request sought to conduct the examination more than fourteen days later and did not  
21 include a request for production of documents (“CIMA 2004 Order”). (ECF No. 10). On the  
22 same date, CIMA Group filed a 2004 Exam notice which included a Subpoena for Rule 2004  
23 Examination (“2004 Subpoena”) that required the witness to produce various documents. (ECF  
24

---

25 <sup>2</sup> The absence of a creditor matrix is significant because bankruptcy relief depends on  
26 proper notice being given to creditors and other parties in interest. Moreover, a “creditor” under  
27 Section 101(10)(A) includes any entity that has a “claim” against the bankruptcy estate on the  
28 date the bankruptcy petition is filed. Under Section 101(5)(A), a claim includes any “right to  
payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed,  
contingent, matured, unmatured, disputed, undisputed, secured, or unsecured...”

1 No. 11).<sup>3</sup>

2 On April 23, 2019, 4Front Advisors LLC (“4Front”) filed the instant Dismissal Motion  
3 seeking dismissal of the Chapter 11 case based on Section 305(a)(1),<sup>4</sup> or, Section 1112(b).<sup>5</sup> In  
4 the alternative, 4Front seeks relief from the automatic stay under Section 362(d) to allow it to  
5 proceed with collection activities under non-bankruptcy law. Numerous documents are attached  
6 to the Dismissal Motion and marked as exhibits “1” through “24.” (ECF No. 18). In support of  
7 the Dismissal Motion, 4Front filed the declarations of Kris Krane (“Krane Declaration”)<sup>6</sup> and

8  
9 <sup>3</sup> Local Rule 2004(c) provides as follows: “Production of documents may not be obtained  
10 via an order under Fed. R. Bankr. P. 2004. Production of documents may, however, be obtained  
11 via subpoena as provided by Fed. R. Civ. P. 45(a)(1)(C), as adopted by Fed. R. Bankr. P. 9016.”  
12 (Emphasis added.) It appears that the 2004 Subpoena commands both testimony and production  
13 of documents based on the CIMA 2004 Order. The latter command appears to run afoul of Local  
14 Rule 2004(c). In addition, Local Rule 5075(a)(2) authorizes the clerk of the court to sign various  
15 orders on behalf of the court for certain matters, including 2004 Exam requests. That  
16 authorization applies to “[o]rders authorizing examinations to be taken under Fed. R. Bankr. P.  
17 2004 if the date set for examinations is set on not less than fourteen (14) days’ notice and the  
18 request for examination does not include a request for production of documents. Orders that do  
19 not meet these requirements and orders under Fed. R. Bankr. P. 2004(d), must be signed by a  
20 judge...” Local Rule 5075(a)(2)(L) (emphasis added). The language of Local Rule  
21 5075(a)(2)(L) is simply inconsistent with the language of Local Rule 2004(c) that precludes a  
22 production of documents from being obtained through an order authorizing a 2004 Exam. As a  
23 party in interest, CIMA Group is permitted to conduct a 2004 Exam of the Debtor’s principal and  
24 should not be whipsawed, of course, between two poorly drafted local rules. CIMA Group has  
25 noticed a motion to be heard on June 19, 2019, if necessary, to address compliance with the  
26 CIMA 2004 Order and 2004 Subpoena. (ECF Nos. 70 and 74).

20 <sup>4</sup> Section 305(a) provides that a bankruptcy court, after notice and a hearing, may dismiss  
21 a bankruptcy case at any time if “the interests of creditors and the debtor would be better served  
22 by such dismissal...” 11 U.S.C. § 305(a)(1).

23 <sup>5</sup> Section 1112(b) provides that a bankruptcy court, after notice and a hearing, shall  
24 dismiss a Chapter 11 case, or convert it to Chapter 7, for cause, whichever is in the best of  
25 creditors and the estate. See 11 U.S.C. § 1112(b)(1). Examples of “cause” include “gross  
26 management of the estate.” Id. at § 1112(b)(4)(B). To avoid dismissal or conversion, a party in  
27 interest must establish, *inter alia*, that there is a reasonable justification of the act or omission  
28 constituting cause, and that the act or omission will be cured within a reasonable amount of time.  
Id. at § 1112(b)(2)(B).

27 <sup>6</sup> Through the written testimony of its co-founder, 4Front maintains that it is a “nationally  
28 recognized consultant in the legal cannabis industry.” Krane Declaration at ¶ 5. 4Front  
apparently entered into an agreement with the Debtor on March 10, 2014, to provide consulting

1 Cory L. Braddock (“Braddock Declaration”).<sup>7</sup> (ECF Nos. 20 and 21).<sup>8</sup>

2 On April 25, 2019, a combined joinder in the Dismissal Motion was filed on behalf of  
3 Highland Partners NV LLC, MI-CW Holdings NV Fund 2 LLC, and MI-CW Holdings LLC  
4 (collectively “Highland Partners”), as well as by Green Pastures Fund, LLC Series 1  
5 (CW Nevada, LLC), Jakal Investments, LLC, Green Pastures Group, LLC, Jonathan S. Fenn  
6 Revocable Trust, and Growth Properties, LLC (collectively “Green Pastures”). (ECF No. 26).  
7 In support of that combined joinder (“Highland Joinder”), Highland Partners and Green Pastures  
8 filed the declarations of David J. Malley, Esq. (“Malley Declaration”), Christopher R.  
9 Miltenberger, Esq. (“Miltenberger Declaration”), and Brandon Kanitz (“Kanitz Declaration”).  
10 (ECF Nos. 27, 28, and 29).

11 On April 26, 2019, a joinder in the Dismissal Motion was filed on behalf of Timothy  
12 Smits Van Oyen (“Van Oyen”). (ECF No. 37).

13 On May 2, 2019, a joinder in the Dismissal Motion was filed on behalf of MC Brands,  
14 LLC (“MC Brands”). (ECF No. 47).

15 On May 7, 2019, a limited joinder in the Dismissal Motion was filed on behalf of The  
16 CIMA Group (“CIMA Joinder”), to which is attached copies of three documents marked as  
17 exhibits “1” through “3.” (ECF No. 50).

18 On May 7, 2019, Debtor filed an opposition to the Dismissal Motion (“Opposition”) to  
19 \_\_\_\_\_  
20 services “to assist [Debtor] in applying for highly valuable and competitive licenses to operate  
21 sate-legal marijuana facilities in Nevada.” Id. at ¶ 6. In addition to that assistance, 4Front  
22 apparently provided “consulting services relating to the design and operation of successful retail  
23 cannabis dispensaries as permitted under Nevada state law.” Id. at ¶ 7.

24 <sup>7</sup> Through the written testimony of its legal counsel, 4Front maintains that it obtained an  
25 arbitration award against the Debtor that it seeks to confirm in an action pending in “Nevada  
26 state court.” Braddock Declaration at ¶¶ 3, 4 and 5. Based on the arbitration award, 4Front  
27 apparently filed an application for the appointment of a receiver (“Receivership Application”),  
28 the hearing on which was continued by the Eighth Judicial District Court, Clark County, Nevada  
29 (“State Court”) on several occasions and eventually set for April 17, 2019. Id. at ¶¶ 6 through  
30 13. The State Court apparently entered an order requiring the Debtor to show cause on May 6,  
31 2019, why it should not be held in contempt for violating a prior order. Id. at ¶ 14.

32 <sup>8</sup> Paragraphs 17 through 39 of the Braddock Declaration offer authentication under FRE  
33 901 of the twenty-four exhibits attached to the Dismissal Motion.

1 which is attached four documents marked as exhibits “A” through “D.” (ECF No. 51). The  
2 Opposition is supported by the Declaration of Brian C. Padgett (“Padgett Declaration”). (ECF  
3 No. 52). On the same date, Debtor filed oppositions to the Highland Joinder, as well as the  
4 joinders filed by Van Oyen and MC Brands. (ECF Nos. 54 and 55).

5 On May 8, 2019, Debtor filed an opposition to the CIMA Joinder (“Additional  
6 Opposition”). (ECF No. 56).

7 On May 8 and May 9, 2019, Debtor filed a request for judicial notice (“RJN”) of  
8 numerous documents marked as exhibits “A” through “O.” (ECF Nos. 57 and 60). Exhibits “A”  
9 through “J” apparently consist of copies of the “Register of Actions” or list of docket entries for  
10 proceedings of public record pending in State Court, and in this bankruptcy court.<sup>9</sup> Exhibits “K”  
11 through “O” consist of documents that were not, until now, of public record.<sup>10</sup>

12 On May 13, 2019, 4Front filed a reply in support of the Dismissal Motion (“4Front  
13 Reply”), to which is attached five documents marked as Exhibits “A” through “E.” (ECF No.  
14 68). On the same date, Highland Partners filed a reply in support of the Highland Joinder  
15 (“Highland Reply”). (ECF No. 69). On the same date, CIMA Group filed a reply in support of  
16 the CIMA Joinder (“CIMA Reply”), to which is attached a single document marked as exhibit  
17 “1.” (ECF No. 71).<sup>11</sup>

---

18  
19 <sup>9</sup> The court can take judicial notice under FRE 201 of the documents filed in the state  
20 court proceedings, as well as in this bankruptcy court. See U.S. v. Wilson, 631 F.2d 118, 119  
21 (9th Cir. 1980); Conde v. Open Door Mktg., LLC, 223 F. Supp. 3d 949, 970 n.9 (N.D. Cal.  
22 2017); Green v. Williams, 2012 WL 3962458, at \*1 n.1 (D. Nev. Sept. 7, 2012); Bank of Am.,  
N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr.  
C.D. Cal. 2015).

23 <sup>10</sup> Exhibits “K” through “N” appear to be authenticated under FRE 901 by paragraphs 13,  
24 12, 11, and 10 of the Padgett Declaration. Exhibit “O” is a copy of a document entitled “Cannex  
25 Notice of Meeting and Management Information Circular Relating to the Special Meeting of  
26 Security Holders to be Held on April 18, 2019” (“Cannex Notice”), the source of which is not  
addressed by the Padgett Declaration.

27 <sup>11</sup> The Office of the United States Trustee (“U.S. Trustee”) is a component of the United  
28 States Department of Justice (“Justice Department”) and exercises oversight responsibilities in  
bankruptcy cases through regional offices located throughout the United States. See 28 U.S.C. §  
586. The U.S. Trustee has not joined in the instant Dismissal Motion, nor has it filed a statement

1 **DISCUSSION**

2 Debtor is in the business of cultivating, producing, and distributing medical and  
 3 recreational marijuana (“Marijuana Business”). See Padgett Declaration at ¶¶ 4-5. It also is in  
 4 the business of producing and distributing products that contain cannabidiol (“CBD”) which  
 5 apparently are used, *inter alia*, to treat epilepsy (“CBD Business”). Id. at ¶ 6. Debtor apparently  
 6 operates or once operated marijuana cultivation, production, or dispensary facilities at up to five  
 7 Nevada locations: three in Las Vegas, one in North Las Vegas, and one in Pahrump. See  
 8 CWNevada Investor Update, February 2016, attached as Exhibit “1” to Dismissal Motion, at  
 9 pages 13-17; see also Benchmark Insurance Company - Workers Compensation and Employers  
 10 Liability Insurance, 04/26/2019 to 04/26/2020, attached as Exhibit “N” to RJN and as Exhibit  
 11 “A” to Opposition. Debtor’s health plan coverage apparently encompasses 54 subscribers. See  
 12 Health Plan of Nevada Bill Statement for May 2019, attached as Exhibit “M” to RJN and as  
 13 Exhibit “B” to Opposition. Debtor apparently made a payment of \$81,850 to the Nevada  
 14 Department of Taxation (“NDOT”) on April 23, 2019. See Marijuana Tax Return dated March  
 15 29, 2019, attached as Exhibit “K” to RJN and as Exhibit “D” to Opposition.<sup>12</sup>

16 Debtor’s business operations apparently are authorized under Nevada law.<sup>13</sup> Debtor’s  
 17 Marijuana Business is prohibited under federal law by provisions of the Controlled Substances  
 18 Act, 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 812(c), Schedule I(c)(10) [Marihuana] and Schedule  
 19 \_\_\_\_\_  
 20 expressing any view on the merits of this matter. Likewise, the U.S. Trustee did not enter an  
 21 appearance at the hearing in this matter. Similarly, neither the Nevada Department of Taxation,  
 22 Nevada Department of Health and Human Services, nor any other Nevada agency has joined in  
 the Dismissal Motion, or expressed any view. Nor did any Nevada governmental agency enter  
 an appearance at the hearing.

23 <sup>12</sup> That exhibit is a photocopy that is obscured by a “sticky note” reflecting someone’s  
 24 handwriting and also what appears to be a receipt stapled to the original of the document. That  
 25 receipt indicates that the NDOT received a total of \$81,850 consisting of a check in the amount  
 of \$12,000, and cash in the amount of \$69,850.00.

26 <sup>13</sup> Nevada is one of many states that has enacted legislation to decriminalize marijuana.  
 27 See generally NLJ Staff, *The Elephant in Nevada’s Hotel Rooms: Social Consumption of*  
 28 *Recreational Marijuana, A Survey of Law, Issues, and Solutions*, 2 Nev.L.J. Forum 99 (2018)  
 [hereafter “NLJ Survey”].

