



Signed and Filed: June 26, 2024

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
) No. 24-30082-DM
CHRISTOPHER MICHAEL CALLAWAY,)
) Chapter 7
) Debtor.)
))
))
))

MEMORANDUM DECISION REGARDING MOTIONS TO DISMISS CASE FOR CAUSE

I. INTRODUCTION

On March 29, 2024, creditor M. Dattani Credit Trust ("Dattani Trust") filed its Motion to Dismiss Case for Cause 11 U.S.C. § 707(a) ("Dattani Motion") (Dkt. 15). On April 18, 2024, Tracy Hope Davis, United States Trustee for Region 17, filed her Motion to Dismiss Case Pursuant to 11 U.S.C. § 707(a) ("UST Motion" (Dkt. 25), together with the Dattani Motion, the "Dismissal Motions").

The Dismissal Motions seek dismissal of this case under Section 707(a)¹ for "cause" and both rely on similar arguments.

¹ Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 The Dattani Motion says there is cause for dismissal "because
2 the assets of the estate are comprised of or derived from
3 cannabis." (Dattani Motion, p. 1). The UST Motion explains that
4 the cause for dismissal is that the Debtor "possesses and
5 controls an interest in cannabis assets and business ventures
6 that are in violation of the Controlled Substances Act 21 U.S.C.
7 Sections 801-904 ("CSA"), and which a chapter 7 trustee cannot
8 lawfully administer." (UST Motion, p. 1).²

9 The Dismissal Motions do not allege or contend that the
10 Debtor lacked good faith in filing his chapter 7 petition, do
11 not challenge his eligibility under Section 109(b) to file a
12 chapter 7 petition, do not allege that he directly owns
13 marijuana or marijuana-related tangible assets, and do not
14 contend that any of the statutory examples of "cause" for
15 dismissal under Section 707(a) exist.³ Neither relies on Section

16
17 ² "The word 'marijuana' refers to parts of or products from the
18 plant *Cannabis sativa* that contain substantial amounts of
19 tetrahydrocannabinol (THC)," the compound for which marijuana is
20 famous. [https://www.nccih.nih.gov/health/cannabis-marijuana-and-](https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know)
21 [cannabinoids-what-you-need-to-know](https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know). The word "cannabis" refers
22 to all parts of the cannabis plant. The parties, and most
23 caselaw, appear to use the words interchangeably to mean parts
24 of the plant with substantial amounts of THC. Without further
25 citations, the court notes there is a general preference for the
26 word "cannabis." Unless using a direct quote or referring to the
27 way Debtor refers to his interests in his schedules, the court
28 will use the word "marijuana" in this Memorandum of Decision.

³ Section 707(a) states:

- (a) The court may dismiss a case under this chapter only
after notice and a hearing and only for cause, including—
(1) unreasonable delay by the debtor that is prejudicial
to creditors;
(2) nonpayment of any fees or charges required under
chapter 123 of title 28; and

1 105 or any inherent powers. Instead, the sole basis for each of
2 them to seek dismissal is as the UST summarized: The chapter 7
3 trustee cannot lawfully administer assets in violation of the
4 CSA, and continuation of the case would force the chapter 7
5 trustee into such a position.

6 The chapter 7 trustee, Paul Mansdorf ("trustee"), who urged
7 Dattani Trust to file the Dattani Motion, has joined in the
8 Dismissal Motions (Dkt 36). He stated:

9 ". . .although a Chapter 7 Trustee would like
10 nothing more than to be able to administer an
11 asset case, it is clear that he would be subject
12 to prosecution in any attempt to administer the
13 assets of this particular estate. Pursuant to the
UST's motion, "a chapter 7 trustee cannot lawfully
administer (cannabis assets.)"

14 Based on the facts of this case and applicable law, the
15 court holds that administering the ownership interests of LLCs
16 that engage in marijuana business is not necessarily equivalent
17 to administering marijuana assets. The court also holds the
18 trustee's own personal determination that he cannot lawfully
19 administer the assets of this case is insufficient cause to
20 dismiss the debtor's case as there are other options for the
21 trustee as discussed, *infra*.

22 For the reasons that follow, the court denies the Dismissal
23 Motions.

24 _____
25 (3) failure of the debtor in a voluntary case to file,
26 within fifteen days or such additional time as the
27 court may allow after the filing of the petition
28 commencing such case, the information required by
paragraph (1) of section 521(a), but only on a motion
by the United States trustee.

