UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re: MOUNT ACADIA SENIOR PROPERTIES LLC, Debtor-in-Possession.	Bk. Case No.: 25-05308-JBM11 **MEMORANDUM DECISION GRANTING LIVE OAK BANKING COMPANY'S MOTION TO DISMISS CHAPTER 11 CASE** Date: January 14, 2026 Time: 2:00 p.m. Judge: Hon. J. Barrett Marum

INTRODUCTION

Creditor Live Oak Banking Company ("Live Oak") moves to dismiss the Debtor's Chapter 11 case on the grounds that the Debtor filed the Chapter 11 petition without authorization. Alternatively Live Oak requests that the Court excuse the state court receiver's turnover of certain estate property under § 543(d)(1). Based on the papers submitted for and against the requested relief, and arguments presented at the hearing, the Court concludes that the Debtor did not have authority under state law to file the Chapter 11 petition and the Court will therefore dismiss the case.

FACTS

The Debtor is the owner of real property in San Diego, California that it has been developing into a senior and assisted living facility. On December 23, 2025, the Debtor filed a barebones Chapter 11 petition. ECF No. 1. The Chapter 11 petition was executed by John T. DeWald as Managing Partner of

the Debtor. Attached to the petition was a document titled "Action by Written Consent of the Manager of [the Debtor]," which stated that the Debtor was "authorized to file a Petititon for Relief under Chapter 11 of the Bankruptcy Code and [was] further authorized to execute any and all documents and to do any and all acts and deeds necessary and proper to carry into effect the foregoing resolution[.]" *Id*. at 25. This written consent was also executed by John T. DeWald as the Debtor's Managing Partner and dated December 23, 2025. *Id*.

The following day, on December 24, 2025, the Debtor filed a Motion for Entry of an Order Authorizing Debtor to Engage David Kieffer of Stapleton Group as Chief Restructuring Officer of the Debtor ("CRO Motion") and requested that the matter be heard on shortened time. ECF No. 5. That same day the Court entered an order shortening time and set the matter for hearing on December 30, 2025. In its CRO Motion, the Debtor sought the Court's approval of both Mr. Kieffer's engagement as the CRO and also the turnover of assets in the Receiver's possession to himself in his capacity as CRO pursuant to § 543.

Prior to the Chapter 11 petition, Live Oak sued the Debtor and related affiliates, including the Debtor's sole manager, Mount Acadia Ventures, LLC, in San Diego Superior Court[1] (the "state court action"), and eventually filed an application for receivership over the Debtor and the related affiliates. The state court conducted a two-day evidentiary hearing in early December 2025.

On December 9, 2025, the state court entered an order ("State Court Order"), which granted Live Oak's application and appointed David Kieffer of The Stapleton Group as the receiver ("Receiver") over the real and personal property assets of the Debtor and Mount Acadia Senior Operations, LLC, defined jointly in the State Court Order as the "Mount Acadia Parties," and their "going concern operations," defined in the State Court Order as the receivership properties. The State Court Order contained 29 enumerated paragraphs that detailed the Receiver's broad powers and obligations to preserve the receivership properties.

Of import here, the State Court Order provided that "[t]he Receiver shall have **all** the powers of the directors, officer and managers of [the] Mount Acadia Parties, and **the authorities of any directors,**

[1] The state court action is styled as *Live Oak Banking Company v. Mount Acadia Senior Properties, LLC, et al.*, case number 25CU060842C.

officers, or managers in existence immediately prior to entry of this Order are hereby suspended." ECF No. 7, Ex. A at 2 (Emphasis added). In addition, the State Court Order permanently enjoined the Defendants, including the Debtor and its manager, and any of their agents, partners, or employees, from taking a number of actions with respect to the receivership properties or interfering with or otherwise hindering the Receiver. *Id*. at 9.

The Receiver is the same individual whom the Debtor seeks to employ as CRO in the Chapter 11 case. In the bankruptcy case, Live Oak filed opposition to the Debtor's CRO Motion. Among other things, it asserted that the Debtor's filing of the Chapter 11 petition was unauthorized based on the State Court Order, which divested the Debtor's manager of authority to file the petition commencing the bankruptcy case. Live Oak also argued that the Debtor had no cash collateral and lacked funds to pay the CRO. On the same date, December 30, 2025, Live Oak filed the Motion to Dismiss on the basis that the Debtor lacked authority to file the Chapter 11 petition based on the State Court Order entered earlier in the month. ECF No. 22.

