

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

January 12, 2023 at 2:00 p.m.

1. [22-90041-E-7](#)
[RHS-1](#)

AREA X INC.

**CONTINUED ORDER TO SHOW CAUSE
WHY CASE SHOULD NOT BE
CONVERTED; ORDER TO SHOW CAUSE
WHY THE COURT DOES NOT ORDER
SANCTIONS AND ORDER TO APPEAR**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditors, Former Debtor in Possession, Former Debtor in Possession's Attorney, Responsible Representative of the Debtor and Former Debtor in Possession, U.S. Trustee, and other parties in interest as stated on the Certificate of Service on July 1, 2022. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause to address why the court should not Order the Immediate Conversion of the Bankruptcy Case to one under Chapter 7 based on numerous concerns.

The Order to Show Cause is XXXXXXXXXX

JANUARY 12, 2023 STATUS AND SCHEDULING CONFERENCE

As addressed below, the court has been presented with completely opposite testimony under penalty of perjury by two parties in this Bankruptcy Case. Additionally, that Neftali Alberto, the principal of this Debtor and the debtor/debtor in possession in other cases and a bankruptcy debtor himself provided false information under penalty of perjury on the various Schedules.

A review of the Docket for this Case on January 10, 2023, discloses that no motions have been filed by the Chapter 7 Trustee or the U.S. Trustee (who may have to act given that the bankruptcy estate may

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be devoid of liquid assets) addressing the conflicting statements under penalty of perjury, the status of any discovery, and recommendations on his this matter should proceed.

At the January 12, 2023 Status and Scheduling Conference, **XXXXXXX**

ORDER TO SHOW CAUSE

Area X, Inc., the Debtor, commenced this bankruptcy case on February 7, 2022. On June 16, 2022, the court conducted a hearing on the Motion for Authority to Sell Property of the Bankruptcy Estate that was filed by Area X, Inc., serving as the Debtor in Possession. The court's ruling on that Motion raises several very serious issues for the Debtor in Possession and it's Responsible Representative Neftali Alberto (its president) concerning their conduct as the fiduciary of the Bankruptcy Estate. These issues, as stated in the court's ruling set for in the Civil Minutes, include:

- A. The Purchase Agreement names a nonexistent entity as the Purchaser.
- B. The Purchase Agreement is purported to be signed by a representative of the nonexistent entity. There is a largely illegible signature, with there being no date and no printed name for the purported representative of the nonexistent entity. The signature of the purported representative is right above the typed name of the nonexistent entity.
- C. It was unexplained how a representative of the purported real buyer would sign the Purchase Agreement as a representative of a nonexistent entity.
- D. Debtor in Possession's counsel reported at the hearing that Neftali Alberto, the fiduciary Responsible Representative, knew the name of the Purchaser on the Purchase Agreement was not correct, but instructed counsel to file it anyway, and that an amended purchase agreement would be generated.
- E. In the Motion For Authority to Sell Property, counsel for the Debtor in Possession noted that the purchaser named in the Motion was not the same as in the Purchase Agreement and an amended purchase agreement would be executed.
- F. No amended purchase agreement was generated.
- G. The fiduciary Responsible Representative of Debtor in Possession presented the court with no evidence of the Property having been marketed, or why a sale put together by the Responsible Representative was commercially reasonable.
- H. While the Debtor's pre-petition business, under the management of Neftali Alberto, is stated to have been the buying and selling of real property, such business operations drove the Debtor into bankruptcy, notwithstanding a thriving real estate market and soaring real estate prices.
- I. It was not explained how Neftali Alberto, who testified in his declaration that he had been a licensed real estate for eight years, would draft a Purchase Agreement to name a nonexistent entity as the Purchaser.

- J. The Purchase Agreement identifies the Seller as the Debtor, not the fiduciary Debtor in Possession. No explanation was provided for how Neftali Alberto, the fiduciary Responsible Representative, and counsel for the Debtor in Possession could make such a mistake and then prosecute the Motion For Authority to Sell Property pursuant to the Purchase Agreement in which the Debtor was the Seller.
- K. Subsequent to filing the Motion For Authority to Sell Property for \$185,000.00, Neftali Alberto, as the representative of the Debtor, stated under penalty of perjury that the Property actually has a value of \$250,000.00 (Schedule A/B filed on June 2, 2022, and the Motion to Sell filed on May 12, 2022). The question left hanging in the air is where was that “extra” \$65,000.00 suppose to go.

