



Signed and Filed: June 26, 2024

*Dennis Montali*

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)<sup>1</sup> for "cause" and both rely on similar arguments.

<sup>1</sup> 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).<sup>2</sup>

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.<sup>3</sup> Neither relies on Section

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16  
17 <sup>2</sup> "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.

<sup>3</sup> 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.

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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**<sup>4</sup>

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 names<sup>5</sup>,

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

24 <sup>5</sup> 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  
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27 coke.com, joydolphins.com, lilnappers.com, lilnapperz.com,  
28 fleurlocale.com, lefleur.shop, grandefleur.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.<sup>6</sup>

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25  
26 <sup>6</sup> 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 business<sup>7</sup>, 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.<sup>8</sup> 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.<sup>9</sup>

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.

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21 <sup>7</sup> 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 <sup>8</sup> See <https://www.jdsupra.com/legalnews/attorney-general-garland-reconfirms-the-9983989/>.

27 <sup>9</sup> *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.")<sup>10</sup>

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  
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26 <sup>10</sup> 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.<sup>11</sup>  
18 Debtors who misbehaved pre-petition may be subject to a  
19 determination of non-dischargeability of certain debts.<sup>12</sup>

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

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25  
26 <sup>11</sup> Bankruptcy Code Sections 727(a)(4) and 727(a)(6)(A).

27 <sup>12</sup> 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).<sup>13</sup> 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

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23  
24 <sup>13</sup> 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.

22  
23 \*\*\* END OF MEMORANDUM DECISION \*\*\*  
24  
25  
26  
27  
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