



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 22, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:

QUICKER LIQUOR LLC,

Debtor.

Case No. 22-10331-mkn
Chapter 11
(Jointly administered)

In re:

NEVADA WINE CELLARS, INC.

Debtor.

Case No. 22-10332-mkn
Chapter 11

Date: June 16, 2022
Time: 1:30 p.m.

ORDER ON MOTION TO DISMISS FOR BAD FAITH UNDER 11 U.S.C. § 1121(b)(1) AND (b)(4)(A), (B), (E), (I) AND (J), OR ALTERNATIVELY, MOTION TO TERMINATE AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1) AND (d)(2), AND WAIVER OF 14-DAY STAY UNDER RULE 4001(a)(3)¹

On June 16, 2022, a hearing was held on the Motion to Dismiss for Bad Faith Under 11 U.S.C. § 1121(b)(1) and (b)(4)(A), (B), (E), (I) and (J), or Alternatively, Motion to Terminate Automatic Stay Under U.S.C. § 362(d)(1) and (d)(2), and Waiver of 14-Day Stay Under Rule

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §101, *et seq.* All references to “Bankruptcy Rule” are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the provisions of the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 4001(a)(3) (“Dismissal Motion”), brought on behalf of secured creditor The Ernest W. Moody
2 Revocable Trust. The appearances of counsel were noted on the record. After arguments were
3 presented, the matter was taken under submission.

4 **BACKGROUND²**

5 On January 31, 2022, Quicker Liquor LLC (“QL”) and Nevada Wine Cellars, Inc.
6 (“NWC”), filed separate “skeleton” Chapter 11 petitions. (QL ECF No. 1; NWC ECF No. 1).
7 Both Chapter 11 petitions were filed by the law firm of Larson & Zirzow, LLC (“L&Z Firm”).
8 On the same date, a Notice of Chapter 11 Bankruptcy Case was entered informing parties in
9 interest of the QL and NWC Chapter 11 bankruptcy proceedings; the deadline of June 1, 2022,
10 for creditors to file a proof of claim and August 1, 2022, for any governmental unit to file a proof
11 of claim; and set a meeting of creditors (“341 Meeting”) for March 3, 2022.

12 On February 3, 2022, QL and NWC filed separate emergency motions for order directing
13 joint administration of their respective Chapter 11 cases for “procedural convenience and cost
14 efficiencies” (“Joint Admin Motion”). (QL ECF No. 7; NWC ECF No. 7).

15 On February 4, 2022, an order was entered shortening time for the Joint Admin Motion to
16 be heard on February 9, 2022, along with other motions. (QL ECF No. 16; NWC ECF No. 18).
17 The other motions consisted of additional requests (“First Day Motions”) by QL and NWC.
18 Those consisted of the following: (1) First Day Motion Authorizing Debtors to Pay Employee
19 Wages, etc. (“Employee Wages Motion”); (2) First Day Motion Authorization to: (i) Continue
20 Using Existing Cash Management System..., (ii) to Honor Certain Prepetition Obligations
21 Related to the Use of Cash Management System, and (iii) Maintain Existing Bank Accounts
22 (“Cash Management System Motion”); (3) First Day Motion to Approve Kathy Trout as the
23 Designated Responsible Person in Their Chapter 11 Cases (“Designated Person Motion”); and
24 (4) First Day Motion for Continuation of Utility Service and Approval of Adequate Assurance of

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26 ² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
27 docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir.
28 1980). See also 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) (“The Court may consider the records in this
case, the underlying bankruptcy case and public records.”).

1 Payment to Utility Company (“Utilities Motion”). (QL ECF Nos. 8-11; NWC ECF Nos. 8-11).
2 The Joint Admin Motion and the First Day Motions were all scheduled to be heard on February
3 9, 2022.

4 On February 4, 2022, an omnibus declaration of Kathy Trout (“Trout”) in support of the
5 First Day Motions was filed (“First Trout Declaration”).³ (QL ECF No. 17; NWC ECF No. 14).
6 QL is the holder of 100% of the shares in NWC, while NWC is the owner and operator of
7 Pahrump Valley Winery (“PVW”). See First Trout Declaration at ¶ 2.

8 On February 8, 2022, an order was entered authorizing the Moody Trust to conduct an
9 examination under Civil Rule 2004 (“2004 Examination”)⁴ of the person most knowledgeable for
10 QL (“QL 2004 Examination Order”). (QL ECF No. 22).

11 On February 8, 2022, an order was entered authorizing the Moody Trust to conduct a
12 2004 Examination of the person most knowledgeable for NWC (“NWC 2004 Examination
13 Order”). (NWC ECF No. 22).

14 On February 9, 2022, an order was entered granting joint administration of the cases and
15 QL was designated as the lead debtor in possession (collectively “Debtors”). (QL ECF No. 24;

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17 ³ Among other things, Trout attested that in January 2019, QL borrowed \$6,956,271.34
18 from the Ernest W. Moody Revocable Trust (“Moody Trust”) to acquire 100% of the common
19 stock in NWC. See First Trout Declaration at ¶ 7. In June 2020 and June 2021, QL and the
20 Moody Trust executed several amendments to the promissory note. Id. at ¶ 12. In August 2021,
October 2021, and January 2022, QL and the Moody Trust entered into three separate
forbearance agreements. Id. at ¶¶ 14, 15, and 18.