Civil Minutes; Dckt. 52.

Primo Farms, LLC Bankruptcy Case

Primo Farms, LLC is an entity (represented by the same counsel as Area X, Inc.) that filed a voluntary Chapter 11 case on December 3, 2020. 20-90779. Neftali Alberto is the fiduciary Responsible Representative of Primo Farms, LLC as the debtor in possession in that case, and continues as the fiduciary Responsible Representative under the Confirmed Chapter 11 Plan in the Primo Farms, LLC Bankruptcy Case.

What has come to light in the Primo Farms, LLC case is that Neftali Alberto’s cousin (so identified by Primo Farm, LLC’s counsel), who is also a member of Primo Farms, LLC, purported to secretly dissolve Primo Farms, LLC after the commencement of its Bankruptcy Case – Clearly a Violation of the Automatic Stay and a Void Act. This had the effect of torpedoing the subsequently confirmed Chapter 11 Plan (the Plan being confirmed on June 10, 2021) and the Plan Estate, and creditors, losing assets. Neftali Alberto stated that he learned of the void purported May 2021 dissolution of the Primo Farms, LLC in July 2021. 20-90770; Declaration, ¶ 4, Dckt. 103.

Neftali Alberto then testifies that he then took advice from an escrow officer to set up a new limited liability company to take over the property of the non-dissolved Primo Farms, LLC (such conduct being in violation of 11 U.S.C. § 362(a) and void). Additionally, Neftali Alberto states that the dissolution paperwork falsely represented that all members agreed to dissolve Primo Farms, LLC and was not proper under applicable state law. No mention is made about Neftali Alberto, the fiduciary Responsible Representative for that Plan Administrator debtor, seeking the advice of Primo Farms, LLC’s, the fiduciary Debtor in Possession, bankruptcy counsel or otherwise seeking to subsequently enforce the rights of the Debtor Plan Administrator for such damages inflicted on the Bankruptcy Estate and the Plan Estate.

Having learned of the void purported dissolution of Primo Farms, LLC, the torpedoed Chapter 11 Plan, and the violations of the automatic stay, Responsible Representative Neftali Alberto and the counsel for Primo Farms, LLC, as Plan Administrator, stated that they would just seek to dismiss the Primo Farms, LLC Bankruptcy Case. Such a dismissal could appear to be a tactic to just “sweep under the rug” the gross violation of the automatic stay and the damages done to the Bankruptcy and Plan Estate, and that other background financial transactions were taking place. *Id.*; Declaration, ¶ 13, Dckt. 103; Plan Administrator Status Report, ¶ 5, Dckt. 94.

Recently, in connection with the bankruptcy proceedings for the formerly suspended and who resigned his law license in January 2021, former attorney Thomas Gillis, the court noted that Neftali Alberto has filed a number of unsuccessful personal bankruptcy cases. A summary (not exhaustive review) of these prior bankruptcy cases filed by Neftali Alberto personally is:

I. Chapter 13 Case 20-90017

A. Filed January 7, 2020

B. Dismissed March 6, 2020

C. Information in Petition Under Penalty of Perjury

1. Neftali Alberto has a dba of Area X, Inc. *Id.*; Dckt. 1 at 2.
2. Neftali Alberto is the sole proprietor of the business named Area X, Inc. *Id.* at 4.

D. Information in Schedules Under Penalty of Perjury

1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id.*; Schedule A/B, Question 19, Dckt. 1 at 14.
2. No mention is made of Primo Farms, LLC, on Schedule A/B. However, Primo Farms, LLC filed bankruptcy on December 3, 2020, stating:
 - a. Neftali Alberto was a 50% owner and managing member of Primo Farms, Inc. (Statement of Financial Affairs, Question 28), and
 - b. That Primo Farms, LLC had been in business since 2015 (Statement of Financial Affairs, Question 25.1)

20-90779; Dckt. 22.

- c. In the Primo Farms, LLC case, Neftali Alberto testified under penalty of perjury with respect to his interest in Primo Farms, LLC;

- (1) “I was the managing member of Primo Farms, LLC (the "Debtor"), which was registered with the Secretary of State on September 18, 2013, and was in good standing when then the Chapter 11 petition was filed on December 3, 2020. At the time the petition was filed, I owned 50% and Mark McManis ("McManis") owned 50% of the Debtor. In 2020, I had become the managing member of the Debtor. However, from 2013 to 2020, McManis had

been the managing member (or president) of the Debtor and maintained its records and books.” 20-90779; Declaration, ¶ 1; Dckt. 103.

