UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 27, 2025 at 11:00 a.m.

1.	**24-23905-E-12 FRB-1**	**DEAVER RANCH, INC., A CALIFORNIA CORPORATION**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-3-25 [230]**

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on January 3, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The court would note that Movant was not specific in its Notice of Hearing under which Local Rule provision this Motion is noticed. Moreover, Movant incorrectly stated that written opposition must be filed at least 28 days prior to the hearing. However, Local Bankruptcy Rule 9014-1(f)(1) only requires 14 days to submit written opposition.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is xxxxxxx .

March 27, 2025 Hearing

The court continued the hearing on this Objection to provide Parties with time to offer the court supplemental pleadings and briefing. On March 3, 2025, the Parties submitted a Stipulation with the court agreeing the treatment of the claimed exemptions and Creditor's secured status, asking to remove the matter from the calendar.

The court noted some questions concerning the language of the Stipulation, with it only referring to Debtors and not Debtors in Possession in their fiduciary capacity. The court issued an Order requesting clarification on this issue on March 17, 2025. Docket 416.

The Stipulation included the "Debtors" acknowledging the validity and scope of Creditor's security interest. It was not clear to the court whether the Stipulation was to bind, and put aside any issue for Creditor, the validity and scope of the lien with respect to only the Debtor, or with respect to the Debtor in Possession, Bankruptcy Estate, and all other parties in interest.

At the hearing, **xxxxxxx**

REVIEW OF OBJECTION

Creditor AgWest farm Credit, PCA ("Creditor") objects to Kenneth Henry Deaver And Mary Jean Deaver's ("Debtor in Possession's") claimed exemptions under California law. Creditor states:

1. Debtor in Possession has no equity in their assets for which exemption are claimed. and therefore, there is nothing to exempt. Obj. 2:7-8.

2. Debtor in Possession cannot exempt livestock under Cal. Code of Civil Procedure § 704.060 and because they claimed to exempt more value under § 704.060 than what that exemption allows. *Id.* at 2:8-3:1.

3. Debtor in Possession can also not exempt their new Holland Tractors and 2017 Chevrolet Tahoe Trucks under Cal. Code of Civil Procedure § 704.060. *Id.* at 5:15-22.

4. Debtor in Possession claim they are a family farmer, but are not actually a "family farmer" or a "farmer" as defined in the Bankruptcy Code, and therefore cannot claim equipment as a tool used as part of their trade under § 704.060. *Id.* at 3:2-5.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on January 27, 2025. Docket 287. Debtor in Possession states:

1. Creditor's argument that the exemptions should be disallowed because there is no equity for Debtor in Possession to exempt is wholly without merit. The plain language of Cal. Code of Civil Procedure § 704.060 only allows any exemption "to the extent [of] the aggregate equity." Opp'n 2:21-25.

2. Debtor in Possession is not asking to exempt equity beyond the limitation of Cal. Code of Civil Procedure § 704.060. *Id.* at 3:9-13.

3. There does not appear to be any controlling case law in determining whether livestock are tools of the trade. However, here, the sheep are used

mostly to control weeds on the farm, and are thus used in the exercise of Debtors' farming operations. *Id.* at 4:27-5:2.

4. Creditor's objection that the exemption should be disallowed because Debtor in Possession is not a farmer is without merit. The California exemption statutes pertain to any Debtor, not just a Chapter 12 Debtor. *Id.* at 5:4-11.

CREDITOR'S RESPONSE

Creditor filed a Response on February 6, 2025. Docket 321. Creditor states:

1. Debtor in Possession has not met its burden of production and persuasion rebutting the Objection. *Id.* at 2:14-23.

2. Debtor in Possession has not shown how sheep are tools of their trade subject to Cal. Code of Civil Procedure § 704.060. *Id.* at 3:3-16.

3. Debtor in Possession has not equity at the time of filing th petition so they cannot claim an exemption. *Id.* at 3:23-4:4.

APPLICABLE LAW

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

The exemption in question is Cal. Code of Civil Procedure § 704.060. That statute provides for exemptions to be claimed in certain personal property assets, and states (emphasis added):

§ 704.060. Personal property used in trade, business, or profession

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, **and of the personal property are exempt to the extent that the aggregate equity therein does not exceed**:

(1) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Eight thousand seven hundred twenty-five dollars ($8,725), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to four thousand eight hundred fifty dollars ($4,850).

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to twice the amount of the exemption provided in paragraph (1) of this subdivision.

In California Code of Civil Procedure § 680.290, the term "Personal Property" is defined as:

§ 680.290. "Personal property"

"Personal property" includes both tangible and intangible personal property.

Cal Code Civ Proc § 680.290

"Tangible personal property" is defined in California Code of Civil Procedure § 680.370 to be:

§ 680.370. "Tangible personal property"

"Tangible personal property" includes chattel paper, documents of title, instruments, securities, and money.