21 ⁴ Any party in interest may request permission to conduct a 2004 Examination.
22 FED.R.BANKR.P. 2004(a). The examination “may relate only to the acts, conduct, or property or
23 to the liabilities and financial condition of the debtor, or to any matter which may affect the
24 administration of the debtor’s estate, or to the debtor’s right to a discharge.” FED.R.BANKR.P.
25 2004(b). The “...production of documents or electronically stored information ...may be
26 compelled as provided in Rule 9016 for the attendance of a witness as a hearing or trial.”
27 FED.R.BANKR.P. 2004(c). Bankruptcy Rule 9016 provides for the attendance of witnesses to be
28 compelled by issuance of a subpoena under Civil Rule 45. See FED.R.BANKR.P. 9016. In
addition to compelling a witness to give testimony, subpoenas issued under Civil Rule 45 also
may compel the production of documents and electronically stored information, as well as the
inspection of premises. See FED.R.CIV.P. 45(a)(1)(C and D). In addition to a civil contempt
remedy for noncompliance with a subpoena, see Fed.R.Civ.P. 45(g), a recalcitrant witness who
refuses to testify without just cause is subject to incarceration for a period not exceeding eighteen
months. 28 U.S.C. §1826(a).

1 NWC ECF No. 23). A Notice of Deadline to File Combined Matrix was also filed. (QL ECF
2 No. 25). On this same date, interim orders were entered granting the Cash Management System
3 Motion, the Employee Wages Motion, the Utilities Motion, and Designated Person Motion. (QL
4 ECF Nos. 26, 27, 29, and 32).

5 On February 11, 2022, Debtors filed their consolidated matrix for the jointly administered
6 cases. (QL ECF No. 34).

7 On February 14, 2022, Debtors filed an application for authorization to employ the L&Z
8 Firm as bankruptcy counsel for both Chapter 11 debtors in possession, supported by the
9 Declaration of Matthew Zirzow (“First Zirzow Declaration”). (QL ECF Nos. 38 and 39).

10 On February 14, 2022, Debtors filed their schedules of assets and liabilities
11 (“Schedules”)⁵ along with, *inter alia*, their statements of financial affairs (“SOFA”).⁶ (QL ECF
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13 ⁵ QL Schedule “D” lists one secured creditor, the Moody Trust, as having a claim in the
14 amount of \$7,978,266.66, secured by “100% of the common stock of Nevada Wine Cellars, Inc.”
15 The claim is designated as disputed, therefore requiring the Moody Trust to timely file a proof of
16 claim. See FED.R.BANKR.P. 3003(c)(2). QL Schedule “E/F” lists zero priority unsecured
17 creditors, and three nonpriority unsecured claims in unknown amounts owed to three creditors:
18 JEH Investments, Inc. (“JEH”), John Hobbs (“Hobbs”), and PCC Holdings, LLC (“PCC
19 Holdings”). JEH and Hobbs appear to be insiders of QL. None of the unsecured claims
20 scheduled by QL are designated as contingent, unliquidated or disputed, and therefore no timely
21 proofs of claim are required. See FED.R.BANKR.P. 3003(b)(1). None of the claims scheduled by
22 QL are owed to NWC.

23 NWC Schedule “D” lists four secured creditors having claims totaling \$226,771.14.
24 NWC Schedule “E/F” lists thirty-one priority unsecured claims totaling \$43,663.98, thirty of
25 which are for unpaid employee wages, in addition to five nonpriority unsecured claims totaling
26 \$243,540.62 (the majority of which is owed to the Debtors’ principal). None of the claims
27 scheduled by NWC are designated as contingent, unliquidated or disputed, and therefore no
28 timely proofs of claim are required. None of the claims scheduled by NWC are owed to QL.
None of the claims scheduled by NWC includes any amount owed to the Moody Trust.

23 ⁶ QL attests that it had one legal action pending within one year of the commencement of
24 the Chapter 11 proceeding involving the liquor license for the restaurant at PVW which action
25 had been concluded and was not on appeal. See QL SOFA at Item 7. NWC attests that it had
26 two legal proceedings pending within one year of the commencement of the Chapter 11
27 proceeding involving the same liquor license matter and an employee theft incident, both of
28 which actions had been concluded and were not on appeal. See NWC SOFA at Item 7. NWC
also attests that its assets include potential claims and causes of action against the Moody Trust,
Nye County, and others of unknown value that are subject to investigation. See NWC Schedule
“A/B” at Item 75.

1 No. 40; NWC ECF No. 28).⁷ The Schedules and SOFA for both Debtors are signed under
2 penalty of perjury by Trout on behalf of the managing member of QL and as secretary/treasurer
3 of NWC.⁸

4 On February 17, 2022, Debtors filed a motion to employ the law offices of Timothy
5 Elson (“Elson”) as special counsel, accompanied by the Declaration of Timothy Elson. (ECF
6 Nos. 42 and 43). On the same date, Debtors filed a notice of hearing setting the motions to
7 employ the L&Z Firm and Elson to be heard on March 23, 2022. (ECF No. 44).

8 On March 3, 2022, the 341 Meeting was concluded. (ECF No. 60).

9 On March 25, 2022, Debtors filed their monthly operating report for the period ending
10 February 28, 2022 (“February MOR”). (ECF No. 75).

11 On March 29, 2022, the Moody Trust filed in the QL case a proof of claim in the amount
12 of \$8,602,810.32. On the same date, the Moody Trust filed in the NWC case a proof of claim in
13 the same amount.

14 On March 30, 2022, the Moody Trust filed a motion to prohibit the Debtors’ use of cash
15 collateral (“Cash Collateral Prohibition Motion”), supported by the Declaration of David Keys
16 (“First Keys Declaration”). (ECF Nos. 81 and 82). The motion was noticed to be heard on April
17 27, 2022. (ECF No. 84).

18 On April 11, 2022, an order was entered authorizing the Debtors’ employment of the
19 L&Z Firm (“L&Z Employment Order”). (ECF No. 91).

20 On April 11, 2022, an order was entered denying authorization for the Debtors to employ
21 Elson. (ECF No. 92).

22 On April 22, 2022, Debtors filed their monthly operating report for the period ending
23 March 31, 2022 (“March MOR”). (ECF No. 111).