II. Chapter 13 Case 19-91091

- A. Filed December 17, 2019
- B. Dismissed January 6, 2020
 - 1. Dismissed for failure to file documents, including the Schedules and Statement of Financial Affairs.
- C. Neftali Alberto requested the dismissal of this case.

III. Chapter 13 Case 20-19-90973

- A. Filed October 30, 2019
- B. Dismissed December 18, 2019
- C. Information in Petition Under Penalty of Perjury
 - 1. Neftali Alberto has a dba of Area X, Inc. *Id.*; Dckt. 1 at 2.
 - 2. Neftali Alberto is not the sole proprietor of the business. *Id.* at 4.
- D. Information in Schedules Under Penalty of Perjury
 - 1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id.*; Schedule A/B, Question 19, Dckt. 21 at 6.
 - 2. No mention is made of Primo Farms, LLC, on Schedule A/B.

The court has considered the conduct of Neftali Alberto in this case, the presentation of a Purchase Agreement which Neftali Alberto, the fiduciary Responsible Representative of the Debtor in Possession, and the attorney for the Debtor in Possession in knowingly presenting a Purchase Agreement where the “Buyer” was a known nonentity. Further, the Purchase Agreement which was prepared by Neftali Alberto, who states that he was a licensed real estate agent for eight years, is incomplete and purported to be signed by a representative of a nonexistent entity (signing it right above the printed name of the nonexistent entity).

In the Primo Farms, LLC case, even though there is a gross violation of the automatic stay, as the fiduciary Representative of the Debtor in Possession and the Debtor as the Plan Administrator, no action has been taken by Neftali Alberto to rectify the wrong and address the civil damages caused by the gross violation of Federal Law by one of the members of Primo Farms, LLC.

Then, in multiple recently filed Chapter 13 cases, Neftali Alberto has stated under penalty of perjury that his dba is Area X, Inc., and has stated no interest in Primo Farms, LLC, though in other pleadings and on the Primo Farms, Inc. Statement of Financial Affairs he states that his is, and has been, a 50% owner.

ASSETS AND ORDER TO SHOW CAUSE

On the Schedules, signed under penalty of perjury by Neftali Alberto as president of the Debtor, the disclosed assets of Area X, Inc. include:

- A. \$3,000.00 in accounts receivable.
- B. Rouse Avenue Property with a value of \$250,000.00.
 - 1. Encumbrances - Schedules and Proofs of Claim
 - a. On Schedule D, the Debtor lists Jayco Premium Finance of California, dba Jcap Private Lending, Financial Group as having a secured claim of (\$176,000.00).
 - b. Proof of Claim 3-1 filed by JCAP Financial Group asserts a claim for (\$170,440.86) secured by the Rouse Avenue Property.
 - (1) In looking at the Note attached to Proof of Claim 3-1, the signatory for Area X, Inc. is a person named Israel Albert, signing it on what appears to be August 3, 2020.
 - (2) In response to Question 28 on the Statement of Financial Affairs, Neftali Alberto is listed as the 100% shareholder, President, and Director, with no other persons listed. Dckt. 20 at 21.
 - c. Proof of Claim 6-1 filed by Creditor Debra Koftinow asserts a claim for (\$20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference below in ¶ B.1.b. (3)).
 - d. A computer printout filed as Proof of Claim 9-1 asserts that Stanislaus County has a secured claim for (\$2,269.84).

Using the value of \$250,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately \$25,000.00 of equity for creditors with unsecured claims (assuming payment of the Koftinow judgment lien is paid from the sale of the Rouse Avenue Property).

- C. Brady Avenue Property with a value of \$350,000.00.
 - 1. Encumbrances - Schedules and Proofs of Claim

- a. Encumbrances of (\$385,000.00) on Schedule D for Cary Hahn, (\$115,000.00) for Debra Kofinow, and (\$1,500.00) for Stanislaus County.
- b. No Proof of Claim has been filed by Cary Hahn.
- c. Proof of Claim 5-1 filed by Creditor Debra Kofinow, secured by the Brady Avenue Property asserts a claim for (\$148,617.25).
- d. Proof of Claim 6-1 filed by Creditor Debra Kofinow asserts a claim for (\$20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference above in ¶ B.1.a.(3)).
- e. A computer printout filed as Proof of Claim 8-1 asserts that Stanislaus County has a secured claim for (\$17,043.48).