In Objecting Creditor's Points and Authorities it is argued:

> Second, the Debtors are trying to claim sheep as exempt under section 704.060, which only allows tools of the trade to be considered exempt, which makes no sense. **See Matter of Patterson,** 825 F.2d 1140, 1147 (7th Cir. 1987) ("**To regard cows and other livestock as 'tools' or 'implements' does particular violence to the English language**, and there is no indication that the terms are being used in a technical sense"). Hence, for purposes of the sheep, the exemption is improper. Moreover, the Deavers listed (8) new holland Tractors and (2) 2017 Chevrolet Tahoe trucks citing to Cal. Code of Civil Procedure section 704.060, as a basis for their exemptions, which is also improper.

While citing to *Matter of Patterson*, Objecting Creditor does not provide an analysis of what statutory exemption and the language of the statute that the Seventh Circuit Court of Appeals was reading.

Looking to the plain language of California Code of Civil Procedure § 704.060, it is not limited to "mere" implements or tools, but has a much broader scope of exempt personal property, go so far as to provide an exemption for "other personal property."

Objecting Creditor has not made any meritorious argument or provided the court with any law that "all other personal property" would not include the sheep if used as part of the business.

DISCUSSION

The assets claimed as exempt under Cal. Code of Civil Procedure § 704.060 are as follows:

1. 2017 Chevrolet Tahoe, claiming $1,100 as exempt;

2. eight New Holland Tractors, claiming $15,675 as exempt;

3. 35-40 sheep, claiming $8,000 as exempt;

4. four pickup trailers, claiming $600 as exempt;

5. a flat bed trailer, claiming $600 as exempt;

6. a box trailer, claiming $250 as exempt;

7. two sheep trailers, claiming $200 as exempt;

8. two tilt bed tin trailers, claiming $400 as exempt;

9. four grape trailers, claiming $1,200 as exempt;

10. five storage containers, claiming $4,000 as exempt;

11. five fuel tanks, claiming $500 as exempt;

12. three sprayers, claiming $1,625 as exempt;

13. four water tanks, claiming $1,400 as exempt; and

14. six travel trailers, claiming $2,400 as exempt.

Ex. 9 at 112, Schedule C, Docket 234.

As an initial matter, the court agrees with Debtor in Possession in finding Creditor's argument that Debtor in Possession may not claim exemptions due to a lack of equity is without merit. The plain language of the exemption statute clearly states an exemption only applies to any equity in the assets; if there is no equity in the event of a sale, then the exemption does not apply.

However, the court agrees with Creditor's contention that Debtor in Possession must limit the exemption to the statutorily permitted amount. The statute, in the case of married persons, may claim up to $17,450 in equity in tools of the trade as exempt. Debtor in Possession has exceeded that number, arguing that certain assets where the exemption is claimed will not actually result in equity to claim as exempt if sold, so Debtor in Possession has been cautious in claiming more than what is statutorily permitted. The court finds that Debtor in Possession's claimed exemptions must be limited to the figure provided for by statute. The statute does not provide for a cautious approach where Debtor in Possession is permitted to exempt beyond the provided figure in the event certain tools do not realize any equity if sold.

The answer to this "problem" is for the Debtor to list all of the tools of the trade for which the exemption is being claimed pursuant to California Code of Civil Procedure § 704.060 (a) . What the Debtor has done here is listed 19 different sets of assets in which the exemption is being claimed generically pursuant to California Code of Civil Procedure § 704.060, claiming exemption amounts that total $21,325.00. This is greater than the $17,450 amount stated in California Code of Civil Procedure § 704.060(a)(3). There is, by Debtor's calculation, $3,875 in non-exempt equity for the confirmation calculation.

Are Sheep Tools

The court is presented with the issue of whether livestock, the sheep, may be exempted as tools of the trade. In *In re Stewart*, 110 B.R. 11, 12 (Bankr. D. Idaho 1989), that court found that three horses used in the debtor's farming operation could be exempt under the applicable tools of the trade exemption. The court has not found any binding authority on whether the sheep in this instance should also be given such a classification.

Debtor in Possession states that the sheep are "primarily" used to graze the fields and control weeds. However, there are no details provided as to whether Debtor in Possession also raises the sheep for slaughter or to be sold, so as to be considered inventory, and whether there would be other more effective means to keep the pastures properly maintained, meaning the sheep have varying uses.

In reviewing the Objection, no citation is made to California Law as to the interpretation of the California Statute providing for this exemption. Rather Objecting Creditor cites the court to a Seventh Circuit Decision from 1987. The Debtor in Possession does not provide the court with any California law analysis, legislative history, or other California Law analysis.