The Court heard the CRO Motion on December 30, 2025. Based on arguments presented at the hearing, the Court continued the matter to January 14, 2026, to be heard concurrently with the Motion to Dismiss, on which the Court shortened time as stated on the record at the hearing. The Court requested the proposed CRO's supplemental declaration to address issues identified by the United States Trustee. The Court also set deadlines to oppose and reply to the CRO Motion and Motion to Dismiss.

The Debtor subsequently filed opposition to the Motion to Dismiss. Among other things, it argued that the Debtor was authorized to file the Chapter 11 petition because the State Court Order did not purport to replace the Debtor's manager. The Debtor also argued that if it lacked authority to file the petition, then Live Oak lacked standing to challenge the validity of the petition based on a long-established Supreme Court case. Finally, the Debtor argued that if its Chapter 11 petition was defective, the Receiver ratified the petition by both his participation in the bankruptcy case and his failure to move to dismiss. In support of this position, the Debtor pointed out that the Receiver had agreed to be retained as the Debtor's CRO in the Chapter 11 case, that the CRO had executed a declaration in support of the CRO Motion, and supported the bankruptcy case by failing to oppose the Motion to Dismiss.

Signed by Judge J Barrett Marum February 5, 2026

The Court heard the Motion to Dismiss on January 14, 2026. At the hearing, in addition to the Debtor and Live Oak, the Court heard from the office of the Receiver/proposed CRO. The Receiver advised that the construction project continued to move forward, notwithstanding the bankruptcy filing. On the issue of the validity of the Chapter 11 petition, the Receiver stated that it had no opinion on the issue. The Receiver agreed that it would have been authorized to file a bankruptcy petition under the State Court Order. And finally, the Receiver represented to the Court that its declarations filed in support of the CRO Motion were not intended to ratify the Chapter 11 petition or bankruptcy filing. The Receiver noted that it had spoken with both the Debtor and Live Oak and made clear that it would agree to continue to serve as a fiduciary in the Chapter 11 case, but stated that the Receiver was "not going to take a stance" on the issue of whether the Chapter 11 petition was authorized.

Following arguments presented, the Court continued the CRO Motion to January 28, 2026 and took the Motion to Dismiss under submission. In response to comments the parties made at the hearing, the Court noted that if the parties believed that a delay on the Court's order on the Motion to Dismiss would be helpful to their settlement negotiations, they could jointly contact the Courtroom Deputy to make the request.

The parties thereafter contacted the Courtroom Deputy to request a delay on the Court's order pending settlement negotiations. The Court intended to hold its order on the Motion to Dismiss until January 28, 2026. The parties, however, again contacted the Courtroom Deputy and requested further time. As a result, the Court issued a Tentative Ruling on the CRO Motion, which the Court had previously continued to January 28, 2026, and further continued the matter to February 5, 2026.

On February 4, 2026, Debtor's counsel advised the Courtroom Deputy that settlement negotiations had terminated such that the parties no longer requested that the Court hold its order on the Motion to Dismiss.

DISCUSSION

A. Live Oak's standing to challenge the validity of the Debtor's Chapter 11 petition.

In opposition to Live Oak's motion, among other things, the Debtor challenges Live Oak's standing to object to the validity of the Debtor's chapter 11 petition and move for case dismissal based

Signed by Judge J Barrett Marum February 5, 2026

on *Royal Indem. Co. v. Am. Bond & Mortgage Co.*, 289 U.S. 165 (1933). In *Royal Indemnity*, a case decided under the Bankruptcy Act of 1898, or the predecessor of the modern Bankruptcy Code, the Supreme Court examined whether creditors had standing to challenge the debtor's bankruptcy petition, which was filed without the consent of the debtor's stockholders as required under state law. The Supreme Court concluded that the creditors lacked standing to challenge the petition and adjudication of the debtor in bankruptcy. In doing so, the Supreme Court stated:

> Even if action of directors authorizing the filing of a voluntary petition, or admitting inability of the corporation to pay its debts and its willingness on that ground to be adjudged a bankrupt, thus creating an act of bankruptcy under section 3a(6) of the act, were **in excess of the authority conferred, or otherwise invalid, creditors could not for that reason attack the consequent adjudication**. The question is purely one of the internal management of the corporation. **Creditors have no standing to plead statutory requirements not intended for their protection.** If the stockholders' rights had been infringed, and they chose to waive them, a creditor could not assert them in opposing an adjudication."