1 **II. FACTS**⁴

2 Debtor Christopher Michael Callaway filed for chapter 7 on
3 February 12, 2024. He has never filed under any other chapter
4 of the Bankruptcy Code and has made no attempt to convert this
5 case to any other chapter. His Schedules and Statement of
6 Financial Affairs (Dkts. 1 and 12) indicate that he owns and
7 operates 100% of Caliverde, LLC ("Caliverde"), a retail cannabis
8 dispensary in San Francisco, and owns a 40% interest in Grassy
9 Castro, LLC ("Grassy Castro"), another retail cannabis store in
10 San Francisco. Debtor also owns interests in other LLCs, some
11 operating, some no longer operating, some never operated, some,
12 but not all, related to cannabis. One of the LLC interests is a
13 61% ownership of Mr. C's, LLC ("Mr. C's"), an art gallery/flower
14 shop/cannabis dispensary that has never operated as a dispensary
15 due to circumstances that led to litigation by Dattani Trust
16 against Debtor and others in the San Francisco Superior Court.
17 That matter was about to go to trial when Debtor filed his
18 petition.

19 The Schedules show some other assets of very slight value,
20 or values unknown, including intangibles such as domain names⁵,

22 ⁴ The following discussion constitutes the court's findings of
23 fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

24 ⁵ Domain names: jodolphins.com, tracknappers.com,
25 tracknaps.com, outerhayes.com, blaze-valley.com,
26 project-flowers.com, theouterhaze.com, porn.com,
27 hazevalley.com, petitfleur.com, pot-monster.com, snarcs.com,
28 highroadbikes.com, caliverde.com, oasis-delivery.com,
haze-valley.com, blazevalley.com, hybryd.com, indica.com,
sativa.com, potmonster.com, chris-callaway.com,
christopher-callaway.com, postmonster.org, lafrum.com,

1 which collectively are claimed as exempt on Schedule C under the
2 California wildcard exemptions of less than \$30,000. There are
3 no tangible assets listed that bear any connection with
4 marijuana plants, marijuana equipment or anything else covered
5 by the CSA. This is for good reason: all those assets are
6 likely owned by Caliverde, Grassy Castro or other LLCs and as
7 such, are not property of the bankruptcy estate.

8 The only other noteworthy item on the Amended Schedule A/B
9 (Dkt. 12) is "Claims for distributions owed as minority owner of
10 Grassy Castro LLC" in an UNKNOWN amount. Debtor has never
11 received any distribution from Grassy Castro or its owners in
12 the past. Debtor did explain at his Meeting of Creditors that
13 Grassy Castro's yearly revenue is in the ballpark of three
14 million dollars (Dkt. 15-1) and he assumes that his claim for
15 distributions from it are in the ballpark of "several hundred
16 thousand dollars."

17 As of the petition date to the present, the trustee owns
18 those claims under Section 541 and would be expected to seek to
19 recover any money owed to the estate.

20 Debtor also reports on Schedule I his monthly income from
21 Caliverde but as of and after the moment he sought bankruptcy
22 protection, none of his post-petition income was property of
23 this estate and is not subject to the control of the trustee.
24 Section 541(a)(6) excepts from property of the estate
25 ". . .earnings from services performed by an individual debtor
26

27 coke.com, joydolphins.com, lilnappers.com, lilnapperz.com,
28 fleurlocale.com, lefleur.shop, grandfleur.co, kidsvalley.co,
highroadcoffee.co, vinoflores.com, hazevalley.co, caliverde.co

1 after commencement of a case". Debtor's post-petition income as
2 someone employed in the marijuana business, therefore, does not
3 bear upon the question of whether there is cause to dismiss
4 Debtor's chapter 7 bankruptcy. That he is also the owner and
5 partial owner of marijuana-related LLCs does not matter either,
6 because the trustee is the owner now and it is his choice, not
7 the Debtor's, whether to sell the ownership interests, and sale
8 of those ownership interests may not violate the CSA in any
9 event or may otherwise be restricted by the respective LLC's
10 articles of incorporation. Nothing in the record presented
11 sheds any meaningful light on these questions. Debtor's own
12 statements at the Meeting of Creditors, while made under oath,
13 have not been confirmed or tested for foundational legal or
14 factual accuracy by the trustee or anyone else.