1 I(c)(17) [Tetrahydrocannabinols].<sup>14</sup> Debtor’s CBD Business, however, may no longer be  
2 prohibited under federal law as a result of the Agriculture Improvement Act of 2018, Pub. L.  
3 115-334, 132 Stat. 4490.

4 The Agriculture Improvement Act became effective on December 20, 2018, when the bill  
5 was signed into law. The Act amended the term “Marihuana” under the Controlled Substances  
6 Act to exclude hemp “as defined under section 1639o of Title 7.” See 21 U.S.C. § 802(16)(B).  
7 The Act also amended Schedule I(c)(17) of the Controlled Substances Act to exclude from the  
8 definition of “Tetrahydrocannabinols” the “tetrahydrocannabinols in hemp (as defined under  
9 section 1639o of Title 7).” See 21 U.S.C. § 812(c), Schedule I(c)(17). Under 7 U.S.C. §  
10 1639o(1), the term hemp “means the plant *Cannabis sativa* L. and any part of that plant,  
11 including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, and salts of  
12 isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more  
13 than 0.3 percent on a dry weight basis.” (Emphasis added.) Because products derived from  
14 hemp plants containing restricted concentrations of tetrahydrocannabinols (“THC”), which is the  
15 active ingredient in marijuana, are no longer in violation of the Controlled Substances Act, the  
16 Food and Drug Administration (“FDA”) apparently will assume a regulatory role for such  
17 products.<sup>15</sup>

18  
19  
20 <sup>14</sup> Violations of the Controlled Substances Act are subject to criminal prosecution, with a  
21 range of penalties including incarceration and fines. See 21 U.S.C. §§ 841(b)(1)(A)(vii),  
22 841(b)(1)(B)(vii), 841(b)(1)(C), and 841(b)(1)(D). See generally Brian T. Yeh, *Drug Offenses:*  
23 *Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances*  
24 *Act and Related Laws*, Congressional Research Service, January 20, 2015, available at  
25 <https://fas.org/sgp/crs/misc/RL30722.pdf> (last visited May 31, 2019). Persons who attempt or  
26 conspire in a violation of the Controlled Substances Act also may be subject to prosecution. See  
27 21 U.S.C. § 846. Compare 18 U.S.C. § 2(a) (a person who aids, abets, counsels, commands,  
induces or procures the commission of an offense against the United States is punishable as a  
principal). The statute of limitations for the Justice Department to prosecute a violation of the  
Controlled Substances Act is five years. 18 U.S.C. § 3282. See, e.g., *United States v. Mancuso*,  
718 F.3d 780, 787 n.1 (9th Cir. 2013) (five-year statute of limitations applies to federal  
prosecution under Controlled Substances Act).

28 <sup>15</sup> See Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to advance  
agency’s continued evaluation of potential regulatory pathways for cannabis-containing and

1 Under these circumstances, the portion of the Debtor's operations devoted to the  
2 Marijuana Business appears to be in violation of federal law, while the portion devoted to the  
3 CBD Business might be excluded from the Controlled Substances Act if the CBD products sold  
4 by the Debtor are derived from the type of hemp permitted under federal law. Notwithstanding  
5 its operations of these two businesses in accordance with Nevada law, Debtor apparently  
6 defaulted on payment of many of its obligations, including the claim of 4Front. Before 4Front's  
7 Receivership Application could be heard by the State Court, however, Debtor filed its voluntary  
8 Chapter 11 Petition.

9 No one disputes that the Debtor is a limited liability company formed under Nevada law.  
10 A limited liability company is treated as a "corporation" under Section 101(9)(A)(iv), and  
11 therefore is a "person" as defined under Section 101(41). See AE Rest. Assocs. LLC v.  
12 Giampietro (In re Giampietro), 317 B.R. 841, 844 n.3 (Bankr. D. Nev. 2004).<sup>16</sup> Under Section  
13 109(a), a person that resides, has a place of business, or has property in the United States, may be  
14 a debtor in bankruptcy. Because the Debtor in this case resides and has a place of business in  
15 Nevada, it is eligible under Section 109(a) to file a bankruptcy petition. Additionally, under  
16 Section 101(15), a person is included in the term "entity." Under Section 301(a), a voluntary  
17 bankruptcy petition commencing a case may be filed by an entity. Because the Debtor is both a  
18 person and an entity, it clearly was permitted under Section 301(a) to file its voluntary Chapter  
19 11 Petition.

20 As a result of filing a bankruptcy petition, the automatic stay arose under Section 362(a),  
21 applicable to all entities, barring various acts and actions from being taken or continued against  
22 the Debtor or property of the bankruptcy estate. See 11 U.S.C. § 362(a)(1 through 8). Property  
23 of the bankruptcy estate includes, *inter alia*, all legal and equitable interests of the Debtor in  
24 \_\_\_\_\_  
25 cannabis-derived products, April 2, 2019, available at <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb> (last visited May 31, 2019).

26 <sup>16</sup> In Giampietro, the bankruptcy court determined that Nevada limited liability  
27 companies are subject to the alter ego doctrine that is applied to pierce the veil of Nevada  
28 corporations. 317 B.R. at 846-48. In 2017, the Nevada Supreme Court reached the same  
conclusion. See Gardner v. Eighth Judicial District Court, 405 P.3d 651, 656 (Nev. 2017).



1 property as of the commencement of the case. See 11 U.S.C. § 541(a)(1).<sup>17</sup> So when the  
2 Chapter 11 petition was filed in the instant case, 4Front, Highland Partners, Green Pastures,  
3 CIMA Group, MC Brands, Van Oyen, and all other creditors were barred from continuing with  
4 their State Court litigation against the Debtor, or engaging in any other acts against the Debtor or  
5 any property of the Debtor. See generally Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n,  
6 997 F.2d 581, 585 (9th Cir. 1993).<sup>18</sup>

7 A fundamental purpose for allowing businesses and individuals to reorganize in Chapter  
8 11 is to preserve jobs, pay creditors as much as they would receive in a Chapter 7 liquidation,  
9 and to preserve the investment equity of shareholders. See U.S. v. Whiting Pools, Inc. (In re  
10 Whiting Pools, Inc.), 462 U.S. 198, 203, 103 S.Ct. 2309, 2312-13 (1983); In re Mohave Agrarian  
11 Group, LLC, 588 B.R. 903, 915 (Bankr. D. Nev. 2018). Because a voluntary Chapter 11 debtor  
12 remains in possession of property of its bankruptcy estate, and because it has the rights, powers  
13 and duties of a bankruptcy trustee, see 11 U.S.C. § 1107(a), a Chapter 11 debtor in possession  
14 has a fiduciary responsibility to all creditors of the bankruptcy estate. See Woodson v.  
15 Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988) (“[Debtor’s] failure  
16 to notify his creditors of the \$1 million in a timely fashion is especially troubling because  
17 [Debtor] is not an ordinary litigant. As debtor in possession he is the trustee of his own estate  
18

19 \_\_\_\_\_  
20 <sup>17</sup> The Bankruptcy Code makes clear that it is the commencement of a case under  
21 Sections 301, 302 and 303 that “creates an estate.” 11 U.S.C. § 541(a). Prior to the  
22 commencement of a case, a debtor simply holds interests that may ultimately become property of  
23 the bankruptcy estate. After a bankruptcy estate comes into existence, it may thereafter acquire  
24 interests in additional property that also become property of the bankruptcy estate. See 11  
25 U.S.C. § 541(a)(7). Amongst the “legal or equitable interests of the debtor in property as of the  
26 commencement” of a bankruptcy case, see 11 U.S.C. § 541(a)(1), are any claims or causes of  
27 action that the debtor may assert against any parties. See Sierra Switchboard Co. v.  
28 Westinghouse Elec. Corp., 789 F.2d 705, 707 (9th Cir. 1986).

25 <sup>18</sup> This includes taking possession of or exercising control over property of the  
26 bankruptcy estate, or enforcing a lien against property of the estate. See 11 U.S.C. §§ 362(a)(3  
27 and 4). Even if a party is not a creditor having a claim against the Debtor, it is still an “entity” to  
28 which the automatic stay applies. The automatic stay described in Sections 362(a)(1, 2, 3 and 6)  
does not apply to certain activity, such as an action by a governmental unit to enforce the unit’s  
police and regulatory power. See 11 U.S.C. § 362(b)(4).

1 and therefore stands in a fiduciary relationship to his creditors.”). A debtor in possession also is  
2 required to manage and operate the property in its possession according to the requirements of  
3 state law. See 28 U.S.C. § 959(b).

4 Creditors who oppose a Chapter 11 debtor’s efforts can object at any time during the case  
5 and to any plan of reorganization that might be proposed. A Chapter 11 debtor in possession  
6 typically has an exclusive period of 120 days to propose a plan of reorganization, after which  
7 time a creditor may file its own plan. See 11 U.S.C. § 1121(b). As a general rule, a Chapter 11  
8 debtor can propose a plan of reorganization to which all of its creditors agree, and such a  
9 consensual plan is confirmed without the necessity of a “cramdown” of plan treatment.<sup>19</sup> If all  
10 creditors do not agree, then the plan may be confirmed through cramdown only if the treatment  
11 of the objecting creditors’ claims is “fair and equitable.” 11 U.S.C. § 1129(b). It is under this  
12 legal framework that the court addresses this Dismissal Motion.<sup>20</sup>

### 13 **1. The Arguments of the Parties.**

14 After describing a litany of events that allegedly preceded the commencement of this  
15 Chapter 11 proceeding, see Dismissal Motion at 2:6 to 10:20, 4Front offers eight separate, but  
16 overlapping arguments in favor of its request: (1) that Debtor is ineligible for relief under  
17 bankruptcy law, id. at 10:25 to 13:20, (2) that all parties are better served by abstention under  
18 Section 305(a) through dismissal of the case, id. at 13:23 to 14:10, (3) that appointment of a  
19 receiver in State Court offers a superior forum to resolve disputes, id. at 14:12 to 15:13, (4) that  
20 the Debtor commenced the Chapter 11 proceeding to frustrate creditor rights, id. at 15:15 to 16:2,  
21 (5) that economy and efficiency supports abstention by dismissal, id. at 16:4 to 17:10, (6) that  
22

---

23 <sup>19</sup> “Cramdown” is simply a description of what is permitted in bankruptcy: if creditors  
24 and interest holders do not agree to the proposed treatment of their claims, the court may confirm  
25 a proposed plan over their objections if certain conditions are met.

26 <sup>20</sup> Bankruptcy permits individuals and non-individuals to obtain a discharge of their  
27 personal liability to pay a debt. The Bankruptcy Code provides the statutory framework for  
28 which a discharge may be obtained. No one disputes, however, that a party that files for  
bankruptcy protection does not have a constitutional right to receive a discharge of debts. See  
U.S. v. Kras, 409 U.S. 434, 446, 93 S.Ct. 631, 638 (1973).

1 dismissal is warranted under Section 1112(b) because of bad faith,<sup>21</sup> id. at 17:13 to 18:3, (7) that  
2 dismissal is warranted based on the doctrine of unclean hands, id. at 18:5-24, and (8) that the  
3 automatic stay should be lifted to permit the actions in State Court to proceed, id. at 18:27 to  
4 19:19. MC Brands simply joins in all of the arguments raised by 4 Front. Highland Partners,  
5 Green Pastures, and Van Oyen join in the arguments based on Section 305(a) and Section  
6 1112(b). See Highlands Joinder at 6:15-27 and 7:2 to 10:20; Van Oyen Joinder at 2:1-2. The  
7 “joinder” filed by CIMA Group, however, seeks the appointment of a Chapter 11 trustee under  
8 Section 1104(a) in the event the case is not dismissed under Section 1112(b).<sup>22</sup> See CIMA  
9 Joinder at 8:2 to 12:2.<sup>23</sup>

10 Debtor does not dispute the characterization of most of the events leading up to the filing  
11 of its Chapter 11 petition. See Opposition at 2:26 to 4:4. Instead, it offers eight separate but  
12 overlapping arguments of its own: (1) that a Chapter 11 plan will be proposed in good faith, see  
13 Opposition at 4:12 to 6:2, (2) that the Justice Department is currently barred from expending  
14 funds to enforce the marijuana restrictions applicable under the Controlled Substances Act, id. at  
15 6:5 to 7:13, (3) that abstention through dismissal under Section 305(a) will not better serve the  
16 interests of the Debtor, id. at 7:14 to 9:3, (4) that the Debtor is in the process of establishing

---

17  
18 <sup>21</sup> Although 4Front seeks dismissal of the case under Section 1112(b), it does not request  
19 appointment of a Chapter 11 trustee under Section 1104(a).

20 <sup>22</sup> As previously mentioned, see discussion at 3, supra, 4Front seeks dismissal under  
21 Section 305(a), or, in the alternative, Section 1112(b). A decision on a motion to dismiss under  
22 Section 1112 must be rendered no later than fifteen days after a hearing commences, unless the  
23 moving party consents or compelling circumstances otherwise requires. See 11 U.S.C. §  
24 1112(b)(3).