289 U.S. at 171 (emphasis added).

Royal Indemnity remains good law. That said, the facts here are distinguishable. First, Live Oak is not challenging Debtor's authorization to file a Chapter 11 petition based on the failure to comply with California law on corporate formalities. Instead, Live Oak's challenge to the validity of the Chapter 11 petition is predicated on the State Court Order, which vested all powers of the Debtor's manager in the Receiver and simultaneously suspended the authority of the Debtor's manager to act on behalf of the Debtor, using language that is very similar to the language at issue in *Sino Clean Energy, Inc. v. Seiden (In re Sino Clean Energy, Inc.)*, 901 F.3d 1139, 1141 (9th Cir. 2018) and *Oil & Gas Co. v. Duryee*, 9 F.3d 771 (9th Cir. 1993), cases the Court addresses further below. There is no question that the State Court Order interrupted the Debtor's ability to manage its affairs, on its own or through its manager, or that the State Court placed those powers and authorities concurrently in the Receiver. In this respect, the holding in *Royal Indemnity* and its progeny do not squarely apply to the facts here.

Second, the Supreme Court decided *Royal Indemnity* in 1933, under the Bankruptcy Act of 1898. The Bankruptcy Act limited the participation of creditors in bankruptcy proceedings. *See Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 279 (2024). In *Truck Insurance Exchange*, the Supreme Court examined the issue of standing pursuant to § 1109. In doing so, it stated:

> Congress consistently has acted to promote greater participation in reorganization proceedings. Section 77B of the Bankruptcy Act of 1898, for example, provided debtors the right to be heard on all issues, **but limited the right of creditors and stockholders to only certain issues**. See 11 U.S.C. § 207 (1946 ed.) (emphasis added). Section 206 of the Bankruptcy Act of 1938 broadened participation and provided that "[the] debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter.

Id. at 279 (emphasis added).

The Bankruptcy Code, enacted in 1978, implemented § 1109(b), which expressly includes creditors as a party in interest with the right to appear and be heard on any issue in a chapter 11 case. Under the Bankruptcy Code, and in contrast to the Bankruptcy Act, "[a] party in interest, including . . . a creditor . . . **may raise and may appear and be heard on any issue** in a case under this chapter." Emphasis added. *See also Truck Ins. Exch.*, 602 U.S. at 272 (for the purposes of § 1109(b), a party "with financial responsibility on a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a 'party in interest'" in the chapter 11 proceedings). Whether the Debtor's Chapter 11 petition was properly filed is plainly an issue that falls within the purview of "any issue" in a chapter 11 case for the purposes of § 1109(b).

Thus, although *Royal Indemnity* remains good law, the facts of this case and the current iteration of bankruptcy law support the conclusion that Live Oak has standing to challenge the validity of the Debtor's Chapter 11 petition.

B. The Court may independently review the validity of the Debtor's Chapter 11 petition.

Even if Live Oak (or any other party in interest) lacked standing or failed to raise the propriety of the Chapter 11 filing, the Court is entitled on its own volition to examine whether the bankruptcy

Signed by Judge J Barrett Marum February 5, 2026

petition was valid at the time filed, which bears directly on whether the bankruptcy case is properly before the Court. *See generally* 11 U.S.C. § 105(a). The Court will not turn a blind eye to such an issue, especially when the State Court conducted a two-day evidentiary hearing before it decided to strip the Debtor's manager of its powers and to vest them in the Receiver. Thus, even if the Court had concluded that Live Oak lacked standing to challenge the Debtor's Chapter 11 petition – which it does not – the Court *sua sponte* exercises its authority to further examine this critical issue. The Court thus turns next to whether the Debtor was authorized on the petition date to file the Chapter 11 petition.

C. The Debtor lacked authority to file its Chapter 11 petition on the petition date based on the State Court Order.

Generally, "[a] person filing a voluntary petition for bankruptcy on behalf of a business entity must be duly authorized to do so." *In re Parks Diversified, L.P.*, 661 B.R. 401, 414 (C.D. Cal. 2024) (internal citation omitted), *reh'g denied*, 2024 WL 4405242 (C.D. Cal. Aug. 9, 2024), *on appeal sub. nom., Talon Diversified Holdings Inc., et al. v. Klein, et al.* (9th Cir. Sept. 10, 2024). "State law generally determines who has authority to file a bankruptcy petition." *Id*. (internal citation omitted) (collecting cases). "Whether or not a party possesses authority under state law to initiate a bankruptcy case is a determination within the exclusive jurisdiction of a bankruptcy court." *Id*. (internal citation omitted). If a person is not authorized to file bankruptcy, "the court has no alternative but to dismiss the petition." *Id.* at 414 (internal citation omitted).