15 **III. DISCUSSION**

16 **A. The CSA**

17 The CSA is a statutory scheme that regulates nearly every
18 facet of the manufacturing, distribution, and dispensing of
19 controlled substances. 21 U.S.C. § 841 *et seq.* For now,
20 marijuana products remain a Schedule I controlled substance
21 under the CSA, the most tightly regulated classification of
22 controlled substances.⁶

25
26 ⁶ As of June 2024, the Justice Department has submitted a
27 proposed rule change that would reclassify marijuana as a
28 Schedule III substance, but that change has not yet gone into
effect. See <https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-reschedule-marijuana>.

1 In addition to the prohibition on most actions related to
2 the manufacture and distribution of marijuana, the CSA, in
3 brief, prohibits the following in relation to those activities:

- 4 • Using the internet, or aiding or abetting use of the
5 internet to engage in marijuana business. 21 U.S.C. §
6 841(h).
- 7 • Conspiring or conspiring to commit marijuana business.
8 21 U.S.C. § 846.
- 9 • Engaging in the marijuana business in an
10 organizational, supervisory, or management role and
11 deriving substantial income or resources from that
12 role. 21 U.S.C. § 848.
- 13 • Investing proceeds of marijuana business in securities
14 on the open-market or any other enterprise that may
15 affect interstate or foreign commerce. 21 U.S.C. §
16 854.
- 17 • Deriving profits or proceeds from marijuana business.
18 21 U.S.C. § 855.
- 19 • Leasing or maintaining, owning, or occupying any space
20 that is used for marijuana business. 21 U.S.C. § 856.

21 Most relevant to this case is that each of these sections
22 of the CSA prohibit direct acts or benefits as they relate to
23 engaging in marijuana business. None of these prohibitions, or
24 others in the CSA, even when directed to be read as broadly as
25 possible, 21 U.S.C. § 854(d), include a direct prohibition on
26 owning or disposing of an interest in an entity that engages in
27
28

1 marijuana business⁷, or owning other intangible assets of such as
2 domain names with catchy words conveying messages about
3 marijuana.

4 As it relates to marijuana, the Justice Department has for
5 years taken both an implicit and explicit hands-off approach to
6 enforcement of the CSA as it relates to state-regulated
7 manufacture and distribution.⁸ This hands-off approach has been
8 in place in various iterations since 2013, and marijuana
9 businesses that adhere to state and local laws permitting such
10 business have grown. In 2024, it seems the only arm of the
11 executive branch with an explicit mission to enforce the CSA
12 against state-regulated marijuana businesses is the UST Program
13 in seeking to dismiss bankruptcies on the basis of a trustee or
14 estate's potential administration of assets in violation of the
15 CSA.⁹

16 Like many people and businesses involved in any industry,
17 those people and businesses engaged in marijuana business at the
18 state-regulated level sometimes face economic hardship and seek
19 economic relief in the form of a fresh start via bankruptcy.

21 ⁷ Caliverde and Grassy Castro no doubt are at least deriving
22 revenue or proceeds, and likely profits, from marijuana and are
23 therefore violating the CSA, but this is for another branch of
24 the Department of Justice, not the UST, nor this court, to be
concerned about. Nor is it relevant to the question of whether
cause exists to dismiss Debtor's bankruptcy.

25 ⁸ See <https://www.jdsupra.com/legalnews/attorney-general-garland-reconfirms-the-9983989/>.

27 ⁹ *Why Marijuana Assets May Not Be Administered In Bankruptcy*,
28 Clifford J. White III and John Sheahan, 36 Am. Bankr. Inst. J.
34 (Dec. 2017).

1 As a result, there is a growing body of cases of debtors
2 involved in some way with marijuana. Each of these cases is
3 essentially a fact-driven matter of first impression. Against
4 that backdrop, the court in each bankruptcy weighs whether and
5 how the CSA applies, and how and whether that application
6 creates such a problem of legality that an otherwise eligible
7 debtor can or cannot seek the fresh start of a bankruptcy
8 discharge that would otherwise be available absent connections
9 with marijuana.