25 <sup>23</sup> Although CIMA Group’s request for the appointment of a Chapter 11 trustee first  
26 appeared in its joinder filed the day before the Debtor’s opposition was due, see CIMA Joinder at  
27 6:16 to 12:2, Debtor’s written opposition to that joinder does not discuss whether appointment of  
28 a trustee is appropriate. See Additional Opposition at 2 (“Debtor hereby adopts all previous  
arguments made in their Opposition to 4Front Advisors, LLC’s Motion as if fully set forth  
herein...”). In any event, the bankruptcy court may appoint a Chapter 11 trustee *sua sponte*, see  
Fukutomi v. U.S. Trustee (In re Bibo, Inc.), 76 F.3d 256 (9th Cir. 1996), if it determines the  
appointment of a Chapter 11 trustee to be in the interests of creditors, equity security holders,  
and other interests of the estate. See 11 U.S.C. § 1104(a)(2).

1 relationships with banks that currently do business with 4Front, id. at 9:5-12, (5) that the Debtor  
2 has workers compensation, employee health, and automobile insurance in place, and made a tax  
3 payment to the NDOT on April 23, 2019, id. at 9:14-27, (6) that the doctrine of unclean hands  
4 does not bar bankruptcy relief, id. at 10:2-13, (7) that the balance of hardships favor keeping the  
5 automatic stay in place, id. at 10:15 to 11:8, and (8) that civil contempt proceedings currently  
6 pending in State Court may be exempt from the automatic stay, id. at 11:11-17.

7 **2. The Existing Case Law is Distinguishable.**<sup>24</sup>

8 Interspersed amongst the parties arguments are citations to various decisions by other  
9 courts suggesting why a marijuana-related bankruptcy case should, or should not, be dismissed.  
10 None of those decisions, however, are controlling under the circumstances of the case now  
11 before this court.<sup>25</sup>

12 \_\_\_\_\_  
13 <sup>24</sup> Not surprisingly, a variety of cases have been filed in this court by individual or non-  
14 individual debtors that receive or propose to receive income from a source authorized under state  
15 law to cultivate or distribute marijuana. See, e.g., In re Warwick Properties, LLC, Case No. 17-  
16 15065-MKN (voluntary Chapter 11 limited liability company whose tenant cultivated marijuana  
17 on California real property as authorized by California law); In re Perez, Case No. 19-12284-  
18 MKN (voluntary individual Chapter 7 debtor apparently employed by a Nevada marijuana  
19 dispensary licensed under Nevada law); In re Misle, Case No. 18-15705-BTB (involuntary  
20 individual Chapter 7 debtor who receives income from an entity that manages marijuana  
21 cultivation facilities under Nevada law); In re Redrock Enterprises, LLC, Case No. 15-13493-  
22 ABL (voluntary Chapter 11 by debtor who proposed to lease property to a tenant engaged in  
23 marijuana operation under Nevada law); In re Olson, Case No. 17-50081-BTB (Chapter 13  
24 debtor who received rental income from medical marijuana dispensary operating under Nevada  
25 law).

26 <sup>25</sup> Cases involving marijuana-related individual and non-individual debtors have become  
27 the boogeyman of bankruptcy jurisprudence. Some courts have shied away, and other courts  
28 have approached such cases with caution. The bankruptcy debtor's actual connection to the  
potential illegal activity – whether direct, indirect, remote, or near – appears to be a significant  
consideration. It is worth noting, however, that bankruptcy courts have a long history of  
considering cases involving debtors whose activities and operations have included past, present  
and possibly ongoing violations of applicable non-bankruptcy, civil and criminal laws. See, e.g.,  
Midlantic Nat'l Bank v. New Jersey Dept. of Env't'l Prot., 474 U.S. 494, 106 S.Ct. 755  
(1986)(voluntary Chapter 11 of waste oil processor that possessed leaking containers of cancer-  
causing substances in violation of state and local law was converted to Chapter 7, rather than  
dismissed); In re Freedom Industries, Inc., Case No. 14-bk-20017 (Bankr. S.D. W.Va. Jan. 17,  
2014)(voluntary Chapter 11 filed by chemical producer after chemical spill contaminated Elk  
River; Chapter 11 plan of reorganization confirmed even though the debtor and officers were

1                   **A. The Most Recent Decision of the Ninth Circuit Court of Appeals.**

2                   On May 2, 2019, sixteen days after the Debtor commenced this Chapter 11 proceeding,  
3 the Ninth Circuit Court of Appeals (“Ninth Circuit”) entered its decision in Garvin v. Cook  
4 Investments NW, SPNWY, LLC (In re Cook Investments NW), 922 F.3d 1031 (2019). That  
5 Chapter 11 proceeding was commenced in the bankruptcy court for the Western District of  
6 Washington and encompassed five related real estate entities. One of those entities, Cook  
7 Investments NW DARR (“Cook DARR”), leased property to an unrelated third party licensed  
8 under Washington law to grow marijuana. That lease violated, however, the provision of the  
9 Controlled Substances Act that prohibited the knowing lease of any space “...for the purpose of  
10 manufacturing, distributing, or using any controlled substance...” 21 U.S.C. § 856(a)(1). The  
11 U.S. Trustee filed a motion under Section 1112(b)(1) to dismiss the Chapter 11 proceeding based  
12 on gross mismanagement as defined under Section 1112(b)(4)(B). The bankruptcy court denied  
13 the motion on the debtors’ representation that an amended plan would include a rejection of the  
14 lease with the marijuana grower and payments under the plan therefore would not depend on a  
15 source that violates federal law. See Geiger v. Cook Investments NW, SPNWY, LLC (In re  
16 Cook Investments NW), 2017 WL 10716993, at \*1 (W.D. Wash. Dec. 18, 2017). The  
17 bankruptcy court gave the U.S. Trustee leave to renew the motion at the time of confirmation of  
18 the amended plan.<sup>26</sup>

19                   The debtors filed an amended plan along with a separate motion to reject the marijuana  
20 tenant’s lease. The U.S. Trustee objected to confirmation of the amended plan, but not to the

21 \_\_\_\_\_  
22 subsequently sentenced for criminal violations of the federal Clean Water Act and federal Refuse  
23 Act). See also NCR Staff, *Catholic Dioceses and Orders that Filed for Bankruptcy and Other*  
24 *Major Settlements*, National Catholic Reporter (May 31, 2018), available at  
25 [https://www.ncronline.org/news/accountability/catholic-dioceses-and-orders-filed-bankruptcy-](https://www.ncronline.org/news/accountability/catholic-dioceses-and-orders-filed-bankruptcy-and-other-major-settlements)  
26 [and-other-major-settlements](https://www.ncronline.org/news/accountability/catholic-dioceses-and-orders-filed-bankruptcy-and-other-major-settlements) (last visited May 31, 2019) (listing all Catholic diocese bankruptcy  
27 proceedings filed from July 6, 2004 through approximately February 28, 2018, to address sexual  
28 abuse claims against clergy).

26 Although the debtors were the subject of a prior state court judgment that precipitated  
the Chapter 11 filing, id. at \*1, the U.S. Trustee sought dismissal of the bankruptcy case solely  
under Section 1112(b), and not dismissal based on abstention under Section 305(a).

1 motion to reject the lease. An order was entered authorizing rejection of the lease. The U.S.  
2 Trustee objected that the amended plan was not proposed in good faith under Section 1129(a)(3),  
3 but did not renew the motion to dismiss under Section 1112(b)(1) based on gross  
4 mismanagement. The bankruptcy court overruled the plan objection and confirmed the amended  
5 plan under Section 1129(a).<sup>27</sup> Id. at \*1-2. On appeal, the federal district court affirmed both the  
6 plan confirmation order and the order denying the U.S. Trustee's motion to dismiss. As to  
7 dismissal based on gross mismanagement, the district court concluded that the U.S. Trustee had  
8 waived the objection by failing to renew the prior motion. Id. at \*3. The district court also  
9 concluded that it was not an abuse of discretion to deny dismissal because the debtors might be  
10 able to propose a Chapter 11 plan that does not rely on income from the marijuana lease. Id. at  
11 \*4. The district court emphasized that the debtors' plan of reorganization provided for payment  
12 of the single creditor whose judgment would be paid in full from non-marijuana income. Id.

13 On further appeal, the Ninth Circuit again affirmed. In particular, the circuit panel  
14 addressed the U.S. Trustee's objection that the debtors' Chapter 11 plan did not meet Section  
15 1129(a)(3) because it had not "been proposed in good faith and not by any means forbidden by  
16 law." The Ninth Circuit held that the good faith requirement under Section 1129(a)(3)  
17 "...directs courts to look only to the proposal of a [Chapter 11] plan, not to the terms of the  
18 plan." 922 F.3d at 1035. (Emphasis added). Because the Debtor's plan had been negotiated  
19 during the Chapter 11 proceeding in good faith, it had not been proposed by any means  
20 forbidden by bankruptcy or non-bankruptcy law. Id. at 1033-34. With respect to any alleged  
21 violations of the Controlled Substances Act, the court observed:

22 We do not believe that the interpretation compelled by the text [of  
23 Section 1129(a)(3)] will result in bankruptcy proceedings being  
24 used to facilitate legal violations. To begin, absent waiver, as in  
25 this case, courts may consider gross mismanagement under §  
26 1112(b). And confirmation of a plan does not insulate debtors  
from prosecution for criminal activity, even if that activity is part  
of the plan itself...There is thus no need to "convert the  
bankruptcy judge into an ombudsman without portfolio,

27  
28 <sup>27</sup> Section 1129(a) sets forth sixteen separate requirements that generally apply to all  
Chapter 11 plan proponents seeking to confirm a plan. Only individual Chapter 11 debtors,  
however, are subject to the requirements under Section 1129(a)(15).

1 gratuitously seeking out possible ‘illegalities’ in every plan,” a  
2 result that would be “inimical to the basic function of bankruptcy  
judges in bankruptcy proceedings.”

3 Id. at 1036 (citations omitted).<sup>28</sup> With respect to dismissal for gross management within the  
4 meaning of Section 1112(b)(4)(B), the Ninth Circuit concluded that the U.S. Trustee had waived  
5 the objection by failing to renew its motion at plan confirmation. The circuit panel reached that  
6 conclusion because the motion was not presented under Section 1112(b)(1) and therefore there  
7 was no opportunity for the bankruptcy court to consider whether any claim of gross  
8 mismanagement could be cured under Section 1112(b)(2).<sup>29</sup> Id. at 1034.

9 While the Ninth Circuit’s decision in Garvin is controlling when a good faith objection to  
10 plan confirmation is raised under Section 1129(a)(3), there is no proposed Chapter 11 plan  
11 before the court at this time. Similarly, the Garvin decision does not address other requirements  
12 for Chapter 11 plan confirmation, such as feasibility under Section 1129(a)(11).<sup>30</sup> At this stage,

13  
14 <sup>28</sup> In Chapter 11 and Chapter 13 proceedings, however, bankruptcy judges have been  
15 directed to make an independent determination of whether the statutory requirements for  
16 confirmation of a debtor’s proposed plan have been met. See, e.g., Liberty Nat’l Enters. v.  
17 Ambanc La Mesa Ltd. P’Ship (In re Ambanc La Mesa Ltd. P’Ship), 115 F.3d 650, 653 (9th Cir.  
18 1997) (Chapter 11 plan confirmation); United Student Aid Funds, Inc. v. Espinosa (In re  
19 Espinosa), 559 U.S. 260, 276-77, 130 S.Ct. 1367, 1380-81 (2010) (Chapter 13 plan  
20 confirmation). See also In re Las Vegas Monorail Co., 462 B.R. 795, 798 (Bankr. D. Nev. 2011)  
21 (Chapter 11); In re Escarcega, 573 B.R. 219, 231 (B.A.P. 9th Cir. 2017) (Chapter 13).  
Moreover, federal judges are directed to report to the appropriate United States attorney all the  
22 facts and circumstances of a case in which the judge has reasonable grounds to believe that a  
23 bankruptcy crime or any violation of “other laws relating to insolvent debtors, receiverships or  
24 reorganization plans have been committed, or that an investigation should be had in connection  
25 therewith...” 18 U.S.C. § 3057(a).

26 <sup>29</sup> If there are unusual circumstances establishing that conversion or dismissal of a  
27 Chapter 11 case is not in the best interests of creditors and the estate, such relief is prohibited if  
28 the debtor establishes a reasonable likelihood that a plan will be confirmed in a reasonable  
amount of time, and, inter alia, that any act constituting cause, including gross mismanagement,  
will be cured within a reasonable amount of time fixed by the court. See 11 U.S.C. §  
1112(b)(2)(A and B).