Using the value of \$350,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately \$140,000.00 of equity for creditors with unsecured claims (assuming payment of the Kofinow judgment lien being paid from a sale of the Rouse Avenue Property). However, if Cary Hahn, who has not filed a proof of claim, though being provided notice of this Bankruptcy Case, has a claim secured by this property, then there would be no unencumbered value for the bankruptcy estate.

- D. Counterclaim of unknown value against Mark McManis, the member of Primo Farms, LLC who is stated to have violated the automatic stay and torpedoed the confirmed Chapter 11 Plan by purporting to dissolve Primo Farms, LLC during its Chapter 11 case.

Based on the financial information provided by Neftali Alberto under penalty of perjury in the Schedules, there are substantial assets to be administered in this Bankruptcy Case. However, that property needs to be administered by a fiduciary of the Bankruptcy Estate, acting in the interests of the Bankruptcy Estate.

Unfortunately, the Debtor in Possession and the fiduciary Responsible Representative Neftali Alberto have demonstrated that such duties are beyond their abilities. Neftali Alberto has “struggled” in his own multiple personal bankruptcy cases and in the Primo Farms, LLC Bankruptcy Case. It also appears that Neftali Alberto is “challenged” when providing asset and financial information under penalty of perjury.

Based on such conduct, cause exists pursuant to 11 U.S.C. § 1112(b), § 105(a) (“No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”)

Before taking such action, the court affords all parties to Show Cause why this case should not be converted to one under Chapter 7. While, based on the asset information and values provided by Alberto Neftali (a former licensed real estate agent and self proclaimed experienced real estate transaction person) that there is significant equity for creditors with unsecured claims (after payment of costs of sale, secured claims, and administrative expenses), it may be that the finances for the above properties are tight for

administration by a Chapter 7 trustee. The court notes in the past that savvy Chapter 7 trustees have been able to “educate” creditors with liens on properties of the “special powers” of a Chapter 7 trustee to promptly sell property rather than a creditor having to go through a foreclosure sale, pay additional property taxes, pay additional insurance, pay additional security, hire a real estate broker, and delay for a good six months the sale of the encumbered property. Of course, the savvy Chapter 7 trustee obtains a modest carve-out of the encumbered sales proceeds for the bankruptcy estate to generate monies to pay something to creditors (not merely the Chapter 7 trustee and counsel fees).

Or it may be that there is little to administer and the Chapter 7 trustee is left without assets to do anything than abandon the property. Fortunately, in such cases the taxpayers fund the Office of the U.S. Trustee who has standing in bankruptcy cases to review what is going on, investigate, and take action in the bankruptcy case (in addition to any possible referrals to the U.S. Attorney). Merely because a debtor may have lost/destroyed the value of assets, such does not grant an “exemption” from having to comply with Federal Law. To the extent that there are issues relating to proper filing and prosecution of bankruptcy cases, the U.S. Trustee is equipped and empowered to address such issues.

Neftali Alberto’s Response

On July 21, 2022, Neftali Alberto (“Alberto”) filed a response (Dckt. 68) opposing the corrective sanction and Alberto’s OSC Declaration.

In the Response, it is argued that is was an unintentional error in misnaming the purchaser in the Purchase Agreement, noting that in the Motion for Authorization to Sell the error was noted. Response, ¶ 3; Dckt. 68.

It is next argued that Neftali Alberto did not prepare the sales agreement, but that some Unidentified Real Estate Agent who was Working Without Compensation prepared the Purchase Agreement. The Invisible Unidentified Real Estate Agent who was Working For Free, who also owed fiduciary duties to the bankruptcy estate remains unidentified. *Id.*, ¶ 4.