10 **B. Cause to Dismiss**

11 One of the bedrock principles of our bankruptcy law and
12 system is that the honest but unfortunate debtor is entitled to
13 a fresh start. *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S.
14 709, 715 (2018) (“One of the ‘main purposes’ of the federal
15 bankruptcy system is ‘to aid the unfortunate debtor by giving
16 him a fresh start in life, free from debts, except of a certain
17 character.’”) (quoting *Stellwagen v. Clum*, 245 U.S. 605, 617
18 (1918) (internal formatting omitted)); *Grogan v. Garner*, 498
19 U.S. 279, 286-87 (1994) (“the [Bankruptcy] Act limits the
20 opportunity for a completely unencumbered new beginning to the
21 ‘honest but unfortunate debtor.’”) (quoting *Local Loan Co. v.*
22 *Hunt*, 292 U.S. 234, 244 (1934)).

23 Another well-established principle is to refrain from
24 applying statutory mandates in a contradictory manner. For
25 example, in *Law v. Siegel*, 134 S. Ct. 1188 (2014), the Supreme
26 Court declined to contravene expressed provisions of the
27 Bankruptcy Code regarding administrative expenses on the one
28 hand and exemptions on the other hand and held that a debtor’s

1 exempt property could not be used to pay those administrative
2 expenses notwithstanding debtor's egregious conduct that was not
3 related to his exemption claim. Stated otherwise, the
4 provisions of the Bankruptcy Code regarding exemptions would not
5 give way to another section of the Bankruptcy Code that
6 permitted allowance of administrative expenses.

7 Another familiar principle is a rule of construction found
8 in Section 102(3): "includes" and "including" are not limiting.
9 Thus, in Section 707(a), the causes that justify court's
10 dismissal include, but are not limited to, the subsection's
11 three enumerated events listed *supra* at fn. 3.

12 In chapters 11, 12 and 13, there are longer lists of
13 examples of what constitutes cause justifying dismissal, but
14 almost all, without exception, are based upon conduct, or the
15 absence of conduct, by the debtor or some other representative
16 of the estate. See Sections 1112(b)(4); 1208; 1307(c).

17 There is a "stated reluctance in this Circuit to adopt *per*
18 *se* bright-line rules requiring the immediate disposition of
19 bankruptcy cases in which marijuana activity is present[.]
20 *Burton v. Maney (In re Burton)*, 610 B.R. 633 (9th Cir. BAP
21 2020). "Congress did not adopt a 'zero tolerance' policy that
22 requires dismissal of any bankruptcy case involving violation of
23 the CSA (or other activity that might be proven to be illegal.)"
24 *In re Hacienda Co.*, 647 B.R. 748, 754 (Bankr. C.D. Cal. 2023);
25 *see also In re Blumsack*, 657 B.R. 505, 515 (BAP 1st Cir. 2024)
26 (citing *Hacienda* for the proposition that Congress has not
27 adopted a zero-tolerance policy that requires dismissal for any
28 violation of the CSA, and going on to state "[t]hat type of
policy choice to close the

1 doors to the bankruptcy court categorically, without regard to
2 individual circumstances, is one more appropriately left to the
3 legislature.”). To repeat, Section 109(b) does not lock the
4 bankruptcy court’s doors to exclude individuals in the marijuana
5 business.

6 Taking all these points into consideration, before this
7 court will dismiss debtor’s case for cause, it needs to locate
8 any causal connection linking the debtor to whatever dire
9 outcomes the statute and the context either specifically or
10 inferentially identify. Here is where the Dismissal Motions
11 fall short of the mark.

12 The only cause asserted is the Debtor’s ownership interests
13 in LLCs involved in the marijuana business when he filed
14 bankruptcy, and the resulting duty of the trustee to administer
15 some of those assets that he believes will result in his
16 violation of federal law. Debtor has played by all of the rules
17 of the bankruptcy game so far and as noted above, it is not
18 Debtor’s pre- or post-petition conduct but the trustee’s
19 anticipated actions alone which the Dismissal Motions hold out as
20 cause for dismissal.