29 <sup>30</sup> Section 1129(a)(11) requires a Chapter 11 plan proponent to demonstrate that plan  
confirmation “is not likely to be followed by the liquidation, or the need for further financial  
reorganization, of the debtor or any successor to the debtor under the plan, unless such  
liquidation or reorganization is proposed in the plan.” The Chapter 11 plan proponent must  
“demonstrate that any necessary financing or funding has been obtained, or is likely to be

1 the Debtor wants to remain under the protection of the automatic stay while it tries to formulate a  
2 plan of reorganization. The Garvin panel did not preclude consideration of a motion to dismiss  
3 under Section 1112(b)(1), even at plan confirmation, but did not do so only because the U.S.  
4 Trustee had waived the ground by failing to renew its prior motion. So procedurally, the Garvin  
5 decision offers no guidance on whether dismissal under Section 1112(b)(1) on the basis of  
6 mismanagement under Section 1112(b)(4)(B), or any other ground, would be appropriate in the  
7 present case.

8 On the other hand, the more obvious factual distinction is that the Chapter 11 debtor in  
9 Garvin was not engaged in the cultivation, production and distribution of marijuana. Unlike the  
10 debtor in Garvin, this is not a case where proceeds of the Marijuana Business would provide  
11 merely “indirect support” for a confirmed plan.<sup>31</sup> Rather, the Marijuana Business operated by  
12 the Debtor appears to be the primary source of the Debtor’s revenue and appears to be in clear  
13 violation of the Controlled Substances Act.

14 Perhaps more important is that the Garvin decision does not address whether dismissal  
15 independently based on abstention under Section 305(a) is appropriate. The debtors in Garvin  
16 were not subject to multiple state court actions brought by creditors clamoring to enforce their  
17 claims against limited assets. The Debtor in the current case is.

18 Under these circumstances, the recent decision in Garvin is informative, but neither  
19 procedurally nor factually apposite.<sup>32</sup>

20 \_\_\_\_\_  
21 obtained.” In re Trans Max Techs., Inc., 349 B.R. 80, 92 (Bankr. D. Nev. 2006). The  
22 Bankruptcy Code “...does not require the debtor to prove that success is inevitable, and a  
23 relatively low threshold of proof will satisfy §1129(a)(11)...But the court must still have a  
reasonable and credible basis for making the necessary findings...” Id. (citations and quotations  
omitted).

24 <sup>31</sup> See Garvin, 922 F.3d at 1035 (“Because it appears that [debtors’ principal] continues to  
25 receive rent payments from [the marijuana producer], which provides at least indirect support for  
26 the Amended Plan, the [U.S.] Trustee asserts that [the Chapter 11] plan was  
‘proposed...by...means forbidden by law.’”).

27 <sup>32</sup> A Chapter 11 plan may provide for the liquidation of the assets of the estate, see 11  
28 U.S.C. § 1129(a)(11), but confirmation of a plan does not discharge the debtor if the plan  
provides for liquidation of all or substantially all property of the estate, the debtor does not



1                   **B. The Remaining Cases Cited by the Parties.**

2                   The other cases cited by the parties involved marijuana-related bankruptcy relief under  
3 various chapters of the Bankruptcy Code, but under very different circumstances. Three other  
4 non-bankruptcy cases cited by the parties are not persuasive.

5                   **(1) Chapter 13 Cases.**

6                   Relief under Chapter 13 is available only to individuals who are eligible under Section  
7 109(e) and who are willing to devote their future disposable income to the payment of creditors.  
8 Individuals essentially commit to earn income from their labors over time in exchange for a  
9 discharge in Chapter 13. Because individuals cannot be subjected to forced labor, they cannot be  
10 placed into Chapter 13 involuntarily. See 11 U.S.C. § 303(a).

11                   In In re McGinnis, 453 B.R. 770 (Bankr. D. Or. 2011), a Chapter 13 debtor proposed a  
12 plan that would be partially funded by the debtor's own marijuana business and rental income  
13 derived from other marijuana-related businesses. After an evidentiary hearing in which the  
14 Chapter 13 trustee objected, the court denied confirmation because the plan's reliance on income  
15 derived from the marijuana industry violated the good faith requirement under Section  
16 1325(a)(3).<sup>33</sup> The court further concluded that because the contemplated marijuana operations

17  
18 engage in business after consummation of the plan, and the debtor would be denied a discharge if  
19 the case was a case under Chapter 7. See 11 U.S.C. § 1141(d)(3). A non-individual entity is not  
20 eligible for a discharge in Chapter 7. See discussion at 23, infra. A non-individual entity  
21 engaged solely in the cultivation, production and distribution of marijuana faces a difficult  
22 choice when seeking Chapter 11 relief: if it commits to disposing of its marijuana assets and to  
23 not engage in business, it will not receive a Chapter 11 discharge. If such a non-individual entity  
24 does not commit to ceasing operations that are in violation of the Controlled Substances Act,  
25 however, its Chapter 11 proceeding may well be subject to dismissal based on gross  
26 mismanagement established under Section 1112(b)(4)(B). The debtors in Garvin had substantial  
27 operations that did not violate the Controlled Substances Act and were able to engage in business  
28 even after rejecting the marijuana tenant's lease. Thus, a Chapter 11 discharge was available to  
the debtors in Garvin and occurred at the time their plan of reorganization was confirmed. See  
11 U.S.C. § 1141(d)(1).

<sup>33</sup> Section 1325(a)(3) parrots the language in Section 1129(a)(3), and requires the court to  
find that a proposed Chapter 13 plan "has been proposed in good faith and not by any means  
forbidden by law." 11 U.S.C. § 1325(a)(3).

1 were illegal under both federal and Oregon law,<sup>34</sup> debtor could not satisfy Section 1325(a)(6),  
2 which requires proof of a debtor's ability "to make all payments under the plan and to comply  
3 with the plan."<sup>35</sup> The court, however, expressed a willingness to consider confirmation of any  
4 amended plan that did not rely on funding from illegal sources of income. As a result, the court  
5 denied plan confirmation but permitted the debtor to file an amended plan. In the event a timely  
6 amended plan was not filed, the court indicated that it would issue an order to show cause for  
7 dismissal or conversion to Chapter 7. *Id.* at 773-74.<sup>36</sup>

8 In *In re Johnson*, 532 B.R. 53 (Bankr. W.D. Mich. 2015), the U.S. Trustee moved to  
9 dismiss a Chapter 13 case because part of the debtor's income came from the sale of medical  
10 marijuana permitted under Michigan law. The court credited the debtor's testimony that all plan  
11 payments made to the trustee came from his Social Security income but nevertheless concluded  
12 that the court could not, and would not, allow the debtor to remain in a bankruptcy case that  
13 assisted in the advancement of an illegal activity. The court, however, did not agree with the  
14 U.S. Trustee that dismissal was a foregone conclusion, but instead gave the debtor the option to  
15 remain in bankruptcy by ceasing his illegal business operations. Specifically, the court enjoined  
16 the debtor from continuing with his marijuana business, ordered him to destroy all marijuana

---

17  
18 <sup>34</sup> Oregon law allowed a medical marijuana cultivation operation to be reimbursed for  
19 supplies and utility expenditures, but not to obtain a profit from the operation. 453 B.R. at 772-  
20 73. Oregon's non-profit requirement for medical marijuana cultivation businesses perhaps  
21 reflected a social policy to provide effective alternatives to traditional medicine, e.g., to address  
22 the side effects of chemotherapy, as a treatment for chronic pain, etc. A similar non-profit  
23 requirement for recreational marijuana presumably would not reflect a similar social policy any  
24 more than a non-profit requirement for the liquor industry. With more states authorizing the  
25 cultivation, production and distribution of recreational marijuana products, it is clear that the  
26 marijuana industry increasingly is based on profit motivations rather than altruism.

27 <sup>35</sup> Section 1325(a)(6) is the "feasibility" requirement in Chapter 13 that requires the  
28 individual debtor to demonstrate that he or she can actually perform the terms of the proposed  
payment plan. *See* KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY, 4TH  
EDITION, § 198.1, at ¶ [2], Sec. Rev. June 15, 2004, [www.Ch13online.com](http://www.Ch13online.com).

<sup>36</sup> Because the debtor did not file an amended Chapter 13 plan, the case was dismissed  
after the court issued an order to show cause and the debtor filed a motion for voluntary  
dismissal. (McGinnis ECF No. 62).

1 plants, and scheduled a further evidentiary hearing to determine the debtor's compliance with  
2 these conditions. Id. at 59. The court also provided the debtor with the option to terminate the  
3 injunction by moving to dismiss his own case under Section 1307(b). Id.<sup>37</sup>

4 In Olson v. Van Meter (In re Olson), 2018 WL 989263 (B.A.P. 9th Cir. Feb. 5, 2018), a  
5 Chapter 13 debtor obtained rental income from a marijuana dispensary on real property she  
6 proposed to sell under her plan. The bankruptcy court *sua sponte* dismissed the bankruptcy case  
7 because the debtor was accepting rental income during the post-petition period from a source  
8 engaged in a business that violated federal law. On appeal, the bankruptcy appellate panel  
9 vacated and remanded the case, stating that the bankruptcy court needed to make more findings  
10 of fact and conclusions of law to support dismissal. In her concurring opinion, Judge Tighe  
11 expressed her opinion that “[a]lthough debtors connected to marijuana distribution cannot expect  
12 to violate federal law in their bankruptcy case, the presence of marijuana near the case should not  
13 cause mandatory dismissal.” Id. at \*7. Judge Tighe also provided additional clarification  
14 regarding the detail she believes to be necessary in future rulings involving similar cases:

15 I concur in the memorandum and write separately to emphasize (1)  
16 the importance of evaluating whether the Debtor is actually  
17 violating the Controlled Substances Act and (2) the need for the  
18 bankruptcy court to explain its conclusion that dismissal was  
19 mandatory under these circumstances. With over twenty-five  
20 states allowing the medical or recreational use of marijuana, courts  
21 increasingly need to address the needs of litigants who are in  
22 compliance with state law while not excusing activity that violates  
23 federal law. A finding explaining how a debtor violates federal  
24 law or otherwise provides cause of dismissal is important to avoid  
25 incorrectly deeming a debtor a criminal and denying both debtor  
26 and creditors the benefit of the bankruptcy laws.

23 Id. at \*6.

24 The common theme in all of these Chapter 13 cases is the willingness of the bankruptcy  
25 court to allow the voluntary debtor to propose a feasible plan that does not rely on income  
26 received through a violation of the Controlled Substances Act.

---

28 <sup>37</sup> The debtor confirmed a Chapter 13 plan, but his case ultimately was dismissed when  
he defaulted on his plan payments. (Johnson ECF No. 87).

1                                   **(2) Chapter 11 Cases.**

2           Relief under Chapter 11 is available to both individuals and non-individuals, and may be  
3 initiated both voluntarily and involuntarily. For individual Chapter 11 debtors, a bankruptcy  
4 discharge is obtained only upon completion of payments of a confirmed plan. See 11 U.S.C. §  
5 1141(d)(5). For non-individual Chapter 11 debtors, a bankruptcy discharge is obtained upon  
6 confirmation of a plan unless the plan does not provide for continued operations. See discussion  
7 at note 32, supra.

8           In In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799 (Bankr. D. Colo. 2012), creditors  
9 sought to dismiss a voluntary Chapter 11 case filed by the owner of a warehouse. Dismissal was  
10 sought because twenty-five percent of the non-individual debtor's revenues came from  
11 warehouse tenants engaged in the medical marijuana industry. Although the tenants' operations  
12 were authorized under Colorado law, the bankruptcy court found that the revenue source violated  
13 the Controlled Substances Act and subjected the secured creditor's real property collateral to  
14 potential criminal forfeiture proceedings under federal law. Id. at 805-06. The court, therefore,  
15 found that "cause" existed under Section 1112(b) due to gross mismanagement and application  
16 of the unclean hands doctrine. Id. at 809. Because the remaining seventy-five percent of the  
17 debtor's revenues were not derived from the marijuana tenants, however, the court scheduled a  
18 further hearing to determine whether conversion or dismissal would be in the best interests of  
19 creditors. Id. at 810-11.<sup>38</sup>

20           In In re Arm Ventures, LLC, 564 B.R. 77 (Bankr. S.D. Fla. 2017), the Chapter 11 debtor,  
21 which did not have any income derived from marijuana-related sources as of the petition date,  
22 proposed a plan that contemplated leasing real property to an affiliate that would generate  
23 income from medical marijuana as permitted by Florida law. The secured creditor sought  
24 dismissal based on a variety of factors, including the debtor's reliance on marijuana-related  
25 sources of income to fund its plan. The court agreed that it could not confirm such a plan, but it

26 \_\_\_\_\_  
27 <sup>38</sup> According to the docket in the Rent-Rite case, approximately two years later (April 17,  
28 2014), the bankruptcy court entered an order dismissing the Chapter 11 proceeding pursuant to a  
stipulation between the U.S. Trustee and the debtor in possession. (Rent-Rite ECF No. 175).

1 provided the secured creditor with relief from the automatic stay in lieu of dismissal. Id. at 86-  
2 87. The court also gave the debtor two weeks to file an amended plan that did not rely on  
3 marijuana-related sources of income, absent which the court would convert the case to Chapter 7  
4 and the secured creditor would be authorized to immediately proceed with its foreclosure sale.  
5 Id. at 86 & n.23.<sup>39</sup>

6 In In re Way to Grow, Inc., 597 B.R. 111 (Bankr. D. Colo. 2018), the Chapter 11 debtors'  
7 business

8 involve[d] the sale of equipment for indoor hydroponic and  
9 gardening-related supplies. As to their customers' uses of their  
10 products, Debtors have represented "[w]hile the hydroponic  
11 gardening equipment may and is used for many types of crops, the  
12 Debtors' future business expansion plan is tied to the growing  
cannabis industry which is heavily reliant on hydroponic  
gardening."