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26 ⁷ Hereinafter, all references to “ECF No.” are to the jointly administered Chapter 11 case,
27 Quicker Loans LLC, denominated “lead” Case No. 22-10331-mkn.

28 ⁸ Both Debtors filed their Schedules and SOFAs within 14 days after commencement of
the Chapter 11 proceedings under Bankruptcy Rule 1007(c).

1 On April 25, 2022, Debtors objected to the proof of claim filed by the Moody Trust in the
2 NWC estate. (ECF No. 115).

3 On April 27, 2022, an order was entered denying the Cash Collateral Prohibition Motion.
4 (ECF No. 121).

5 On May 3, 2022, the Moody Trust filed a notice of issuance of subpoena for inspection of
6 the premises of NWC (“Inspection Subpoena”). (ECF No. 127).

7 On May 4, 2022, an order was entered approving the Moody Trust’s withdrawal without
8 prejudice of its proof of claim filed against NWC and vacating the hearing scheduled on the
9 claim objection. (ECF No. 129).

10 On May 17, 2022, the L&Z Firm filed a motion to withdraw as counsel for the Debtors
11 (“L&Z Withdrawal Motion”), supported by the Declaration of Matthew C. Zirzow (“Second
12 Zirzow Declaration”). (ECF Nos. 133 and 134).

13 On May 23, 2022, an order shortening time was entered authorizing the L&Z Withdrawal
14 Motion to be heard on June 1, 2022. (ECF No. 143).

15 On May 25, 2022, Debtors filed their monthly operating report for the period ending
16 April 30, 2022 (“April MOR”). (ECF No. 145).

17 On May 25, 2022, Debtor’s Motion to Extend Exclusivity (First Request) (“Exclusivity
18 Extension”) was filed by NWC, along with a supporting declaration of Kathy Trout (“Second
19 Trout Declaration”). (ECF Nos. 149 and 150).

20 On May 25, 2022, a Motion for Entry of an Order of Debtors’ Contempt of Rule 2004
21 Orders and Subpoenas for Debtors’ Production of Documents and Inspection of Equipment by
22 Todd Shirey, Motion to Compel Production and for Sanctions, was also filed by the Moody Trust
23 (“Contempt and Compel Motion”), along with supporting declarations of Ogonna M. Brown,
24 Esq. (“First Brown Declaration”)⁹ and Todd Shirey (“Shirey Declaration”). (ECF Nos. 154, 155,
25 and 157).

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27 ⁹ Attached to the First Brown Declaration are copies of documents separately marked as
28 eighteen numbered exhibits. Exhibits 1 and 2 are the subpoenas issued with the 2004
Examinations (“2004 Examination Subpoenas”). Each subpoena includes a list of “ITEMS TO
BE PRODUCED.” Exhibits 3, 4, 5, 10, 12, 13, 14, 15, 16, 17, and 18 are email messages

1 On May 25, 2022, the Moody Trust filed the instant Dismissal Motion, along with
2 supporting declarations of David Keys (“Second Keys Declaration”), Derek Groff (“Groff
3 Declaration”),¹⁰ Glenn J. Rigdon, MA, IFAS, ASA (“Rigdon Declaration”),¹¹ and Ogonna M.
4 Brown, Esq. (“Second Brown Declaration”).¹² (ECF Nos. 165-169).

5 On May 26, 2022, a Notice of Hearing and Notice of Entry of Order Granting Ex Parte
6 Application for Order Shortening Time to Hear Debtor’s Motion to Extend Exclusivity was filed
7 setting the hearing for June 1, 2022. (ECF No. 177).

8 On May 27, 2022, an order shortening time was entered authorizing both the Dismissal
9 Motion, as well as the Contempt and Compel Motion to be heard on June 15, 2022. (ECF No.
10 180).

11 On May 31, 2022, a joinder to the Exclusivity Extension was filed by QL. (ECF No.
12 188).

13 On May 31, 2022, a stipulation was filed for the law firm of Kung & Brown (“K&B
14 Firm”) to substitute as Chapter 11 counsel for QL in place of the L&Z Firm. (ECF No. 187).

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16 exchanged between counsel. Exhibits 6, 7, 8, and 9 are excerpts of the transcript of an
17 examination taken of Trout on March 11, 2022. Exhibit 11 is a letter dated April 20, 2022, from
18 the Moody Trust’s counsel to former counsel for the Debtors. In that letter, the Moody Trust
19 asserts deficiencies in the Debtors’ responses to the document production subpoenas (“April 20
20 Deficiency Letter”).

21 ¹⁰ Attached to the Groff Declaration are copies of documents separately marked as three
22 lettered exhibits. Exhibit A is a curriculum vitae of Derek A. Groff. Exhibit B is the signed
23 retention agreement between Derek Groff and the Moody Trust to determine the value of the
24 NWC business, including tangible and intangible assets. Exhibit C is an expert report of Derek
25 Groff dated May 20, 2022. As of January 31, 2022, the value of NWC was \$6,091,000.

26 ¹¹ Attached to the Rigdon Declaration are copies of documents separately marked as three
27 lettered exhibits. Exhibit A is a statement of real estate appraisal qualifications of Glenn J.
28 Rigdon. Exhibit B is a letter dated March 15, 2022, from Glenn J. Rigdon to Moody Creek
Winery for an engagement to appraise the real property of NWC. Exhibit C is an appraisal
report of Glenn J. Rigdon dated April 27, 2022, having a valuation date of January 31, 2022. As
of that date, the value of the NWC real property was \$3,570,000.