21 **C. Marijuana Cases and the Debtor**

22 Most of the reported decisions cited in the Dismissal
23 Motions and by the Debtor arise in chapter 11 or chapter 13. See
24 *Hacienda*, 647 B.R. 748 (Bankr. C.D. Cal. 2023); *In re Blumsack*,
25 657 B.R. 505, (BAP 1st Cir. 2024); *In re Johnson*, 532 B.R. 53
26 (Bankr. W.D. Mich. 2015); *Arm Ventures, LLC*, 564 B.R. 77 (Bankr.
27 S.D. Fla. 2017); *In re Way to Grow, Inc.*, 597 B.R. 111 (Bankr.
28 D. Colo 2018); *In re Rent-Rite Super Kegs West Ltd.*, 484 B.R.

1 799 (Bankr. D. Colo. 2012); *In re Mayer*, 2022 WL 18715955
2 (Bankr. D. Ariz. Jan. 31, 2022); *In re Kittrell*, 2020 WL 6821720
3 (Bankr. D. Ariz. Oct. 6, 2020). In these cases, the courts deal
4 with the actual or anticipated post-petition conduct expected of
5 the debtor, the debtor-in-possession or the chapter 13 trustee,
6 almost entirely in the context of use of income or funds from
7 businesses that are in violation of the CSA during chapter 11
8 reorganization or administration of a chapter 13 plan. Those
9 cases, therefore, but not chapter 7 cases, present a different
10 and difficult issue is whether the bankruptcy court and the
11 court appointed bankruptcy trustee should play a role in the
12 continued administration of income derived from a marijuana
13 business.

14 Other chapter 7 cases are also distinguishable from this
15 Debtor's situation: *Arenas v. U.S. Tr. (In re Arenas)*, 535 B.R.
16 845 (10th Cir. BAP 2015) (dismissal of chapter 7 was appropriate
17 because trustee would have had to administer rental income from
18 marijuana business as well as proceeds of the joint-debtor's
19 personal cultivation and sale of marijuana); *In re Great Lakes*
20 *Cultivation, LLC*, 2022 WL 3569586 (E.D. Mich. August 18, 2022)
21 (corporate debtor's business consisted entirely of the growth
22 and sale of medical marijuana, bankruptcy court's finding that
23 cause for dismissal was appropriate because chapter 7 trustee
24 could not lawfully administer the assets of the debtor
25 corporation); *In re Medpoint Management, LLC*, 2016 Bankr.
26 LEXIS 2197, 2016 WL 3251581 (9th Cir. BAP June 3, 2016)
27 (substantially same to *Great Lakes*, except debtor managed
28 another corporation's marijuana operations). *In re Malul*, 614

1 B.R. 699 (Bankr. D. Col. 2020) (debtor sought to schedule
2 previously undisclosed marijuana business investments and
3 related causes of action in her reopened chapter 7 case solely
4 to compel trustee's abandonment of those assets as a means to
5 strengthen her position in state court litigation).

6 Because Debtor is the named operator of Caliverde, the
7 trustee may cease those operations immediately if he deems that
8 appropriate and necessary. Debtor does not receive rental
9 income from a marijuana business, nor does he personally
10 cultivate marijuana. Debtor is not hiding his interests in
11 marijuana businesses, nor is there any indication that his
12 bankruptcy filing was part of a litigation strategy other than
13 stemming the tide of a run-of-the-mill contract dispute with
14 Dattani Trust. Whether the trustee chooses to abandon assets
15 after his own analysis is discussed below, and is
16 distinguishable from the debtor's attempts to manipulate the
17 bankruptcy system as in *Malul*.

18 Here, Debtor is separate from the entities that engage in
19 the marijuana business, meaning the trustee is not in danger of
20 having to administer the actual tangible marijuana assets held
21 by those businesses. Neither entity is in bankruptcy, nor are
22 their tangible assets.

23 While it is true that realizing profits from a marijuana
24 business is prohibited by the CSA, there is nothing presented
25 by the parties, nor discovered by the court, that suggests that
26 monetizing an intangible ownership interest is the equivalent
27 of profiting from a marijuana business. The words of the CSA
28

1 simply do not reach as far as the authors of the Dismissal
2 Motions might prefer.