The Response argues that the Unidentified Real Estate Agent is the one who put the wrong name of the purchaser in the Purchase agreement also obtained the signature of Hector Aguliar. *Id.*, ¶ 4

It then states that when Neftali Alberto, the fiduciary responsible representative of the bankruptcy estate, was unaware of the true name of the purchaser when he forwarded it to the Debtor in Possession’s attorney. *Id.*, ¶ 5. It appears to state that Mr. Alberto never did business with the purchaser, indicating that he may well have never negotiated the sale terms. ^{FN. 1.}

FN. 1. The court notes that in working to get the sale of the Property approved by the court, for which the Purchase Agreement identified a non-existent entity and no addendum or amended purchase agreement was filed with the court, Mr. Alberto's second declaration in support of the Motion to Sell, include testimony that:

2. I have negotiated a sale of real property commonly known as 1609 Rouse Avenue, Modesto, Stanislaus County, California (the "Real Property"), to Adroit Farm Services Inc., a California corporation ("Adroit").

Alberto Sale Declaration 2, ¶ 2; Dckt. 50. This appears to indicate that Mr. Alberto was personally and directly involved in negotiating the proposed sale to Mr. Aguilar's company.

In this Sale Declaration 2, Mr. Alberto states that he personally knows that "The Debtor in Possession and [Adroit Farm Services, Inc.] have agreed that the close of escrow will take place no later than seven days after an order authorizing the sale becomes final." *Id.*, ¶ 5. This indicates that he was personally involved in communicating with the purchaser.

This is consistent with Mr. Alberto's Sale Declaration 1, in which he states that "I have negotiated the sale of the real property" Alberto Sale Declaration 1, ¶ 2; Dckt. 36.

It is then argued that counsel for the Debtor in Possession obtained the correct name of the purchaser from the Unidentified Real Estate Agent and used that name in the Motion. *Id.* ¶ 6.

An Addendum to the Purchase Agreement was prepared, but nobody, neither the Unidentified Real Estate Agent nor Neftali Alberto, the Responsible Representative of the Debtor in Possession, *Id.* ¶ 7.

The Response also notes that the Purchase Agreement prepared by the Unidentified Real Estate Agent, who purportedly was working for free, did not list the Debtor in Possession as the seller but the Debtor. This is "excused" as having been done by the Undisclosed Real Estate Agent and of no real significance in that the Motion to Sell identified the Debtor in Possession as the Seller. *Id.*, ¶ 8. This appears to argue that the parties identified in the Purchase Agreement are of no legal significance.

The Response concludes that nobody objected to the Motion to Sell, not even the U.S. Trustee, apparently indicating that the misidentifications are of little significance. *Id.*, ¶ 9.

Neftali Alberto, the Responsible Representative for the fiduciary Debtor in Possession has filed his Declaration in support of the Response. Dckt. 69. Mr. Alberto's testimony appears to be a word for word cut and paste of the arguments in the Response prepared by counsel for the Debtor and former Debtor in Possession.

In his Declaration, Mr. Alberto carefully avoid disclosing the identity of the Unidentified Real Estate Agent who is purportedly to blame for the misidentification, the errors in the Purchase Agreement, and the failure to present the Addendum to counsel for the Debtor in Possession and to the court.

Hector Aguilar's Response

On July 27, 2022, Hector Aguilar (“Aguilar”) filed a Response. Dckt. 71. The Response appears to be a hybrid Response and Declaration, in which Mr. Aguilar states he is signing it under penalty of perjury. Mr. Aguilar’s counsel has not signed the Response.

Mr. Aguilar’s Response under penalty of perjury provides some additional, and some conflicting information to that provided by Mr. Alberto and counsel for the Debtor and former Debtor in Possession. The information provided by Mr. Aguilar includes:

- A. Mr. Aguilar states that he did not sign the Purchase Agreement, and never signed such Agreement as the authorized representative of a non-existent entity. Response, ¶ 3; Dckt. 71.
- B. Mr. Aguilar states that he could not understand why he was served with the Order to Show Cause. *Id.*, ¶ 4.
- C. After meeting with counsel, Mr. Aguilar learned that he was being identified as the person who signed the Purchase Agreement. *Id.*, ¶ 5.
- D. He further states that he was never served with the Motion to Sell. *Id.*
- E. Mr. Aguilar goes further, stating that his purported signature on the Purchase Agreement is not his signature. *Id.*, ¶ 6.
- F. Mr. Aguilar states that he had done business before with Neftali Alberto, with the last transaction being in 2016. *Id.*, ¶ 7. Mr. Aguilar states that the 2016:

[b]usiness transaction did not end well and based on this experience, I have refrained from doing business with Neftali Alberto, even though he continues to contact me regarding possible business ventures.