The Ninth Circuit's decision in *Sino* provides the Court with a clear path to its decision. In *Sino*, the Ninth Circuit affirmed the bankruptcy court's decision, and on appeal the district court's decision affirming the bankruptcy court, to dismiss a bankruptcy case when the debtor filed its petition without authorization to do so. Pre-petition, the corporate debtor was party to a state court action that culminated in the state court's appointment of a receiver for the debtor. 901 F.3d at 1140. The state court granted the receiver various powers, including the power to reconstitute the debtor's board of directors. *Id*. at 1141. The receiver subsequently replaced the debtor's board of directors with one director. *Id*. But a former officer of the debtor sought to reclaim power and filed a voluntary petition for Chapter 11

Signed by Judge J Barrett Marum February 5, 2026

bankruptcy on the debtor's behalf with other former board directors. *Id*. The bankruptcy court dismissed the chapter 11 case on the basis that the chapter 11 petition was filed without corporate authority given that the state court receiver had replaced the debtor's board of directors. *Id*. The district court affirmed. *Id*.

On appeal, the Ninth Circuit looked to state law as to the requirements for a corporate board of directors to take action on behalf of a corporation, such as filing a bankruptcy petition, and the general premise that state law includes the decisions of state courts. *In re Sino Clean Energy, Inc.*, 901 F.3d at 1141 (citing *Tenneco W., Inc. v. Marathon Oil Co.*, 756 F.2d 769, 771 (9th Cir. 1985)). Based on application of state law to the facts of the case, the Ninth Circuit concluded that "the individuals who filed the bankruptcy petition were not members of the board of directors of [the debtor] at the time they filed the petition, and they were not authorized to file a bankruptcy petition on behalf of [the debtor]." *Id*.

In reaching this conclusion, the Ninth Circuit noted that its decision in *Sino* was buttressed by an older circuit decision – *Oil & Gas Co. v. Duryee*, 9 F.3d 771 (9th Cir. 1993). *In re Sino Clean Energy, Inc.*, 901 F.3d at 1141. *Duryee* involved an insurance company that attempted to file a bankruptcy petition in the Central District of California. *See id*. at 772. Prior to the filing, an Ohio state court had appointed a rehabilitator to run the company and placed the company into rehabilitation. *Id*. The company's former president then sought to file for bankruptcy, notwithstanding that the state court had issued a temporary restraining order enjoining the former president from taking such action. *Id*. Importantly, the state court order appointing the rehabilitator provided that "[t]he Rehabilitator shall have all the powers of the directors, officers, and managers of Defendant, **whose authorities are hereby suspended**." *Id*. at 773 (emphasis added). The Ninth Circuit concluded that "the only person, then, who could go to court on behalf of [the debtor] was [the rehabilitator]." *Id*. As a result, the former president's attempt to file a bankruptcy petition on the debtor's behalf was "null and void." *Id*.

Here, the Debtor is a single manager limited liability company registered in the State of California; as a result, it is subject to the California Revised Uniform Limited Liability Company Act and Cal. Corp. Code § 17704.07. Consequently, under California law, actions taken by the Debtor's manager on behalf of the Debtor required that corporate authority was vested in the manager.

But there is no dispute that the State Court Order divested the Debtor's manager from its authority to act on behalf of the Debtor, albeit during the period of the receivership.[2] The State Court Order expressly states that the authority of any manager in existence immediately prior to entry of the order was "hereby suspended." And there is no dispute that the State Court Order was effectuated; pursuant to representations made to the Court, the Receiver promptly posted the requisite bond, took the oath required, and has worked with the parties on the development project both on a pre- and post-petition basis.

Thus, consistent with *Sino* and *Duryee*, and the general premise in *Tenneco* that state law includes the decisions of the state court, the Court concludes that the Debtor was without authority on December 23, 2025 to file the Chapter 11 petition, or to execute the written consent to file the bankruptcy case.[3] On December 23, 2025, the only party vested with authority to take such action on behalf of the Debtor was the Receiver.

---

[2] The Court notes that under the terms of the State Court Order, the Receiver was not required to replace the Debtor's manager; instead, it appears that the Debtor's manager would regain power and authority over the Debtor once the receivership was terminated.