3 Under California law, shareholders "neither own the
4 corporate property nor the corporate earnings. The shareholder
5 simply has an expectancy interest in each, and he becomes the
6 owner [upon a liquidation action or declaration of a dividend]"
7 See *Miller v. McColgan*, 17 Cal.2d 432, 436 (1941); see also *In*
8 *re Pettit*, 217 F.3d 1072, 1078 (9th Cir. 2000) ("bankruptcy
9 courts must look to state law to determine whether and to what
10 extent the debtor has any legal or equitable interests in
11 property as of the commencement of the case.")¹⁰

12 This separation from the CSA-prohibited products and
13 proceeds is important regarding both the equity ownership of
14 Caliverde and the claim for distributions from Grassy Castro.
15 First, no one - not the Debtor, not the Dattani Trust, not the
16 UST, not the trustee - have analyzed either the legal
17 possibility or the financial likelihood of realizing value by
18 sale of the ownership of Caliverde, including its name, goodwill
19 customer list and other intangibles. They do not on their face
20 appear to implicate the CSA.

21 As for Grassy Castro, only the Debtor has opined as to what
22 he thinks of his claim against his co-owners. The trustee and
23 movants have taken this opinion as fact without further
24 investigation or analysis, despite Debtor's other statement that
25

26 ¹⁰ For a very recent example of how the Ninth Circuit dealt
27 with this separation of an owner from the assets of a
28 corporation, see the unpublished decision *Kasolas v. Aurora*
Capital Advisors et al. (In re Brower), 2024 WL 2826283 (9th
Cir. June 4, 2024).

1 his co-owners have stated that there has not yet been any profit
2 derived from the business that could be distributed.

3 The case that is most factually related to Debtor's
4 situation is *In re Burton*. In *Burton*, the joint debtors were
5 individuals who held a 65% membership interest in a corporate
6 marijuana business called Agricann, along with one of the joint
7 debtors being the manager and president of the business. *Burton*
8 at 634. The debtors filed chapter 13 and listed their interest
9 in Agricann, as well as a cause of action Agricann held against
10 another entity. *Id.* Agricann commenced litigation while the
11 debtors tried and failed multiple times to confirm a chapter 13
12 plan. *Id.* at 634-35. Faced with a motion to convert the case to
13 chapter 7, the bankruptcy court determined that conversion
14 would force a chapter 7 trustee to administer a potential
15 recovery, and that recovery would constitute marijuana assets in
16 violation of the CSA. *Id.* at 639. The bankruptcy court
17 concluded that debtors' ownership interest in Agricann and thus
18 the trustee's forced administration of the "tainted" proceeds of
19 the Agricann litigation was "cause" for dismissal. *Id.* at 639.

20 The BAP held that "[t]he bankruptcy court did not err in
21 this finding, nor did it abuse its discretion in dismissing the
22 case on those grounds."

23 This case is instructive, but as with others, turns on the
24 facts presented. The bankruptcy court found not credible the
25 debtors' assertion that the Agricann claims were worthless, and
26 noted that those claims related specifically to the growing and
27 selling of marijuana.

1 What this court deems to be more instructive is the
2 analysis in *The Green Earth Wellness Center, LLC v. Atain*
3 *Specialty Insurance Company*, 163 F.Supp. 3d 821 (D. Colo. 2016).
4 That case involved a claim by a marijuana grower for recovery on
5 an insurance policy when the grower's plants were damaged in a
6 fire. The issue the court was presented with relevance here was
7 whether the insurer could avoid its obligations to the insured
8 under its insurance policy based upon public policy concerns
9 since some of the property lost in the fire was covered by the
10 CSA. The court rejected the position of the insurer that the
11 demand for payment under the policy was a demand for monetary
12 replacement of marijuana plants and accessories. In doing so,
13 the court stressed that the dispute was over interpretation and
14 application of mutually agreed upon contract terms, and that is
15 why the insurer would be called upon honor its contractual
16 promise to pay money to the insured for its marijuana losses.

17 Contrary to the bankruptcy court's holding in *Burton* that
18 proceeds from litigation arising between two entities engaging
19 in marijuana business must therefore be proceeds from a
20 marijuana business, this court aligns with the *Green Earth* court
21 and holds that any potential sale of a membership interest in an
22 LLC is just that—the sale of an ownership interest whose rights
23 are bundled in applicable articles of incorporation or operating
24 agreements. It is not necessarily the proceeds of a marijuana
25 business because the LLC is itself engaged in marijuana
26 business. Likewise, a claim against fellow LLC owners for owed
27 proceeds are not necessarily a claim for the profits of a
28 marijuana business, but a claim for the entitlements owed to the

1 holder of ownership interests.