¹² Attached to the Second Brown Declaration are copies of documents separately marked
as three numbered exhibits. Exhibits 1 and 2 are transcript excerpts of Trout’s testimony from
the meeting of creditors held of March 3, 2022. Exhibit 3 is an excerpt of the transcript of the
2004 Examination taken of Trout on March 11, 2022.

1 On May 31, 2022, an opposition to the Exclusivity Extension was filed by the Moody
2 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (“Third Brown
3 Declaration”). (ECF Nos. 189 and 190).

4 On May 31, 2022, a proposed joint Chapter 11 plan of reorganization was filed on behalf
5 of QL and NWC. (ECF No. 192).

6 On June 1, 2022, an order was entered granting the L&Z Withdrawal Motion. (ECF No.
7 199). On the same date, the K&B Firm filed an application for authorization to be employed as
8 Chapter 11 counsel for QL, along with a supporting Declaration of A.J. Kung, Esq. (ECF No.
9 197). The application was noticed to be heard on July 13, 2022. (ECF No. 198).

10 On June 1, 2022, a proof of claim in the amount of \$249,654.00 was filed by JEH NV
11 Investments, Inc., in the QL case.¹³

12 On June 1, 2022, the hearing on the Exclusivity Extension was continued to June 16,
13 2022. (ECF No. 202).

14 On June 10, 2022, a joint opposition to the Contempt and Compel Motion (“Joint
15 Contempt and Compel Opposition”),¹⁴ including a Countermotion for Protective Order
16 (“Protective Countermotion”) was filed by the Debtors, along with supporting declarations of
17 Kathy Trout (“Third Trout Declaration”) and Tracy M. O’Steen, Esq. (“First O’Steen
18 Declaration”).¹⁵ (ECF Nos. 213-215).

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20 ¹³ The following day, the proof of claim was amended to identify the creditor as JEH NV
21 Investments, Inc. (and/or John Hobbs) with the other name used by the creditor as “JEH
Investments, Inc.”

22 ¹⁴ Attached to the Joint Contempt and Compel Opposition are copies of documents
23 separately marked as ten separately lettered exhibits. Exhibit A is a spreadsheet describing the
24 Debtors’ response to the document subpoenas received from the Moody Trust. Exhibit B is a
25 copy of attachment to Item 30 of the NWC SOFA. Exhibits C, D, E, and F are excerpts of
26 certain tax documents filed by the Debtors. Exhibit G is a transcript excerpt from a deposition of
27 David Keys apparently taken on June 8, 2022. Exhibit H is an email message dated July 5, 2020,
filed under seal. Exhibit I consists of transcript excerpts of Trout’s testimony at the creditors
meeting held on March 3, 2022. Exhibit J is a transcript excerpt from a deposition of Ernest
William Moody taken on June 8, 2022.

28 ¹⁵ These two declarations seek to authenticate the ten lettered exhibits attached to the
Joint Contempt and Compel Opposition.

1 On June 10, 2022, an opposition (“Dismissal Opposition”)¹⁶ to the Dismissal Motion was
2 filed by the Debtors, along with supporting declarations of Kathy Trout (“Fourth Trout
3 Declaration”) and Tracy M. O’Steen, Esq. (“Second O’Steen Declaration”). (ECF Nos. 220-
4 222).

5 On June 13, 2022, Debtors filed a disclosure statement to accompany joint plan of
6 reorganization (“Disclosure Statement”). (ECF No. 223). A hearing to approve the Disclosure
7 Statement was noticed to be heard on July 13, 2022. (ECF No. 224).

8 On June 13, 2022, an order was entered shortening time to allow the Protective
9 Countermotion to be heard on June 16, 2022, in conjunction with the Contempt and Compel
10 Motion. (ECF No. 231).

11 On June 13, 2022, an order was entered granting Debtors’ request to file a certain
12 document marked as Exhibit “H” under seal. (ECF No. 232).

13 On June 13, 2022, a reply in support of the Contempt and Compel Motion was filed
14 (“Contempt and Compel Reply”), along with a declaration of Ogonna M. Brown, Esq. (“Fourth
15 Brown Declaration”) in support thereof. (ECF Nos. 235 and 236).

16 On June 13, 2022, a reply in support of the Dismissal Motion was filed along with
17 supporting declarations of David Keys (“Third Keys Declaration”) and Ogonna M. Brown, Esq.
18 (“Fifth Brown Declaration”).¹⁷ (ECF Nos. 238-240).

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21 ¹⁶ Attached to the Dismissal Opposition are copies of documents separately marked as
22 four separately lettered exhibits. Exhibit A is an order filed on May 28, 2021, by the Fifth
23 Judicial District Court, Nye County, Nevada, in NV Wine Cellars, et al. v. Nye County
24 Licensing and Liquor Board, Case No. CV20-0706 (“Liquor License Proceeding”). Exhibit B is
25 an email dated June 9, 2022, acknowledging receipt of an installment payment for Nye County
26 real property taxes. Exhibit C is a transcript excerpt from a deposition of Ernest William Moody
27 taken on June 8, 2022. Exhibit D is a transcript excerpt of Trout’s testimony at the creditors
28 meeting held on March 3, 2022.

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31 ¹⁷ Attached to the Fifth Brown Declaration are copies of documents separately marked as
32 three lettered exhibits. Exhibit A is a transcript excerpt of Trout’s testimony from the meeting of
33 creditors held of March 3, 2022. Exhibit B is a transcript excerpt of Trout’s testimony from the
34 2004 Examination conducted on March 11, 2022. Exhibit C is an excerpt of the transcript of the
35 deposition of David Keys taken on June 8, 2022.

1 On June 14, 2022, Debtors filed an errata to the Disclosure Statement to include Exhibit 3
2 – “Debtors’ Pro Forma Projection” and Exhibit 4 – Debtors’ “Joint Liquidation Analysis” to the
3 Disclosure Statement. (ECF No. 243).