13 Id. at 115. After discussing various bankruptcy decisions involving debtors engaged in illegal  
14 activities, including the decision in Rent-Rite, the court discussed "three basic propositions"  
15 gleaned from this caselaw:

16 First, a party cannot seek equitable bankruptcy relief from a federal  
17 court while in continuing violation of federal law. Second, a  
18 bankruptcy case cannot proceed where the court, the trustee or the  
19 debtor-in-possession will necessarily be required to possess and  
20 administer assets which are either illegal under the CSA or  
21 constitute proceeds of activity criminalized by the CSA. And  
third, the focus of this inquiry should be on debtor's marijuana-  
related activities during the bankruptcy case, not necessarily before  
the bankruptcy case is filed.

22 Id. at 120. Utilizing these principles, the court found "cause" existed to dismiss the case under  
23 Section 1112(b) because the debtors' business violated the Controlled Substances Act.  
24 Specifically, after conducting a four-day evidentiary hearing, the court did not find credible the  
25 debtors' explanation that it would try to distance itself from selling its products to entities  
26 engaged in marijuana-related activities. The court further found that the reduction of debtors'

---

27 <sup>39</sup> According to the docket in the Arm Ventures case, the debtor filed a proposed  
28 amended plan of reorganization (Arm Ventures ECF No. 149), but the plan was never confirmed.  
Instead, the Chapter 11 proceeding was later dismissed. (Arm Ventures ECF No. 261).

1 revenue from marijuana-related sources would devastate the debtor's income stream, thereby  
2 making confirmation difficult, if not impossible. Finally, even if the court required the debtors to  
3 extricate themselves from the marijuana industry, the court concluded that the cost and effort of  
4 ensuring compliance would be inefficient, costly, and difficult to monitor:

5 In any event, the Court does not believe such an order [requiring  
6 the debtor to extricate itself from marijuana-related sources of  
7 business], or the remediation it would require, would be effective  
8 in this case. The Court cannot simply order Debtors to cease all  
9 sales to customers known to be involved in marijuana cultivation,  
10 because the usefulness of Debtors' products in illegal grow  
11 operations will continue to attract marijuana horticulturalists to  
12 Debtors' business, including those growing marijuana solely for  
13 personal use. Debtors have already acquired a venerable  
14 reputation for expertise in hydroponic marijuana growing, and it is  
15 difficult to imagine how Debtors could prevent customers from  
16 continuing to patronize Debtors' stores because of this reputation.  
17 Indeed, the evidence does not show Debtors' essential business  
18 model has changed post-petition, which, of course, is the relevant  
19 time to determine whether Debtors may remain in bankruptcy. In  
20 any event, any such order would require the Court, and interested  
21 parties, to monitor the Debtors' sales and customers, which would  
22 be very difficult and inefficient. Further, in light of the  
23 acrimonious nature of [the relationship between the party-in-  
24 interest moving for dismissal] with the Debtors, the Court can be  
25 reasonably certain such an order would lead to costly and time-  
26 consuming future litigation over the Debtors' compliance.

27 To prevent this Court from violating its oath to uphold federal law,  
28 under the specific facts of this case, the Court sees no practical  
alternative to dismissal.

Id. at 132.<sup>40</sup>

22 The common theme of these voluntary Chapter 11 cases is the bankruptcy court's  
23 consideration of whether the debtor in possession could propose a feasible plan that did not rely  
24 on income received through a violation of the Controlled Substances Act.

25 (3) **Chapter 7 Cases.**

---

27 <sup>40</sup> The debtors subsequently appealed the bankruptcy court's order, although the district  
28 court denied their request for a stay pending appeal. See Way to Grow, Inc. v. Inniss (In re Way  
to Grow, Inc.), 2019 WL 669795 (D. Colo. Jan. 18, 2019).

1 Relief under Chapter 7 is available to both individuals and non-individuals, and may be  
2 initiated both voluntarily and involuntarily. For individual Chapter 7 debtors, the property of the  
3 bankruptcy estate is administered by a bankruptcy trustee, see 11 U.S.C. § 704(a), and a  
4 bankruptcy discharge is obtained if no timely objections are filed by parties in interest. See 11  
5 U.S.C. § 727(b). For non-individual Chapter 7 debtors, the property of the bankruptcy estate is  
6 administered by a bankruptcy trustee, but a discharge is not available. See 11 U.S.C. §  
7 727(a)(1).

8 In Arenas v. U.S. Trustee (In re Arenas), 535 B.R. 845 (B.A.P. 10th Cir. 2015), the U.S.  
9 Trustee moved to dismiss a voluntary Chapter 7 case in which the individual debtors sold  
10 marijuana and obtained rental income from an entity engaged in the marijuana industry that was  
11 lawful under Colorado law. In response, the debtors sought to convert the case to Chapter 13.  
12 The bankruptcy court denied conversion and dismissed the case. The bankruptcy appellate panel  
13 for the Tenth Circuit affirmed and expressed their agreement “with the bankruptcy court that  
14 while debtors have not engaged in intrinsically evil conduct, the debtors cannot obtain  
15 bankruptcy relief because their marijuana business activities are federal crimes.” Id. at 849-50.  
16 The appellate panel concluded that the debtors likely would be unable to satisfy the “good faith”  
17 requirement under Section 1325(a)(3) to confirm a Chapter 13 plan, and neither a Chapter 7 or  
18 13 trustee could administer assets without violating federal law. Id. at 852.<sup>41</sup> It further observed  
19 that allowing the debtors to remain in Chapter 7 would prejudicially delay creditors, who would  
20 likely receive no distribution on their claims, while the debtors would receive a discharge and  
21 would be allowed to continue business operations that were illegal under the Controlled  
22 Substances Act. Id. at 853-54.

23 In In re Medpoint Mgmt., LLC, 528 B.R. 178 (Bankr. D. Ariz. 2015), vacated in part on  
24 other grounds, 2016 WL 3251581 (B.A.P. 9th Cir. June 3, 2016), an involuntary Chapter 7 case

---

25 <sup>41</sup> There is disagreement on whether a bankruptcy trustee who merely requests the  
26 disposal of marijuana-related assets is acting in violation of the Controlled Substances Act. See  
27 Steven J. Boyajian, “*Just Say No to Drugs? Creditors Not Getting a Fair Shake When*  
28 *Marijuana-Related Cases are Dismissed*,” XXXVI ABI Journal 9, 24-25, 74-75, September  
2017.

1 was filed against a non-individual entity that provided management services to medical  
2 marijuana businesses licensed under Arizona law. The alleged debtor stated “that all of its assets  
3 are marijuana-related,” and counsel for the U.S. Trustee also expressed her belief that the alleged  
4 debtor did not have “any legal, non-marijuana assets that a trustee could lawfully administer.”  
5 528 B.R. at 184. The court dismissed the case because its continuation would require a Chapter  
6 7 bankruptcy trustee to violate federal law and subject the bankruptcy estate to possible forfeiture  
7 of the alleged debtor’s assets. Id. at 186.<sup>42</sup> The court also found that the petitioning creditors,  
8 who voluntarily conducted business with an entity engaged in illegal activities, were barred from  
9 seeking relief under the “unclean hands” doctrine. Id. at 186-87.<sup>43</sup>

10 <sup>42</sup> Apparently, the authority of a bankruptcy trustee to waive the attorney-client privilege  
11 between a corporate debtor and its legal counsel was not raised. See Commodity Futures  
12 Trading Comm. v. Weintraub, 471 U.S. 343, 354, 105 S.Ct. 1986, 1994 (1985). When the  
13 activity of the corporate client is admittedly in violation of federal law, the criminal penalties for  
14 which extend to multiple parties and for many years, see discussion at note 14, supra, the  
15 potential legal consequences of a waiver may be extraordinary.

16 <sup>43</sup> In Misle, see note 24, supra, an involuntary Chapter 7 case was filed against an  
17 individual. The alleged debtor sought dismissal of the case based on his representation that his  
18 entire income is derived from marijuana sources authorized under Nevada law, but which are in  
19 violation of the Controlled Substances Act. See Order Denying Motion for Dismissal on  
20 Involuntary Case, entered January 2, 2019 (“Misle Order”), at 2-3. (Misle ECF No. 57). The  
21 alleged debtor conceded, however, that (1) he had a 50% interest in a non-marijuana related  
22 entity, though he claimed that his ex-wife had exclusive control over that entity, (2) a Chapter 7  
23 trustee could not legally take control of that entity, and (3) his ex-wife would likely not make any  
24 distributions to him. See Misle Order at 2-3 & n.5 and 5 n.11. The alleged debtor further relied  
25 on a letter and memo prepared by the Executive Office of the United States Trustee in arguing  
26 that trustees should not be put in the position to administer assets that would subject them to  
27 potential violations of federal law. Although the bankruptcy court agreed with this premise, the  
28 court found it premature to speculate as to the position of the U.S. Trustee, who had not yet  
entered an appearance. Id. at 4-5. The court further raised the possibility that a trustee might not  
be violating federal law if the marijuana-related assets were not property of the estate based on a  
non-marijuana-related, government forfeiture case entitled U.S. v. French, 822 F.Supp.2d 615  
(E.D. Va. 2011). Id. at 4. Finally, the court opined that it did not have sufficient evidence from  
the alleged debtor that he did not have viable non-marijuana related assets that could be used to  
pay his creditors. For these reasons, the court declined to adopt a per se rule, as the alleged  
debtor urged, to dismiss the involuntary case based solely on the existence of marijuana-related  
business operations. Id. at 5-6. The individual alleged debtor appealed the order denying  
dismissal of the involuntary case, and the bankruptcy court stayed the involuntary case pending  
the outcome of the appeal. (Misle ECF No. 104).



1 In Northbay Wellness Group, Inc. v. Beyries, 789 F.3d 956 (9th Cir. 2015), an attorney  
2 stole money from his client, i.e., a medical marijuana dispensary, and subsequently filed a  
3 personal, voluntary Chapter 7 bankruptcy. The dispensary instituted an adversary proceeding  
4 seeking to except its claim from discharge, but the bankruptcy court dismissed the adversary  
5 complaint under the “unclean hands” doctrine. The Ninth Circuit reversed and remanded,  
6 explaining that the bankruptcy court failed to balance the parties’ respective wrongdoings as  
7 required under that doctrine:

8 The Supreme Court has emphasized, however, that the  
9 doctrine of unclean hands “does not mean that courts must always  
10 permit a defendant wrongdoer to retain the profits of his  
11 wrongdoing merely because the plaintiff himself is possibly guilty  
12 of transgressing the law.” [*Johnson v. Yellow Cab [Transit Co.]*,  
13 321 U.S. [383, 387 (1944)]. Rather, determining whether the  
14 doctrine of unclean hands precludes relief requires balancing the  
15 alleged wrongdoing of the plaintiff against that of the defendant,  
16 and “weigh[ing] the substance of the right asserted by [the]  
17 plaintiff against the transgression which, it is contended, serves to  
18 foreclose that right.” *Republic Molding Corp. v. B.W. Photo Utils.*,  
19 319 F.2d 347, 350 (9th Cir. 1963). In addition, the “clean hands  
20 doctrine should not be strictly enforced when to do so would  
21 frustrate a substantial public interest.” *EEOC v. Recruit U.S.A.,*  
22 *Inc.*, 939 F.2d 746, 753 (9th Cir. 1991).

23 Id. at 960. The Ninth Circuit additionally observed “that the doctrine of unclean hands cannot  
24 prevent recovery of funds stolen from a client by his or her lawyer.” Id. at 961.<sup>44</sup>

25 The common theme in all of these Chapter 7 cases is that the mere involvement of  
26 marijuana-related assets, income, or connections to the debtor, is not dispositive of whether a  
27 particular case is permitted to proceed.<sup>45</sup>

---

28 <sup>44</sup> Proper application of the unclean hands doctrine is designed to preserve public  
confidence in, as well as the integrity of the court, by preventing it from becoming a participant  
in inequitable conduct. See Precision Instrument Mfg. Co. v. Automotive Maintenance  
Machinery Co., 324 U.S. 806, 814-15, 65 S.Ct. 993, 997-98 (1945); In re Leeds, 589 B.R. 186,  
200 (Bankr. D. Nev. 2018).

<sup>45</sup> In Misle, the bankruptcy court raised the prospect under U.S. v. French that a debtor’s  
interest in property may not become property of a bankruptcy estate if the property was acquired  
through an illegal act that would be subject to forfeiture under federal law. In French, creditors  
filed an involuntary Chapter 7 petition against an individual, and an order for relief was

1 (4) Non-Bankruptcy Cases.