2 Further still, no party has suggested, nor does the court
3 know of a reason, why the trustee would violate the CSA or any
4 other law were he to offer to sell, and actually sell, such
5 intangible assets of the estate such as domain names.

6 In sum, possible sales of interests in LLCs, enforcement
7 of LLCs' contractual rights and sale of other intangibles
8 related to marijuana, but not directly implicated by the
9 language of the CSA, are not sufficient for this court to find
10 cause to dismiss an otherwise eligible individual debtor's
11 chapter 7 case.

12 **D. The Chapter 7 Trustee's Options**

13 There are many tools in the bankruptcy toolbox to deal with
14 debtors who misbehave pre- or post-petition. For instance, a
15 debtor making a false oath or refusing to obey a lawful order of
16 the bankruptcy court can be the basis to seek denial of
17 discharge by the UST, the case trustee or any other creditor.¹¹
18 Debtors who misbehaved pre-petition may be subject to a
19 determination of non-dischargeability of certain debts.¹²

20 Another rarely used tool in that toolbox is available if
21 the trustee chooses not to continue in that role, and no other
22 private panel member will do so. That tool is found in 28
23 U.S.C. § 586(a)(2), permitting the United States Trustee to step
24

25
26 ¹¹ Bankruptcy Code Sections 727(a)(4) and 727(a)(6)(A).

27 ¹² Dattani Trust has already filed A.P. No. 24-03023 alleging
28 grounds for denial under Section 727 and to determine non-
dischargeability under Section 523.

1 in and act as case trustee. *Balser v. Dept of Justice, Office*
2 *of U.S. Trustee*, 327 F.3d 903 (9th Cir. 2003). See also *In re*
3 *Tyrone F. Conner Corp, Inc.*, 140 B.R. 771, 780-781 (Bankr. E.D.
4 Cal. 1992).¹³ The UST can step in here if need be.

5 All experienced bankruptcy practitioners are quite familiar
6 with Section 554, another available tool. They know that
7 property of the estate that is burdensome to the estate can be
8 abandoned. If the trustee here cannot realize value from the
9 assets because of CSA-related prohibitions, the solution is
10 there waiting. The fact that an abandoned asset is returned to
11 the debtor is of no legal significance; it is simply a legal
12 result. Before the trustee, whoever that turns out to be, moves
13 to abandon, the Dattani Trust or any other creditor will have
14 an opportunity to offer to acquire any such available intangible
15 non-exempt assets and exploit them free of any bankruptcy
16 connections, thus ensuring that Debtor will not regain control
17 of them.

18 Thus, as stated above, if the trustee can make a case for
19 enforcement of Debtor's rights vis-à-vis Grassy Castro's co-
20 owners, he presumably will be enforcing contractual rights, not
21 some sort of specific performance obligations to deliver
22

23
24 ¹³ In that case the court's displeasure was clear: "As the UST
25 has failed to diligently and realistically conduct a search for
26 a Chapter 11 trustee, and refuses to look further, the Court
27 finds and holds that necessity exists as contemplated under 11
28 U.S.C. § 321(c) for the UST to serve as trustee for the interim.
The UST shall forthwith assume all duties of the Chapter 11
trustee proscribed under the Code and shall serve until they
(sic)are able to appoint another candidate."

1 marijuana, just as the court held in *Green Earth*. If that
2 supposition proves to be unfounded, the trustee can abandon any
3 claim against those co-owners.

4 The same result follows if the trustee determines that he
5 cannot capitalize on the potential value of the intangibles such
6 as the domain names and the ownership of Caliverde and the other
7 wholly or partially owned LLCs.

8 **IV. CONCLUSION**

9 The Dismissal Motions do not justify a discretionary
10 dismissal of this case. There is no clear basis to disqualify a
11 debtor from the benefits of chapter 7 because of perceived but
12 unanalyzed difficulties the chapter 7 trustee might face when
13 administering the bankruptcy estate. To somehow equate the
14 trustee's dilemma with cause to deny this debtor's right to file
15 and stay in chapter 7 has not been explained by the Dismissal
16 Motions, and the court would be abusing its discretion under
17 Section 707(a) to grant them for the reasons argued in those
18 motions.

19 By separate orders issued concurrently with this Memorandum
20 Decision, the court will deny the Dismissal Motions for the
21 foregoing reasons.

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23 *** END OF MEMORANDUM DECISION ***
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