Id. This appears to conflict with Neftali Alberto’s statement under penalty of perjury that he never did any business with the purchaser – Mr. Aguilar’s business

- G. Mr. Aguilar unequivocally states:
 - a. “I did not sign the agreement . . .”
 - b. “Nor did I have knowledge of the agreement”

Id., ¶ 9.

August 4, 2022 Hearing

The court is being presented with conflicting testimony presented under penalty of perjury and subject to the certifications pursuant to Federal Rule of Bankruptcy Procedure 9011. There is the direct statement under penalty of perjury that Hector Aguilar’s never signed the Purchase Agreement.

Then, there is an Undisclosed Real Estate Agent purporting to act for the Debtor in Possession who is being fingered as being responsible for all of the errors in the Purchase Agreement and for not providing the Addendum to counsel for the then Debtor in Possession.

Clearly much more information is required.

At the hearing, counsel for the Debtor and former Debtor in Possession said they have evidence of many phone calls made by Mr. Alberto, the Responsible Representative of the Debtor in Possession, with Mr. Aguiar, stating that many of these related to the sale.

The identity of the formerly unidentified realtor is Cameron Sparks. Mr. Aguiar's counsel asserted that Mr. Sparks is a business partner of Mr. Alberto.

It was further stated at the hearing by counsel for the Debtor and former Debtor in Possession that Mr. Alberto, as the Responsible Representative of the Debtor in Possession, is the person who signed Mr. Aguiar's name to the Purchase Agreement. Mr. Alberto asserts that Mr. Aguiar authorized him to sign Mr. Aguiar's name to the Purchase Agreement.

These statements attributed to Mr. Alberto are in conflict with Mr. Alberto's testimony under penalty of perjury that:

The real estate agent filled in the buyer's incorrect name and obtained the signature of Hector Aguiar as the representative of the buyer before I signed the agreement.

Declaration, ¶ 5, p.2:21-23; Dckt. 69. In the above testimony Mr. Alberto clearly testifies under penalty of perjury that the real estate agent obtained Mr. Aguiar's signature. As of the July 21, 2022 filed Declaration, Mr. Alberto clearly states that Mr. Aguiar signed the Purchase Agreement, not that Mr. Alberto signed Mr. Aguiar's name to the Purchase Agreement.

Mr. Aguiar's counsel argued that no such authorization had been given by Mr. Aguiar and that Mr. Aguiar (as he has testified) had no knowledge of the Purchase Agreement. In looking at the Purchase Agreement it does not purport to have been signed by an authorized agent of Mr. Aguiar, but by Mr. Aguiar himself. As the court has noted before, Mr. Alberto is not only an experienced real estate investor, but was licensed for eight years as a real estate agent, and presumably knowledgeable in how real estate contract are properly executed.

While Mr. Aguiar expressed frustration that he is having to incur costs and expenses in addressing the Order to Show Cause, the court has testimony under penalty of perjury that he was aware of the Purchase Agreement, authorized it to be executed, and was in contract to purchase the Property. Mr. Aguiar provides counter-testimony, which if believed, would render the other testimony under penalty of perjury is false.

For the court to determine which person has made false statements under penalty of perjury, an evidentiary hearing is required. The court continues the hearing for a Scheduling Conference, affording the Parties to conduct discovery and assemble the evidence for such evidentiary hearing.

January 12, 2022 Hearing

At the hearing, ~~XXXXXXXXXX~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is ~~XXXXXXXXXX~~

FINAL RULINGS

2. [22-90047](#)-E-7 JEFFREY SMITH CONTINUED STATUS CONFERENCE RE:
[22-9001](#) CAE-1 COMPLAINT
HATMAKER V. SMITH 5-25-22 [[1](#)]

ADVERSARY PROCEEDING CLOSED:
12/27/22

Final Ruling: No appearance at the January 12, 2023 Status Conference is required.

Plaintiff's Atty: Bashar S. Ahmad
Defendant's Atty: Pro Per

Adv. Filed: 5/25/22
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
[CAE-1] Notice of Dismissal of Adversary Proceeding Without Prejudice filed 12/7/22 [Dckt 21]; Order granting filed 12/9/22 [Dckt 23]

Case dismissed 12/9/22

The Status Conference is concluded and removed from the calendar.
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Plaintiff dismissed the Adversary Proceeding as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, no response pleading having been filed by the Defendant. The Status Conference is concluded and removed from the Calendar.

The Clerk of the Court may close the file for this Adversary Proceeding.