4 On June 14, 2022, a stipulated order was entered approving the stipulation for protective
5 order. (ECF No. 244).

6 On June 15, 2022, an opposition to Protective Countermotion was filed by the Moody
7 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (“Sixth Brown
8 Declaration”).¹⁸ (ECF Nos. 248 and 249).

9 On June 15, 2022, a supplemental declaration of Ogonna M. Brown, Esq. in support of
10 the Dismissal Motion was filed (“Seventh Brown Declaration”).¹⁹ (ECF No. 250).

11 On June 16, 2022, a concurrent expedited hearing was held on the Dismissal Motion,
12 Exclusivity Extension, Contempt and Compel Motion, and Protective Countermotion. Separate
13 orders on each matter are entered contemporaneously herewith.

14 **DISCUSSION**

15 By the instant Dismissal Motion, the Moody Trust seeks to dismiss both jointly
16 administered Chapter 11 proceedings for cause under Section 1112(b)(1) based on the Debtors’
17 bad faith in seeking Chapter 11 relief. In addition, the Moody Trust maintains that cause exists
18 in the forms described in Section 1112(b)(4)(A), (B), (E), (I), and (J). Those descriptions include
19 substantial or continuing loss or diminution of the Chapter 11 estate coupled with the absence of
20 a reasonable likelihood of rehabilitation, gross mismanagement of the Chapter 11 estate, failure
21 to comply with a bankruptcy court order, failure to timely pay postpetition taxes, and failure to
22 timely file a disclosure statement or file or confirm a Chapter 11 plan. Alternatively, the Moody
23 Trust seeks relief from the automatic stay solely against QL under Sections 362(d)(1) and
24

25 ¹⁸ Attached as Exhibit 1 to the Sixth Brown Declaration is an excerpt of the transcript of
26 the 2004 Examination taken of Trout on March 11, 2022. Attached as Exhibits 2 and 3 are
copies of emails exchanged between Debtors’ current counsel and Moody Trust’s counsel.

27 ¹⁹ Attached as Exhibit 1 to the Seventh Brown Declaration is a copy of a Wells Fargo
28 Combined Statement of Accounts for NWC dated January 31, 2022.

1 362(d)(2). It maintains that cause exists under Section 362(d)(1) for the same reasons it seeks
 2 dismissal for cause under Section 1112(b)(1): that QL commenced the Chapter 11 proceeding in
 3 bad faith. The Moody Trust also maintains under Section 362(d)(2) that QL lacks equity in its
 4 interest in NWC and that NWC is not necessary for an effective reorganization.²⁰ If relief from
 5 stay is granted, the Moody Trust would seek to foreclose on its lien secured by QL's interest in
 6 NWC. As a result, the Moody Trust would become the sole equity interest holder in NWC with
 7 all management rights in its operations.²¹

8 Not surprisingly, Debtors maintain that the Chapter 11 proceedings were not commenced
 9 in bad faith but instead are legitimate efforts to restructure their obligations. They also argue that
 10 none of the statutory examples of cause under Section 1112(b)(1) are present. Moreover,
 11 Debtors maintain that the absence of bad faith negates the existence of cause for relief from stay.
 12 Finally, Debtors argue that even if it lacks equity in the NWC interest, they have a reasonable
 13 possibility of confirming a plan of reorganization within a reasonable amount of time.

14 **I. Dismissal under Section 1112(b)(1).**

15 Bad faith or its equivalent, a lack of good faith, may constitute "cause" for dismissal of a
 16 Chapter 11 proceeding even though it is not one of the examples set forth in Section 1112(b)(4).
 17 See generally 7 COLLIER ON BANKRUPTCY ¶ 1112.07 (Richard Levin and Henry J. Sommer, eds.,
 18 16th ed. 2021). This is because the examples of cause set forth in Section 1112(b)(4) are not
 19 exclusive. See id. ¶ 1112.04 [6] ("Courts that have analyzed section 1112(b)(4) almost
 20 unanimously conclude that the list of the items that constitute cause is not exclusive...").²² But

21 _____
 22 ²⁰ For a motion for relief from stay, the burden of proof is allocated under Section 362(g):
 23 the moving party has the burden of proof on the debtor's equity in the subject property, while the
 24 opposing party has the burden of proof on all other issues.

25 ²¹ If the Moody Trust takes over operations of NWC through foreclosure of its lien
 26 against the entity, it represents that it would maintain operations rather than terminate the
 27 employees. It is not exactly clear how that commitment would be enforceable.

28 ²² Confirmation of a Chapter 11 plan requires a finding that the particular plan "has been
 proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3).
 Confirmation of a Chapter 13 plan requires a similar finding for a proposed plan, see 11 U.S.C. §
 1325(a)(3), but also requires a separate finding that "the action of the [individual] debtor in filing
 the [Chapter 13] petition was in good faith." 11 U.S.C. § 1325(a)(7). In other words, the good

1 even if cause is established warranting conversion or dismissal of a Chapter 11 proceeding,
 2 Section 1112(b)(2) prohibits a court from doing so “if the court finds and specifically identifies
 3 unusual circumstances establishing that converting or dismissing the case is not in the best
 4 interests of creditors and the estate, and the debtor or any other party in interest establishes that –
 5 (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes
 6 established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a
 7 reasonable period of time; and (B) the grounds for converting or dismissing the case include an
 8 act or omission of the debtor other than under paragraph (4)(A) – (i) for which there exists a
 9 reasonable justification for the act or omission; and (ii) that will be cured within a reasonable
 10 period of time fixed by the court.” 11 U.S.C. §1112(b)(2)(A) and (B).