2 Two of the other cases cited by the parties address the likelihood of prosecution under the  
3 Controlled Substances Act, rather than whether particular conduct is in fact illegal under federal  
4 law. The remaining case addresses the appointment of a receiver under Colorado law, but does

5  
6 subsequently entered. Months prior to the bankruptcy filing, however, the debtor had pled guilty  
7 to wire fraud and money laundering, and the government obtained orders of forfeiture of the  
8 debtor's personal property assets that were involved and/or obtained through the commission of  
9 those crimes. The Chapter 7 trustee asserted an interest in the forfeited property as a bona fide  
10 purchaser under Section 544(a). In entering summary judgment against the trustee, the court  
11 recognized that the "relation back" doctrine under 21 U.S.C. § 853(c) "vests all forfeited  
12 property in the United States upon the commission of the act giving rise to forfeiture." 822  
13 F.Supp.2d at 619. (Emphasis added). Therefore,

14 by operation of the "relation back" doctrine, [the debtor's]  
15 forfeited property vested in the United States at the time of his  
16 criminal acts, *i.e.* in 2005—six years prior to the creation of the  
17 bankruptcy estate. Upon her appointment, the [Chapter 7] Trustee  
18 merely stands in the shoes of the debtor as a bona fide purchaser.  
19 Because [the debtor] lacked an ownership interest in the forfeited  
20 property at the creation of his bankruptcy estate, the Trustee also  
21 lacks an ownership interest and thus, lacks standing to challenge  
22 the forfeiture order.

23 Id. at 619. Although it did not rule on the issue, the district court in French acknowledged other  
24 caselaw holding that a similar result applies even when the forfeiture order is entered after the  
25 creation of the bankruptcy estate. Id. at n.3, citing, e.g., U.S. v. Zaccagnino, 2006 WL 1005042  
26 (C.D. Ill. Apr. 18, 2006).

27 A more persuasive authority than French, however, is the decision by the bankruptcy  
28 appellate panel for the Ninth Circuit in U.S. v. Klein (In re Chapman), 264 B.R. 565 (B.A.P. 9th  
Cir. 2001). In Chapman, the appellate court concluded that a civil forfeiture action for assets  
used in the manufacture and distribution of marijuana is excepted from the automatic stay under  
Section 362(b)(4) as an exercise of the police and regulatory power of the federal government.  
Id. at 570-71. The court acknowledged that a civil forfeiture judgment may have the effect of  
retroactively eliminating property from the Chapter 7 bankruptcy estate because of the relation-  
back doctrine. Id. at 572. The appellate court concluded, however, that the federal government  
could complete its forfeiture action "even if the end result is that the Proceeds [from the sale of  
the assets] are not property of the estate." Id. (Emphasis added). The resulting uncertainty is  
that a bankruptcy case might be filed for a marijuana-related entity, but the assets held at the time  
of the bankruptcy petition might be forfeited in favor of the federal government retroactive to the  
date of the debtor's violation of the Controlled Substances Act. See generally Craig Peyton  
Gaumer, *When Two Worlds Collide: The Relationship and Conflicts between Asset Forfeiture*  
*and Bankruptcy Law*, 21-May Am.Bankr.Inst.J. 10 (May 2002).

1 not address the Controlled Substances Act at all. As previously discussed, there is no  
2 meaningful dispute that the Marijuana Business operated by the Debtor is not permitted by  
3 federal law.

4 In U.S. v. McIntosh, 833 F.3d 1163 (9th Cir. 2016), several defendants from California  
5 and Washington, which authorized the cultivation of medical marijuana, sought to enjoin their  
6 convictions for various marijuana-related violations of the Controlled Substances Act. They  
7 argued that Congress approved a rider to successive appropriations bills (referred to as “§ 542”)<sup>46</sup>  
8 that prohibited the Justice Department from spending any of its funds “to prevent States [who  
9 have legalized medical marijuana] from implementing their own State laws that authorize the  
10 use, distribution, possession, or cultivation of medical marijuana.” Id. at 1169-70. In examining  
11 its jurisdiction and appellants’ standing, the Ninth Circuit found, among other things, that  
12 “[e]ven if Appellants cannot obtain injunctions of their prosecutions themselves, they can seek—  
13 and have sought—to enjoin [the Justice Department] from *spending funds* from the relevant  
14 appropriations acts on such prosecutions.” Id. at 1172 (emphasis in original). Thereafter, the  
15 court held that § 542 only prohibits the Justice Department from utilizing funds to prosecute  
16 individuals who are in full compliance with applicable state medical marijuana laws:

17 Individuals who do not strictly comply with all state-law  
18 conditions regarding the use, distribution, possession, and  
19 cultivation of medical marijuana have engaged in conduct that is  
20 unauthorized, and prosecuting such individuals does not violate §  
21 542. Congress could easily have drafted § 542 to prohibit  
22 interference with laws that address medical marijuana, but it did  
not. Instead, it chose to proscribe preventing states from  
implementing laws that authorize the use, distribution, possession,  
and cultivation of medical marijuana.

23 Id. at 1178. The Ninth Circuit therefore vacated and remanded appellants’ cases with  
24 instructions for the district courts to conduct evidentiary hearings to determine whether or not

---

26 <sup>46</sup> Debtor refers to § 542 as the “Rohrbacher-Farr Amendment,” see Opposition at 6:5 to  
27 7:8, in arguing that the Justice Department may not expend funds to prosecute marijuana  
28 offences under the Controlled Substances Act. Although the Congressional appropriations  
process was once predictable, including the attachment of riders to spending bills, that may no  
longer be true.

1 appellants' operations fully complied with their respective state's medical marijuana laws. Id. at  
2 1179.

3 In U.S. v. Kleinman, 880 F.3d 1020 (9th Cir. 2017), an individual appealed his  
4 conviction of various marijuana-related offenses based, in part, on the Justice Department's  
5 prohibited use of funds under § 542. In affirming his conviction, the Ninth Circuit first found  
6 that appellant's conviction, which was entered prior to the passage of § 542, would not be  
7 vacated because § 542 did not change the illegality of marijuana-related offenses under federal  
8 law:

9 § 542 does not require a court to vacate convictions that were  
10 obtained before the rider took effect. In other words, when a  
11 defendant's conviction was entered before § 542 became law, a  
12 determination that the charged conduct was wholly compliant with  
13 state law would *not* vacate that conviction. It would only mean  
14 that the [Justice Department's] continued expenditure of funds  
15 pertaining to that particular state-law-compliant conviction *after* §  
16 542 took effect was unlawful. That is because, as we explained in  
17 *McIntosh*, § 542 did not change any substantive law; it merely  
18 placed a temporary hold on the expenditure of money for a certain  
19 purpose.

20 Id. at 1028 (emphasis in original).

21 In Yates v. Hartman, 2018 WL 1247615 (Colo. App. Mar. 8, 2018), a spouse sought the  
22 appointment of a receiver over medical and recreational marijuana entities held in a marital  
23 dissolution proceeding. The entities were authorized to operate under Colorado law, and none of  
24 the parties asserted that their operations otherwise were illegal under the Controlled Substances  
25 Act. The appellate court concluded that any receiver must possess the proper licenses under  
26 Colorado law to operate the entities. Id. at \*3-4. It therefore reversed the trial court's  
27 appointment of a receiver. Id. at \*4.

28 The relevant theme of these non-bankruptcy cases<sup>47</sup> is that while Congress may act to

---

25 <sup>47</sup> The Yates v. Hartman decision raises a potential issue in any judicial proceeding that  
26 involves a party engaged in state-licensed activity: can a state court-appointed receiver, or an  
27 assigned bankruptcy trustee, continue to conduct operations of the subject entity without express  
28 approval of the licensing authority? In Nevada's long-established gaming industry, a temporary  
gaming license may be sought from the Nevada Gaming Commission by a state-court receiver or  
bankruptcy trustee for continued operation of a casino or other gaming establishment. See Nev.  
Gaming Reg. 9.030. The court is not aware of whether similar authority exists for Nevada's

1 deny funding for federal prosecution of marijuana offenses under the Controlled Substances Act,  
2 it has not acted to legalize the cultivation, production and distribution of marijuana.<sup>48</sup> Until it  
3 does so, all parties engaged in or having a significant connection with the marijuana industry  
4 face a creeping absurdity<sup>49</sup>: they can rely in good faith on more and more state laws to  
5 increasingly form new businesses, increasingly invest and loan millions of dollars,<sup>50</sup> and

6 \_\_\_\_\_  
7 fledgling marijuana industry and the State of Nevada has not provided such information in this  
8 Chapter 11 proceeding.

9 <sup>48</sup> Congress' efforts to criminalize the cultivation, production and distribution of  
10 marijuana, even if such activity occurs solely within the borders of a particular state, does not  
11 rule afoul of the U.S. Constitution. See Gonzales v. Raich, 545 U.S. 1, 22, 125 S.Ct. 2195, 2208-  
12 09 (2005). Under 21 U.S.C. § 811(h)(2), Congress appears to have delegated its authority over  
13 the substances included on the Schedules to the Controlled Substances Act to whomever  
14 currently serves as the Attorney General of the United States. See Touby v. United States, 500  
15 U.S. 160, 165, 111 S.Ct. 1752, 1756 (1991); Washington v. Sessions, 2018 WL 1114758, at \*3  
16 (S.D.N.Y. Feb. 26, 2018). Unfortunately, recent occupants of the position have taken widely  
17 divergent views on the enforcement of the federal laws, including the Controlled Substances Act,  
18 pertaining to marijuana. See generally NLJ Survey, supra, at 115-120. See, e.g., Memorandum  
19 to All United States Attorneys, [former] Attorney General Jefferson B. Sessions, January 4,  
20 2018, attached as Exhibit "E" to 4Front Reply ("Given the Department's well-established  
21 general principles, previous nationwide guidance specific to marijuana enforcement is  
22 unnecessary and is rescinded, effective immediately.") (Emphasis added); Sacramento Nonprofit  
23 Collective v. Holder, 552 Fed.Appx. 680, 683 (9th Cir. Jan. 15, 2014) ("Appellants claim that the  
24 Government is judicially estopped from enforcing the CSA because in a prior lawsuit involving  
25 different plaintiffs, the parties entered into a joint stipulation to dismiss the sole remaining claim  
26 in that case – that the Tenth Amendment barred federal enforcement of the CSA with respect to  
27 medical marijuana use under California law – in light of the Ogden Memorandum. But the  
28 Appellants over-read the statements made in both the Ogden Memorandum and during the  
course of the prior litigation; at no point did the Government promise not to enforce the CSA.  
Appellants therefore identify no clear inconsistency between the Government's current and prior  
positions as is required to invoke the doctrine of judicial estoppel.") (Emphasis added).

<sup>49</sup> See U.S. v. Lozoya, 920 F.3d 1231, 1242 (9th Cir. 2019) (acknowledging a "creeping  
absurdity" of the appellate court's holding as to proper venue for prosecution of federal crimes  
occurring on transcontinental air flights, i.e., in the federal judicial district over which the aircraft  
was flying when the alleged federal criminal act occurred).

<sup>50</sup> Commercial actors who deal with marijuana-related businesses authorized under state  
law apparently acknowledge the risk that they may be parties to a violation of the Controlled  
Substances Act. See, e.g., January 9, 2018, \$3,000,000 Line of Credit Facility, between MI-CW  
Holdings NV Fund 2 LLC and CWNevada, LLC, at Representations and Warranties, Paragraph  
6(d) ("Borrower (i) has all necessary permits, approvals, authorizations, consents, licenses,

1 increasingly enter into occupations that expose all of them to possible federal criminal  
2 prosecution.<sup>51</sup> Moreover, state and local governments that derive tax revenues from medical and  
3 recreational marijuana businesses face continuous uncertainty.<sup>52</sup>

4 \_\_\_\_\_  
5 franchises, registrations and other rights and privileges...to allow it to own and operate its  
6 business with any violation of law (excluding the federal Controlled Substances Act and related  
7 regulations) or the rights of others; (ii) is duly authorized, qualified and licensed under and in  
8 compliance with all applicable laws, regulations, authorizations and orders of public authorities  
(other than the federal Controlled Substances Act and related regulations);...”). (Emphasis  
added). (Ex. “5” to Kanitz Declaration).

9 <sup>51</sup> In the Misle involuntary Chapter 7 case, the bankruptcy court expressed a version of  
10 this absurdity as follows: “As previously noted, recreational marijuana is legal in Nevada, and  
11 trustees in this district have presumably administered cases in which individual debtors  
12 possessed and/or used marijuana during the bankruptcy case. In such circumstances, is the court  
13 required to dismiss every individual bankruptcy case upon the debtor’s admission that he or she  
14 possesses and/or uses marijuana for personal use? That is the natural progression of the Alleged  
15 Debtor’s proposed per se rule and would only serve to invite abuse by opportunistic debtors who  
16 could simply use this mandatory ‘get out of bankruptcy’ card at any time they see fit.” Misle  
17 Order at 3 n.6. While Misle was an involuntary proceeding filed against an individual, it  
18 illustrates the prospect of more voluntary bankruptcy petitions being filed under any chapter by  
19 individuals and non-individuals solely for the purpose of triggering the automatic stay under  
20 Section 362(a). See discussion at 8-9, supra. If the disclosure of marijuana-related assets or  
activities requires a bankruptcy court to dismiss a case after a petition is filed, the debtor may  
have obtained temporary protection from creditors without any intention of obtaining a  
bankruptcy discharge of debts. While Congress has provided a partial solution for individuals  
who repeatedly file consumer bankruptcy petitions, see 11 U.S.C. §§ 362(c)(3) and (c)(4), it has  
provided no meaningful solution for non-individual debtors that repeatedly file Chapter 11  
petitions.