[3] In this respect, the Court declines to follow the holding in *In re Orchards Vill. Invs., LLC*, 405 B.R. 341 (Bankr. D. Or. 2009), which the Debtor asserts supports its position that the Court may retain the Chapter 11 case, notwithstanding the State Court Order's suspension of the Debtor's manager's authority to act. There, the bankruptcy court examined whether a state court pre-petition order appointing a state court receiver prevented the Debtor's manager and members from filing the chapter 11 petition. The bankruptcy court's analysis was in part informed by *In re Corporate and Leisure Event Productions, Inc.*, 351 B.R. 724, 728 (Bankr. D. Ariz. 2006) (citing *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) (1819)). In *Sino*, however, the Ninth Circuit expressly stated that: "[t]o the extent that *Corporate & Leisure* contradicts our decision in *Duryee*, **it is wrong**. No matter the equitable considerations, state law dictates which persons may file a bankruptcy petition on behalf of a debtor corporation." *In re Sino Clean Energy, Inc.*, 901 F.3d at 1142 (emphasis added). As such, to the extent that *Orchards Vill. Invs., LLC* remains good law, the Court disagrees with its conclusion.

Signed by Judge J Barrett Marum February 5, 2026

The result here would be different had the Receiver filed the Chapter 11 petition and executed the written consent to file bankruptcy for the Debtor. But the Receiver did not. The result would also be different had the Receiver ratified the Debtor's decision to file the Chapter 11 petition. *See* Cal. Civ. Code § 2310 ("A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof."); Cal. Civ. Code § 2313 ("No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent."); *see also Camden Systems, LLC v. 409 North Camden, LLC*, 103 Cal.App.5th 1068 (2024) (noting that, "[r]atification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him.") (internal citations omitted) (alteration in original).

The Receiver has not taken actions in the bankruptcy case suggestive of an intent to ratify the Debtor's unauthorized Chapter 11 petition. Notwithstanding the Debtor's arguments to the contrary, nothing in the record supports a conclusion that, under state law, the Receiver ratified the unauthorized Chapter 11 petition.

The Receiver was conspicuously missing from the Chapter 11 case at case initiation. Oddly, the Debtor did not serve the Receiver with the CRO Motion. The Receiver was not present at the first hearing the Court held on the CRO Motion. And the Receiver did not file a document in support of or in opposition to the Motion to Dismiss. The Court surmises the Receiver has taken this approach to these proceedings given the Receiver's role in the state court action as an officer of the state court, a neutral fiduciary, rather than an agent of the parties to that proceeding.[4]

[4] In addition, the Court notes that the State Court Order includes a provision that "the Receiver shall not enter into an agreement with any party to this action about the administration of the receivership **or about any post-receivership matter**." ECF No. 7, Ex. A at 8 (emphasis added).

To the extent there existed any question regarding whether the Receiver ratified the Debtor's unauthorized Chapter 11 petition, that was laid to rest at the hearing on the Motion to Dismiss. At that hearing, the Receiver expressly stated that it did not take a position on the issue of whether the Chapter 11 petition was authorized at the time of filing and clarified that its supplemental declarations filed in support of the CRO Motion were not evidence of its ratification of the Chapter 11 petition or generally its support of the bankruptcy case. In light of the Receiver's affirmative representations at the hearing on the Motion to Dismiss, the Court does not construe the Receiver's lack of opposition to the Motion to Dismiss as an implicit ratification of the Chapter 11 petition.

Finally, it is not lost on the Court that the state court appointed the Receiver with exceptionally broad powers, and empowered it to handle all aspects of the Debtor as a receivership entity, following a two-day evidentiary hearing. The Court will not second guess the state court's decision to place the Debtor into what appears to the Court to be very close to a full equity receivership, which included an immediate suspension of the Debtor's manager on December 9, 2025.

//

//

Based on the foregoing, it is **HEREBY ORDERED** that:

1. The Court concludes that, pursuant to the State Court Order, the Debtor lacked authorization to file the Chapter 11 petition on December 23, 2025;

2. The Court concludes that the Receiver has not during the course of the bankruptcy case ratified the Debtor's unauthorized Chapter 11 petition;

3. The Court **DISMISSES** the Chapter 11 case;

4. All stays now in effect are **VACATED**; and

5. Live Oak's alternative request for relief, with respect to authorizing excuse of the Receiver's turnover of estate property under 11 U.S.C. § 543(d)(1), is **DENIED AS MOOT**.

Dated: February 5, 2026

J. BARRETT MARUM, Judge
United States Bankruptcy Court