11 **A. Bad Faith.**

12 The Moody Trust maintains that the QL proceeding is only a two-party dispute for which
 13 bankruptcy relief through reorganization is inappropriate.²³ It maintains that after three
 14 forbearance periods were negotiated with the Moody Trust, QL simply filed the Chapter 11
 15 petition because it could not meet the loan obligation that was long overdue since the end of
 16 December 2019. See Dismissal Motion at 2:6-15 and 14:16 to 18:7. Absent other obligations
 17 for which collective relief may be appropriate through bankruptcy, the Moody Trust argues that
 18 the Chapter 11 proceeding was commenced by QL in bad faith.

19 _____
 20 faith inquiry as to the commencement of the bankruptcy proceeding eventually must be
 21 addressed to prosecute a Chapter 13 case, but may be addressed in pursuing a Chapter 11
 proceeding.

22 ²³ The court previously expressed a similar concern: “While the Moody Trust appears to
 23 be the primary reason for the Chapter 11 filings, it appears that JEH and Hobbs are insiders, and
 24 the basis, status and amount of PCC Holdings’ claim is unknown (but somehow not designated
 as contingent, unliquidated or disputed). Absent the latter claim, the QL bankruptcy might be
 25 characterized as a two-party dispute rather than a collective proceeding to address multiple
 claims.” L&Z Employment Order at 12:18-23. With respect to the latter claim by PCC, the
 26 Designated Responsible Person for the Debtors testified that she is not aware that the creditor is
 owed any amount by QL. See Transcript of 2004 Examination of Kathleen Trout taken March
 27 11, 2022, at p. 193:18-23, attached as Exhibit 3 to Second Brown Declaration. In other words,
 28 the testimony of the Debtors’ own representative confirms that the QL Chapter 11 proceeding
 may be characterized as a two-party dispute.

1 The Moody Trust argues that various factors should be applied in determining a lack of
2 good faith. See Dismissal Motion at 14:20 to 15:1, citing St. Paul Self Storage Ltd. P’ship v.
3 Port Authority of the City of St. Paul (In re St. Paul Self Storage Ltd. P’ship), 185 B.R. 580, 582-
4 83 (B.A.P. 9th Cir. 1995). Those factors include whether (1) the debtor has only one asset; (2)
5 the debtor has an ongoing business to reorganize; (3) there are any unsecured creditors; (4) the
6 debtor has any cash flow or sources of income to sustain a reorganization plan or to make
7 adequate protection payments; and (5) the case is essentially a two-party dispute capable of
8 prompt adjudication in state court. See also In re Rosenblum, 608 B.R. 529, 537 (Bankr.D.Nev.
9 2019). The evidence presented by the Moody Trust and otherwise in the record sufficiently
10 establish: QL’s only asset consists of its interest in NWC; QL primarily is a holding company;
11 QL’s unsecured creditors consist of insiders or the unsecured portion of the Moody Trust’s
12 secured claim²⁴; QL’s only cash flow are from limited consulting fees paid by NWC for services
13 by Hobbs; and QL’s only non-insider creditor is the Moody Trust.

14 In response to the Dismissal Motion, Debtors primarily assert: that they made significant
15 payments to the Moody Trust in exchange for the forbearance agreements, that a new investor
16 sufficient to satisfy the Moody Trust debt dropped out at the last minute, the NWC has generated
17 \$20,000 in positive cashflow through April, that the Debtors are current on postpetition payables,
18 and that Debtors brought their real property taxes current on June 9. See Fourth Trout
19 Declaration at ¶¶ 7, 9, 13, 16, 17, and 18. Debtors also maintain that they have filed a proposed
20 Chapter 11 plan of reorganization in these jointly administered cases for which confirmation may
21 be sought even if the Moody Trust rejects plan treatment.²⁵ See Dismissal Opposition at 12:18 to
22

23 ²⁴ The Moody Trust apparently would have a substantial allowed unsecured claim under
24 Section 506(a) based on the alleged value of NWC and the amount of the debt owed by QL
25 appearing in its proof of claim. Classification and treatment of that unsecured amount in any
26 proposed plan of reorganization may present other confirmation issues, including satisfaction of
any absolute prior rule concerns.

27 ²⁵ There is no apparent dispute that Moody Trust intends to reject Debtors’ proposed plan
28 treatment and presumably will oppose confirmation of any joint plan of reorganization. See
Transcript of David Keys deposition taken June 8, 2022, at 29:16 to 31:6, attached to Dismissal
Opposition as Exhibit “C”; Second O’Steen Declaration at ¶ 4. Cramdown over the dissenting

1 13:13, citing JPMCC 2007-C1 Grasslawn Lodging, LLC v. Transwest Resort Properties Inc.
2 (Matter of Transwest Resort Properties), 881 F.3d 724 (9th Cir. 2018). In other words, Debtors
3 maintain that even if QL has only one non-insider creditor, Chapter 11 reorganization by jointly
4 administered estates is still permitted in this circuit.²⁶

5 At the hearing, QL emphasized that it has no ability outside of bankruptcy to restructure
6 the Moody Trust obligation and its pursuit of a restructure through Chapter 11, therefore, is in
7 good faith. But that premise is fundamentally flawed because the absence of restructuring
8 alternatives outside of bankruptcy is immaterial.²⁷ There is no dispute that QL entered into
9 forbearance agreements with the Moody Trust prior to filing its Chapter 11 petition. Nothing
10 prevents parties to private contracts from consensually altering their respective rights and
11 obligations. The Moody Trust did not agree to further extensions of the repayment term. QL
12 had no options under state law to force an additional extension or other restructuring. The
13 absence of nonconsensual restructuring available outside of bankruptcy is a product of the U.S.
14 Constitution. In other words, good faith in seeking Chapter 11 relief cannot be inferred simply
15 because a debtor does not have attractive options.