21 <sup>52</sup> See NLJ Survey, supra, at 118 (“Since Nevada legalized recreational marijuana, there  
22 have been an estimated \$126 million in sales and \$19 million in marijuana excise and wholesale  
23 taxes independent of sales tax and state and local licensing fees for marijuana dispensaries. With  
24 nearly 300 licensed businesses, the Nevada Dispensary Association estimates that the marijuana  
25 industry employs 8,700 people and invested \$280 million in real estate. Further, the state awaits  
26 the funds from the 15 percent excise tax on marijuana sales, approximately \$40 million, that it  
27 has earmarked for public education over the next biennium. Nevada, like other states, awaits the  
28 recreational marijuana industry’s harvest.”). Compare Candace Carlyon, “*We Don’t Serve Your  
Kind Here: Federal Courts and Banks Don’t Dance with Mary Jane*,” 26 Nevada Lawyer, Issue  
2, at 9 (February 2018) [hereafter “Nevada Lawyer”] (“The result of the conflict between state  
and federal law creates a dangerous situation in which businesses are booming but unable to  
deposit receipts without disguising the source of their funds. The case nature of the business,  
without any ability to deposit receipts, places the businesses, their employees and their customers  
in a dangerous situation. The ripple effect created by these successful businesses is huge. The

1           **3. The Evidence Presented by the Parties.**

2           The burden of proof on this Dismissal Motion rests with 4Front as the party seeking  
3 relief. See, e.g., In re Rosenblum, 2019 Bankr. LEXIS 1160 (Bankr. D. Nev. Mar. 15, 2019)  
4 (order denying former spouse’s alternative requests for dismissal, abstention, appointment of  
5 trustee, or relief from stay). The evidentiary record before the court consists of the written  
6 testimony offered by declarants Krane, Braddock, Malley, Miltenberger, Kanitz, and Padgett, the  
7 exhibits offered by the declarants, and the documents for which judicial notice has been  
8 requested. No objections have been raised as to any of the written testimony offered, the exhibits  
9 accompanying the declarations, or to the matters for which judicial notice was requested.  
10 Likewise, various documents have been attached as “exhibits” to the written legal arguments,  
11 some of which are not authenticated, but no objections have been raised to the inclusion of those  
12 documents as part of the record.

13           Among other things, Krane attests that 4Front entered into a consulting agreement with  
14 the Debtor in March 2014, for which it has not been paid under an arbitration award. See Krane  
15 Declaration at ¶¶ 6, 10, 11 and 12. As counsel for 4Front, Braddock attests, *inter alia*, that in  
16 May 2017, 4Front sued the Debtor in State Court to collect payments under the consulting  
17 agreement. See Braddock Declaration at ¶ 3. He also attests that prior to the Debtor’s  
18 commencement of this Chapter 11 proceeding, 4Front took numerous steps to confirm and  
19 enforce an arbitration award in its favor, including prosecution of its Receivership Application  
20 and a request to hold the Debtor in contempt. Id. at ¶¶ 6 and 14. Braddock further attests that  
21 the State Court entered a judgment confirming the arbitration award, and the Debtor still refused  
22 to pay. Id. at ¶ 16.

23           As counsel for Highland Partners, and on behalf of both Highland Partners and Green  
24 Pastures, Malley attests that in July 2018, these parties commenced additional State Court  
25 actions against the Debtor for breach of a lease as well as certain loan agreements. See Malley  
26 Declaration at ¶ 5. He also attests that numerous other legal actions have been commenced in

27 \_\_\_\_\_  
28 receipts from marijuana-related businesses are paid over to vendors, landlords, employees and  
governmental agencies: all of these need to deposit those payments.”).

1 State Court by other parties. Id. at ¶ 8. As counsel for Green Pastures, Miltenberger attests that  
2 in May 2015, Green Pastures entered into an agreement with the Debtor to purchase certain  
3 promissory notes but that the Debtor has been in default since no later than June 2018. See  
4 Miltenberger Declaration at ¶¶ 5, 6 and 7. As the manager of an asset management firm, Kanitz  
5 attests that in May 2017, Highland Partners entered into a commercial lease with the Debtor for  
6 premises located at 3132 Highland Drive and 3152 Highland Drive, in Las Vegas. See Kanitz  
7 Declaration at ¶ 4. He also attests that between June and November 2016, certain members of  
8 Highland Partners entered into agreements with the Debtor to purchase certain promissory notes,  
9 and also to loan additional funds to the Debtor, all of which agreements have been breached. Id.  
10 at ¶ 5. Kanitz also attests that in September 2017 and January 2018, other members of Highland  
11 Partners entered into other transactions with the Debtor, including a secured line of credit, all of  
12 which have been breached. Id. at ¶ 6.

13 As the manager of BCP Holding, which is the manager of the Debtor, Padgett attests,  
14 *inter alia*, that on March 14, 2019, a judgment was entered by the State Court confirming an  
15 arbitration award in favor of 4Front in the amount of \$4,987,092.29. See Padgett Declaration at  
16 ¶ 7. He also attests that the Debtor has workers compensation and liability insurance coverage in  
17 place through April 26, 2020. Id. at ¶ 10. Padgett also attests that the Debtor has employee  
18 health insurance as well as automobile insurance in place as of April 8, 2019. Id. at ¶¶ 11 and  
19 12. He attests that the Debtor made a payment of \$81,850 to the Nevada Department of Taxation  
20 on April 23, 2019. Id. at ¶ 13. Padgett attests that an eviction proceeding has been commenced  
21 by “Renaissance one landlord” with respect to a commercial lease “which is critical to  
22 CWNevada’s operations.” Id. at ¶ 15. He also attests that the “Debtor is in the process of  
23 establishing banking relationships at the very same banks that 4Front has established its  
24 relationships with.” Id. at ¶ 20.

25 In addition to the exhibits previously mentioned in this order, see discussion at 5-6, supra,  
26 the record encompasses copies of various documents submitted by 4Front, including: the  
27 Declaration of Anthony Imbimbo in Support of CWNevada’s Opposition to Motion to Affirm  
28 Arbitration Award (“Imbimbo Declaration”) filed in State Court on or about February 14, 2019,



1 in Case No. A-17-755479-C (Ex. “4”); the final arbitration award in favor of 4Front in the  
2 amount of \$3,741,803.92 (Ex. “8”); the State Court order and final judgment confirming the  
3 arbitration award (Ex. “9”); a preliminary injunction entered by the State Court on March 14,  
4 2019, enjoining the Debtor from “selling, transferring, or otherwise disposing of any assets in  
5 their possession, custody, and/or control, including any Nevada cannabis license and cash  
6 received (except as needed for normal business operations) from the lawful sale of cannabis  
7 through their Nevada retail dispensaries until this court orders otherwise” (Ex. “11”); a State  
8 Court complaint entitled Maria Navarrete, et al. v. CWNevada, LLC, et al., Case No. A-19-  
9 792575-C, filed April 4, 2019, alleging, *inter alia*, that the Debtor was in default in payment of  
10 employees at three Nevada marijuana dispensaries operating under the name “Canopi” (Ex.  
11 “13”); email correspondence dated April 10, 2019, from a revenue officer at the Nevada  
12 Department of Taxation indicating that a balance of \$388,890.45 was then-owing by the Debtor,  
13 along with various periodic statements of taxes due (Ex. “14”); an ex parte application for order  
14 to show cause why the Debtor should not be held in contempt, filed by 4Front in State Court on  
15 April 12, 2019 (Ex. “15”); an email dated April 13, 2019, from Padgett to Van Oyen and Kanitz  
16 (“Padgett Email”) (Ex. 16); the U.S. Trustee’s Guidelines for Region 17 as of December 16,  
17 2016 (“UST Guidelines”) (Ex. “A”); and the UST List of Authorized Depositories, District of  
18 Nevada, Fourth Quarter CY 2018 (“Approved Depository List”) (Ex. “B”).

19 Copies of various documents also were submitted by Highland Partners and Green  
20 Pastures, including: the Declaration of Brian Padgett dated September 5, 2018, filed in State  
21 Court in Case No. A-18-777270-B (“2018 Padgett Declaration”) (Ex. “1” to Malley  
22 Declaration); the Convertible Note Purchase Agreement dated May 20, 2015, between various  
23 purchasers (including Green Pastures) and the Debtor (Ex. “1” to Miltenberger Declaration); a  
24 Commercial Lease dated May 24, 2017, for the Debtor’s lease of premises from Highland  
25 Partners for an industrial building located at 3132 Highland Drive and 3135 Highland Drive in  
26 Las Vegas (Ex. “1” to Kanitz Declaration); a Series B Preferred Convertible Note Purchase  
27 Agreement dated November 7, 2016, between the Debtor and Appleseed Ventures Growth  
28 Opportunity Fund LLC, that includes, as Schedule 7(f), the CWNevada, LLC, Financial

1 Statements for the Year Ended December 31, 2015 (“2015 Financial Statement”) (Ex. “2” to  
 2 Kanitz Declaration); and, a Promissory Note dated June 9, 2017, memorializing a loan to the  
 3 Debtor in the amount of \$161,802.81, obtained from Appleseed Ventures Growth Opportunity  
 4 Fund LLC (Ex. “3” to Kanitz Declaration).

5 CIMA Group also submitted a number of documents, including the following: CIMA  
 6 Group’s emergency ex parte application for appointment of receiver and notice of suspension of  
 7 registration, filed on April 13, 2019, in State Court in Case No. A-17-755479-C (“CIMA Group  
 8 Application”) (Ex. “1” to CIMA Joinder); the Notice of Verified Third-Party Claim and Demand  
 9 for Surety, filed on February 15, 2019 on behalf of Brian Padgett, in State Court in Case No. A-  
 10 18-773230-B (“Padgett Claim”) (Ex. “2” to CIMA Joinder); and the Affidavit of Timothy Smits  
 11 Van Oyen, a member of the Debtor<sup>53</sup>, filed on May 13, 2019, in State Court in Case No. A-17-  
 12 755479-C (“Van Oyen Affidavit”) (Ex. “1” to CIMA Reply).

13 **4. Dismissal Based on Abstention is Warranted under Section 305(a).**

14 The production and distribution of CBD products is not prohibited by the Controlled  
 15 Substances Act if the THC concentrations in the particular hemp plant conform to the limitations  
 16 prescribed under Title 7. See discussion at 7, supra. No one challenges Padgett’s written  
 17 testimony that a portion of the Debtor’s operations includes a CBD Business. According to the  
 18 Debtor’s independent accountant, however, as of February 14, 2019, the Debtor’s

19 Current inventory on hand includes over [redacted] pounds of  
 20 Cannabis Flower broken down into various sales weights (valued  
 21 at \$[redacted]), Cannabis Trim of [redacted] ) valued at  
 22 \$[redacted] pound for a total of \$[redacted], Edible Products of  
 23 [redacted] units (valued at \$[redacted]), Concentrates of [redacted]  
 24 units (valued at \$[redacted]), and Work in Process inventory  
 25 (valued at \$[redacted]). The fair market value of this inventory  
 26 totals \$[redacted].

27 See Imbimbo Declaration at ¶ 7. Inasmuch as the recent inventory provided by its independent  
 28 accountant may or may not include any CBD products, it is difficult to determine the

---

27 <sup>53</sup> As of December 31, 2015, Van Oyen had a twenty percent (20%) ownership interest in  
 28 the Debtor while Padgett had a sixty percent (60%) ownership interest. See Statement of Equity  
 set forth in 2015 Financial Statement.