16 But the opposite inference also may be true: seeking Chapter 11 relief in absence of non-
17 bankruptcy options is not determinative of a lack of good faith. Debtors often seek bankruptcy
18 protection, including Chapter 11 relief, on the eve of creditor activity. This case appears to be no

19 _____
20 class encompassing the Moody Trust apparently will be necessary under Section 1129(b), which
21 would require an impaired non-insider class to accept plan treatment under Section 1129(a)(10).

22 ²⁶ The bankruptcy court for the Middle District of Florida discussed differing views on
23 whether impaired class acceptance is required for each debtor in a jointly administered Chapter
24 11 proceeding, or for each plan proposed in a jointly administered proceeding. See In re
25 Consolidated Land Holdings, LLC, 2021 WL 3701799, at *6 & nn. 67-68 (Bankr. M.D. Fla.
26 Aug. 20, 2021). That bankruptcy court rejected the “per plan” approach taken in Transwest
27 Resort Properties, but this bankruptcy court is guided by the Ninth Circuit.

28 ²⁷ Individual states are prohibited from enacting laws that impair rights under contract.
29 See U.S. Const., Art. I, § 10, cl. 1. By contrast, only Congress can enact uniform bankruptcy
30 laws that permit nonconsensual debt restructuring by altering the contractual rights of the parties.
31 See U.S. Const., Art. I, § 8, cl. 4. Debtors may seek approval of a debt restructuring in
32 bankruptcy but there is no constitutional right to a bankruptcy discharge. See U.S. v. Kras, 409
33 U.S. 434, 446-47 (1973).

1 different and the Moody Trust is reasonably concerned about the Debtors' operations because the
 2 only collateral securing its multi-million dollar short-term loan is QL's ownership interest in
 3 NWC rather than the assets of NWC. Its decision not to grant further extensions after the failure
 4 of an investor "bitcoin" fiasco, see First Keys Declaration at ¶¶ 28 through 43, Fourth Trout
 5 Declaration at ¶ 9, and Third Keys Declaration at ¶¶ 13, 17 and 18, is not entirely surprising.
 6 The delays and frustrations experienced by both sides also is not surprising but does not compel
 7 a particular outcome.

8 Under the circumstances, the court concludes at this stage that there is conflicting
 9 evidence and contrasting facts militating against a finding of a lack of good faith. Inasmuch as
 10 confirmation of a single Chapter 11 plan is now permissible in jointly administered proceedings,
 11 it is not entirely clear that the traditional factors considered in determining a lack of good faith
 12 are applicable. A reasonable possibility of confirming a joint Chapter 11 plan of reorganization
 13 exists despite obvious hurdles. Dismissal of these Chapter 11 proceedings under Section
 14 1112(b)(1) for lack of good faith will be denied.

15 The court must consider whether the specific statutory examples of cause have been
 16 demonstrated.

17 **B. Statutory Examples of Cause.**

18 The Moody Trust asserts that five specific types of cause are present in these
 19 proceedings.

20 **1. Section 1112(b)(4)(A) - substantial or continuing loss or diminution of**
 21 **the Chapter 11 estate coupled with the absence of a reasonable**
 22 **likelihood of rehabilitation.**

23 The Moody Trust argues that the MORs filed by the Debtors reflect inadequate financial
 24 performance since the commencement of the Chapter 11 proceeding.²⁸ It maintains that
 25 administrative expenses, including professional fees, are increasing without evidence of buyers
 26 or investors on the horizon. The Moody Trust acknowledges that it will vigorously oppose
 27 confirmation of a joint Chapter 11 plan. See Third Keys Declaration at ¶¶ 7 through 12. Debtors

28 ²⁸ The court agrees with the Moody Trust that the February MOR, March MOR and April
 MOR are illegible as they appear on the docket.

1 maintain that a modest positive cashflow occurred postpetition through the end of April and that
2 substantial funds also were on hand. See Fourth Trout Declaration at ¶ 13. In essence, Debtors
3 maintain that they have sustained no substantial or continuing losses, and no diminution of value.
4 Moreover, Debtors maintain that their joint plan of reorganization has a reasonable possibility of
5 being confirmed by the extended exclusivity deadline.

6 At this stage of the proceedings, the record and evidence is inadequate to find sufficient
7 loss or diminution to either Chapter 11 estate. As already discussed, a reasonable possibility of
8 confirming a joint Chapter 11 plan of reorganization exists notwithstanding the conflicts on the
9 horizon. Cause within the meaning of Section 1112(b)(4)(A) has not been established.

10 **2. Section 1112(b)(4)(B) - gross mismanagement of the Chapter 11**
11 **estate.**

12 The Moody Trust maintains that the Debtors have failed to produce basic financial
13 information in response to the 2004 Examination Subpoenas. Debtors' compliance is the subject
14 of the Contempt and Compel Motion that was heard contemporaneously with the instant
15 Dismissal Motion. For reasons set forth in the order addressing that motion, a finding of gross
16 mismanagement for failure to produce financial information cannot be made on the current
17 record. Cause within the meaning of Section 1112(b)(4)(B) has not been established.

18 **3. Section 1112(b)(4)(E) - failure by Debtors to comply with a**
19 **bankruptcy court order.**

20 The Moody Trust again maintains that the Debtors have failed to comply with the 2004
21 Examination Orders and 2004 Examination Subpoenas that are the subject of the Contempt and
22 Compel Motion. For reasons set forth in the order addressing that motion, a finding of a failure
23 to comply cannot be made on the current record. Cause within the meaning of Section
24 1112(b)(4)(E) has not been established.

25 **4. Section 1112(b)(4)(I) - failure by NWC to timely pay postpetition**
26 **property taxes.**

27 As previously mentioned, NWC apparently brought its real estate taxes current on June 9,
28 2022. Thus, any prior failure to pay such taxes apparently has been cured. Cause within the
29 meaning of Section 1112(b)(4)(I) has not been established.

1 **5. Section 1112(b)(4)(J) - failure to file a disclosure statement, or failure**
 2 **to file or confirm a plan.**

3 Debtors filed a proposed joint Chapter 11 plan on May 31, 2022, before expiration of the
 4 exclusivity period under Section 1121(b). Debtors filed a proposed Disclosure Statement on
 5 June 13, 2022, and noticed an approval hearing to be held on July 13, 2022.²⁹ Both the proposed
 6 Disclosure Statement and the proposed plan were filed before the expiration of any applicable or
 7 court-ordered deadline. By its Exclusivity Extension request, Debtors have sought additional
 8 time to confirm their proposed joint Chapter 11 plan. No failure exists. Cause within the
 9 meaning of Section 1112(b)(4)(J) has not been established.

10 **C. Section 1112(b)(2).**

11 Because cause for conversion or dismissal has not been established under Section
 12 1112(b)(1) on the basis of a lack of good faith, it is unnecessary to address whether Section
 13 1112(b)(2) applies. Because cause has not been established under the asserted statutory
 14 descriptions under Section 1112(b)(4), it is unnecessary to address Section 1112(b)(2). At this
 15 stage, the court finds that there is a reasonable possibility of confirming a joint Chapter 11 plan
 16 of reorganization within the timeframe set by the court. At this stage, the court does not find, as
 17 would be required by Section 1112(b)(2)(A), a reasonable “likelihood” that a plan will be
 18 confirmed.

19 **II. Relief from Automatic Stay under Section 362(d)(1) and (d)(2).**

20 **A. Section 362(a)(1).**

21 Cause for relief from stay under Section 362(d)(1) may be based on a lack of adequate
 22 protection of the moving party’s interest which typically requires proof that the property securing
 23 the claim is declining in value since the commencement of the bankruptcy proceeding. See, e.g.,
 24 In re Soriano, 2019 WL 5783310, at * 2 (Bankr. D. Nev. Sep. 16, 2019), citing First Fed. Bank
 25 of Cal. v. Weinstein (In re Weinstein), 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998). Cause under
 26 Section 362(d)(1) also may be established by sufficient proof of the debtor’s bad faith. See

27 ²⁹ Bankruptcy Rule 2002(b)(1) requires a minimum of 28 days notice of the deadline to
 28 object to a disclosure statement rather than just 28 days notice of the approval hearing. The July
 13, 2022 hearing date for Disclosure Statement approval might not provide sufficient notice of
 the objection deadline.

1 generally Arneson v. Farmers Ins. Exch. (In re Arneson), 2005 WL 6960173, at * 6 (B.A.P. 9th
2 Cir. Apr. 21, 2005), citing Duvar Apt., Inc. v. Fed. Dep. Ins. Corp. (In re Duvar Apt., Inc.), 205
3 B.R. 196, 200-201 (B.A.P. 9th Cir. 1996).

4 In this instance, the evidence presented by the Moody Trust has not demonstrated that
5 QL's interest in NWC has declined in value since the Chapter 11 petitions were filed on January
6 31, 2022. Thus, the Moody Trust has not established that it is entitled to adequate protection
7 payments.

8 For the reasons already discussed in connection with dismissal of the Chapter 11
9 proceeding, the court also has concluded that there is insufficient evidence to conclude that either
10 the QL bankruptcy proceeding, the NWC bankruptcy proceeding, or both, were commenced in
11 bad faith. Thus, the Moody Trust has not established that cause exists for relief from stay under
12 Section 362(d)(1).

13 **B. Section 362(d)(2).**

14 Debtors do not dispute the Moody Trust's valuation of NWC's assets at \$6,091,000. See
15 Third Trout Declaration at ¶ 22. As previously mentioned at 5, supra, the Moody Trust filed a
16 proof of claim in the amount of \$8,602,810.32. In absence of an objection, the proof of claim is
17 deemed allowed under Section 502(a). The evidence and the record therefore appear to establish
18 that QL lacks equity in its interest in NWC.

19 Under Section 362(g)(2), Debtors have the burden of demonstrating that its interest in
20 NWC is necessary to an effective reorganization within the meaning of Section 362(d)(2)(B). To
21 meet that burden, QL must demonstrate that it has a reasonable possibility of a successful
22 reorganization within a reasonable amount of time. See generally United Savings Assoc. of
23 Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 375-76 (1988); In re 1604
24 Sunset Plaza, LLC, 2022 WL 1085557, at *5 (Bankr. C.D. Cal. Apr. 8, 2022). As previously
25 discussed, the court has concluded that there is a reasonable possibility of confirming a joint
26 Chapter 11 plan of reorganization within a time determined by the court. Under these
27 circumstances, an appropriate basis for relief from stay does not currently exist under Section
28 362(d)(2).

1 **IT IS THEREFORE ORDERED** that the Motion to Dismiss for Bad Faith Under 11
2 U.S.C. § 1121(b)(1) and (b)(4)(A), (B), (E), (I) and (J), or Alternatively, Motion to Terminate
3 Automatic Stay Under U.S.C. § 362(d)(1) and (d)(2), and Waiver of 14-Day Stay Under Rule
4 4001(a)(3), brought on behalf of secured creditor The Ernest W. Moody Revocable Trust,
5 Docket No. 165, be, and the same hereby is, **DENIED** without prejudice.

6

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QUICKER LIQUOR LLC

NEVADA WINE CELLARS, INC.

10

ATTN: OFFICER OR MANAGING AGENT

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7582 LAS VEGAS BLVD., STE. 484

LAS VEGAS, NV 89123

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