1 significance of the Debtor’s CBD Business. Moreover, there is no evidence of whether any  
2 portion of the Debtor’s CBD Business includes the type of CBD products that are excluded from  
3 the Controlled Substances Act.<sup>54</sup>

4 Upon the commencement of a Chapter 11 proceeding, a debtor in possession ordinarily is  
5 required to close its existing bank accounts “and establish new debtor in possession accounts to  
6 be used for all transactions during the pendency of the case.” UST Guidelines at 4.4.6(b). The  
7 new accounts must be established at a depository institution meeting the requirements of Section  
8 345(b). Those requirements are designed to ensure the safety of the funds held by a trustee or  
9 debtor in possession as a fiduciary of a bankruptcy estate. A list of approved depositories is  
10 maintained by the U.S. Trustee. See UST Guidelines at 4.4.6(a)(1). Padgett attests that the  
11 Debtor is attempting to establish debtor in possession accounts with the “very same banks that  
12 4Front has established its relationships with.” Padgett Declaration at ¶ 20. While 4Front has  
13 offered no evidence to the contrary, the Debtor’s factual and legal position is a false equivalency:  
14 4Front is not a debtor in possession and is not subject to the same requirement. The names of  
15 thirty-nine approved financial institutions, including Bank of Nevada, Bank of George, First  
16 Security Bank of Nevada, and Heritage Bank of Nevada, have been provided to the voluntary  
17 Chapter 11 debtor in possession. See Approved Depository List at 1. Because Debtor has never  
18 filed any Schedules nor a SOFA that would disclose any bank accounts that existed when it filed  
19 its voluntary Chapter 11 Petition, or which were closed prior to filing the Petition, the court does

---

20  
21  
22 <sup>54</sup> A marijuana-related business that cultivates, produces and distributes products that are  
23 both illegal and legal, with some proceeds subject to forfeiture and other proceeds not, may  
24 create the type of “tracing” concern commonly associated with Ponzi schemes. See  
25 Cunningham v. Brown, 265 U.S. 1, 11-13, 44 S.Ct. 424, 426-27 (1924). Compare U.S. v. Gettel,  
26 2017 WL 3966635 (S.D. Cal. Sep. 7, 2017)(resolution of competing claims to proceeds of real  
27 property that are the subject of government forfeiture). If the proceeds of a marijuana-related  
28 business are commingled, what test will be applied to determine which proceeds were  
subsequently used to acquire additional assets? Which of the subsequently acquired assets are  
subject to forfeiture and which of them are not? Which assets might be excluded from the  
bankruptcy estate, and which might not?

1 not know whether the Debtor even had any bank accounts to close.<sup>55</sup> At the very least, however,  
2 Debtor should be able to identify an approved depository institution in which it has attempted to  
3 open its required debtor in possession accounts.<sup>56</sup> It has not done so.

4 As a non-individual, fictitious legal entity, Debtor cannot proceed without legal counsel.  
5 See generally United States v. High Country Broadcasting Co. Inc., 3 F.3d 1244, 1245 (9th Cir.  
6 1993). The voluntary Chapter 11 petition was signed by the Debtor's general counsel, and such  
7 counsel conceded at the hearing on the Dismissal Motion that the Debtor must obtain separate,  
8 disinterested, bankruptcy counsel. The record also reveals that Padgett holds the majority of the  
9 membership interests of the Debtor, see note 53, supra, and also is the manager of BCP Holding,  
10 which is the manager of the Debtor. The record further discloses that Padgett previously  
11 provided some nature of legal services to the Debtor. See 2015 Financial Statement at Note 3:  
12 Related Party Transactions.<sup>57</sup> The record also reveals that the Debtor's general counsel also  
13 represents Padgett personally and filed the Padgett Claim in one of the actions pending in State  
14 Court.<sup>58</sup> In that claim, Padgett represents that he "is the owner of all rights, title and interest" to  
15

16 <sup>55</sup> The difficulties that a marijuana business authorized under state law has in establishing  
17 bank accounts is often discussed. See Nevada Lawyer, supra, at 8-9. In this instance, it appears  
18 that the Debtor made a portion of its April 23, 2019 tax payment to NDOT using a check. See  
19 discussion at note 12, supra. Assuming the item referenced was a typical check from a checking  
20 account, rather than a check associated with a credit line, there should be information available  
21 as to the banking institution where the Debtor does business. That information does not appear  
22 in the record.

23 <sup>56</sup> In its opposition to the Dismissal Motion, Debtor quotes from "Page 199" of the  
24 Cannex Notice referring to "banking relationships with 1st Bank of Colorado, Century Bank of  
25 Massachusetts, and Bank of Springfield in Illinois." See Opposition at 9:7-10. Unfortunately,  
26 there appears to be no part of the Cannex Notice that includes a page 199. More important, even  
27 if 4Front has relationships with those financial institutions, none of them appear on the Approved  
28 Depository List.

<sup>57</sup> During 2015, Debtor paid \$117,625.00 in legal and professional fees. See 2015  
Financial Statement, Statement of Income. The document does not state whether any portion of  
the fees were paid to Padgett for legal services.

<sup>58</sup> The Padgett Claim includes a verification executed under penalty of perjury by general  
counsel on behalf of Padgett. See Padgett Claim at 3.

1 funds that previously had been garnished by CIMA Group. See Padgett Claim at ¶¶ 3-4.  
2 Moreover, he also alleges that pursuant to a previously perfected security interest, he “has the  
3 right of possession, and owns all rights, title and interest in all of the assets of CWNevada,  
4 including but not limited to all personal property, accounts, money, deposit accounts, products  
5 and the proceeds therefrom that existed or acquired afterwards.” (Additional emphasis added).  
6 Id. at ¶ 5. Assuming these representations are accurate, Padgett at one time, or perhaps  
7 continuously, has provided legal services to an entity whose operations have resulted in nine  
8 separate lawsuits that are pending in various stages in State Court. See Padgett Declaration at ¶¶  
9 8, 14 and 15.<sup>59</sup> More important, despite apparently perfecting only a security interest in the  
10 assets of the Debtor, he has made a verified claim in State Court that he actually owns all of the  
11 assets of the Debtor. In essence, the record before this court indicates that Padgett has taken  
12 positions that may be in actual and direct conflict with the interests of the Debtor, and that he  
13 also may be subject to claims by the Debtor that would be property of the bankruptcy estate.

14 The necessity of independent counsel to advise the Debtor is amply demonstrated by the  
15 record. While the Debtor is a limited liability company that, according to the Chapter 11  
16 Petition, is managed by BCP Holding, as the managing member of the Debtor, see Resolution  
17 Authorizing Bankruptcy attached to Petition, it apparently is managed by a board of directors  
18 consisting of Padgett, Van Oyen, and Jennifer Lazovich. See 2018 Padgett Declaration at ¶ 3.  
19 Van Oyen had a twenty percent (20%) membership interest in the Debtor as of the end of 2015,  
20 see note 53, supra, and remains a member of the Debtor at this time. See Van Oyen Affidavit at  
21 ¶ 2. In addition to the board members he identifies, Padgett attests that the Debtor had two  
22 “shadow” directors, who apparently represented members of the Highland Partners and Green  
23 Pastures groups that purchased various promissory notes from the Debtor. See 2018 Padgett  
24 Declaration at ¶ 4. Whatever may be the validity or source of the alleged intrigue in the  
25 management of the Debtor, there is no dispute that Van Oyen joined in the Receivership  
26 Application brought in State Court by 4Front and also joins in the instant Dismissal Motion.

---

27 <sup>59</sup> As late as September 5, 2018, it appears that as the attorney for the Debtor, Padgett  
28 prepared his own declaration that was filed in State Court. See 2018 Padgett Declaration at ¶ 1.

1 Thus, there appears to be no consensus amongst the Debtor's management in favor of Chapter 11  
2 relief.<sup>60</sup>

3 Notwithstanding the significant issues concerning management, the record also suggests  
4 that the Debtor's financial woes have been understated by that management. No one disputes  
5 that the April 23, 2019 payment was made to NDOT in the amount of \$81,850. See Padgett  
6 Declaration at ¶ 13.<sup>61</sup> That is a significant sum. The record also suggests, however, that as of  
7 May 3, 2019, the balance owing by the Debtor was \$405,076.91. See Van Oyen Affidavit at ¶ 4.  
8 In other words, the tax payment made by the Debtor seven days after filing the Chapter 11  
9 petition barely made a dent in the amount likely owed to the State of Nevada. Additionally, no  
10 one disputes that the Debtor is the subject of an eviction proceeding for "a commercial lease  
11 which is critical to the CWNevada's operations." Padgett Declaration at ¶ 15. The record also  
12 suggests that as of May 3, 2019, the Debtor was \$117,500 in arrears as to that commercial lease  
13 of the dispensary premises located at 6540 Blue Diamond Road in Las Vegas, in addition to  
14 related obligations. See Van Oyen Affidavit at ¶¶ 5 and 6. Management simply ignores or  
15 apparently is unaware that a Chapter 11 debtor in possession is required to perform its  
16 obligations under any unexpired lease of commercial real property, particularly the payment of  
17

---

18 <sup>60</sup> Given the infighting amongst the Debtor's board of directors, including the alleged  
19 "shadow directors," it is not surprising that communications devolved into childishness  
20 immediately before the Chapter 11 petition was filed. See Padgett Email ("Since we are coming  
21 to the end of this clown convention, I'll tell you, smartest thing Jannotta did was not joining in  
22 on this one. I doubt any of you are fit to hold licenses. Heat's about to turn up boys.").  
Notwithstanding the churlish tone of the email, it is not clear whether it was sent on behalf of the  
Debtor, as counsel for the Debtor, or, on behalf of the author.

23 <sup>61</sup> That payment was made seven days after the Debtor commenced this Chapter 11  
24 proceeding. If Padgett owns all of the Debtor's money, as he claims, those funds must have been  
25 borrowed from Padgett, or was an additional capital contribution, either of which was subject to  
26 prior court approval under Section 364(b). If Padgett has only a security interest in the Debtor's  
27 assets, then the funds likely constitute "cash collateral" under Section 363(a) that cannot be used  
28 without consent or prior court approval under Section 362(c)(2). If other creditors assert a  
security interest or lien against the same assets, then the funds also cannot be used by the Debtor  
except with the consent of those creditors or prior court approval. A bankruptcy trustee, of  
course, can thoroughly investigate these assertions by waiving the attorney-client privilege of a  
non-individual debtor. See discussion at note 42, supra.

1 scheduled rent. See 11 U.S.C. § 365(d)(3).

2 The court has considered the role of the “unclean hands” doctrine in a bankruptcy case  
3 involving a marijuana-related debtor and the many parties that willingly do business with such an  
4 entity. It is clear that the Marijuana Business of this Debtor is not authorized under the  
5 Controlled Substances Act. It is equally clear that 4Front is a “national consultant in the  
6 cannabis industry,” see note 6, supra, and therefore has potential legal exposure under the  
7 Controlled Substances Act. Compare Rent-Rite (voluntary Chapter 11 dismissed based on gross  
8 mismanagement and unclean hands of the debtor), with Medpoint Mgmt. (involuntary Chapter  
9 11 dismissed based on, *inter alia*, unclean hands of petitioning creditors who did business with  
10 marijuana-related alleged debtor). Likewise, Highland Partners, Green Pastures, Van Oyen, MC  
11 Brands, and CIMA Group have potential legal exposure. See note 14, supra. When all sides to a  
12 pending dispute may be accused of wrongdoing, a court in equity may simply deny relief to all  
13 sides and dismiss the case. See, e.g., Green v. Higgins, 535 P.2d 446 (Kan. 1975) (denial of both  
14 claims and counterclaims on finding that the conduct of both plaintiff and defendant had been  
15 willful, fraudulent, illegal, and unconscionable). But bankruptcy courts, like all courts, are  
16 required to consider the circumstances of each case rather than routinely dismissing entire swaths  
17 of petitions and requests filed by parties seeking legal relief.<sup>62</sup> Public confidence and the  
18 integrity of the court, see note 44, supra, require no less. Thus, the court is not convinced that  
19 the “unclean hands” doctrine has an appropriate role in this case.

20 There may be cases where Chapter 11 relief is appropriate for an individual or a non-  
21 individual entity directly engaged in a marijuana-related business. For the reasons discussed  
22 above, this case is not one of them.

23 For the same reasons, the court instead concludes that the interests of creditors and the  
24 Debtor would be better served by dismissal of the case. See 11 U.S.C. § 305(a)(1). The parties  
25 may return to State Court where the Receivership Application, among other matters, may be  
26 fully addressed. Having reached this conclusion, it is unnecessary to address 4Font’s alternative

---

27 <sup>62</sup> If there are 8,700 residents of Nevada employed by the marijuana industry, see  
28 discussion at note 52, supra, then the impact of automatically denying a bankruptcy fresh start to  
those residents and their dependents would be unconscionable.

1 request for dismissal under Section 1112(b), as well as the request for appointment of a Chapter  
2 11 trustee under Section 1104(a). Because dismissal of the case results in a termination of the  
3 automatic stay under Section 362(c), it also is unnecessary to address 4Front's alternative request  
4 for relief from stay.

5 **IT IS THEREFORE ORDERED** that the Creditor 4Front Advisors LLC's Motion to  
6 Dismiss Bankruptcy Petition or, Alternatively, Motion for Relief from the Automatic Stay to  
7 Allow Receivership and Contempt Proceedings to Continue, Docket No. 18, be, and the same  
8 hereby is, **GRANTED**.

9 **IT IS FURTHER ORDERED** that the above-captioned Chapter 11 proceeding is  
10 **DISMISSED** pursuant to 11 U.S.C. § 305(a)(1).

11 **IT IS FURTHER ORDERED** that all pending hearings in connection with the above-  
12 captioned Chapter 11 proceeding are **VACATED**.

13  
14  
15 Copies sent via CM/ECF ELECTRONIC FILING

16 Copies sent via BNC to:

17 CWNEVADA LLC  
18 ATTN: OFFICER OR MANAGING AGENT  
19 4145 ALI BABA LANE, SUITE A  
20 LAS VEGAS, NV 89146

21 ###  
22  
23  
24  
25  
26  
27  
28