Time of Determination if Exemption May be Claimed

and Time Amount of Exemption is Determined

In the Reply, Creditor cites the court to various decisions for the proposition that "Case law is clear in that the value of the exemption is limited to the value that lawfully may be claimed as of the petition date." Thus, Creditor concludes that it is the value of the exempt equity in the property as of the bankruptcy case filing, and there can be no increase in the exemption if the property increases in value post-petition.

The first case Creditor cites is identified as *In re Anderson*, 988 F.3d 1210, 1216 (9th Cir. 2021). However, that citation is to *Enriquez v. Wilkinson*, 988 F.3rd 1210 (9th Cir. 2021). The *Enriquez* Decision relates to the remand of a matter to the Immigration Court.

The second cited case is *Wilson v. Rigby*, 909 F.3d 306, 312 (9th Cir. 2018). The holding in the *Wilson* decision related to the application of the State of Washington statutory homestead exemption and the interpretation of that Washington Statute. In that discussion, the Ninth Circuit examined the difference between a Washington State exemption and the California statutory exemptions.

> The first set of cases cited by Wilson and *Amici* involved California's homestead statute, which differs in material respects from Washington's statute. Under California law, **every debtor is entitled to claim an exemption with a fixed dollar value, based on demographic criteria—not home equity**. *See, e.g., Alsberg v. Robertson (In re Alsberg)*, 68 F.3d 312, 314 (9th Cir. 1995); Cal. Civ. Proc. Code § 704.730.[2] By contrast, Washington applies a sliding scale in which "the homestead exemption amount shall not exceed the lesser of (1) the total net value of the [homestead] . . . or (2) the sum of one hundred twenty-five thousand dollars . . . ." Wash. Rev. Code § 6.13.030 (emphasis added).
>
> In both California and Washington, the value of the homestead must be fixed as of the date of the bankruptcy petition. **In California, the value of the homestead is always a defined statutory figure.** *See* Cal. Civ. Proc. Code § 704.730. However, **in Washington, the value is tied to the equity in the debtor's home as of the date of the filing of the petition**. See Wash. Rev. Code § 6.13.030. Because the value that can be claimed **in California is determined by demographic criteria, the homestead amount claimed at filing may exceed home equity on that petition date.** ***See Alsberg*, 68 F.3d at 313-14** (noting that under California law "in effect at the time of filing [the debtor] was entitled to claim a homestead exemption of $45,000 on the residence" where the home equity at the time of filing was only $33,875). **If the home subsequently appreciates, it enures to the California debtor up to the amount she was entitled to claim under California law on the petition date.** *See id.* at 313-15 **(affirming** the BAP's determination that, **upon the sale of the home, the California debtor was entitled to the full $45,000 exemption even though the equity at the time of the filing was less than this amount**). Accordingly, our cases (that appear to allow California debtors to obtain post-petition appreciation) have merely allowed the debtors to receive the full value of the homestead exemption that they were entitled to claim as of the petition date. See, e.g., id.; Hyman, 967 F.2d at 1321.3

Wilson v. Rigby, 909 F.3d at 309-310 (double emphasis added).

It appears that this authority cited by Objecting Creditor is opposite of what is stated in the Reply Brief (which is subject to the certifications made by counsel and Creditor pursuant to Federal Rule of Bankruptcy Procedure 9011), and demonstrates that the dollar amount claimed exempt under California Law is limited to the exempt equity that only existed when the Bankruptcy Case was filed is without merit.

The third case cited by Objecting Creditor is *White v. Stump*, 266 U.S. 310, 313 (1924), a now century old Supreme Court Decision. In *White*, the Supreme Court was addressing Idaho homestead exemption law. In discussing the old Bankruptcy Act, which is no longer applicable law, the Supreme Court states on the page (313) cited by Objecting Creditor:

> These and other provisions of the bankruptcy law show that the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed. This has been recognized in our decisions. Thus we have said that the law discloses a purpose "to fix the line of cleavage" with special regard to the conditions existing when the petition is filed, *Everett v. Judson*, 228 U.S. 474, 479, and that -- **"It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes actually or potentially into the control of the bankruptcy court**." *Bailey v. Baker Ice Machine Co*., 239 U.S. 268, 275; *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 307. When the law speaks of property which is exempt and of rights to exemptions it of course refers to some point of time. **In our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control, and with respect to which the status and rights of the bankrupt, the creditors and the trustee in other particulars are fixed.** The provisions before cited show -- some expressly and others impliedly -- that one common point of time is intended and that it is the date of the filing of the petition. The bankrupt's right to control and dispose of the estate terminates as of that time, save only as to "property which is exempt." § 70a. The exception, as its words and the context show, is not of property which would or might be exempt if some condition not performed were performed, but of property to which there is under the state law a present right of exemption -- one which withdraws the property from levy and sale under judicial process.

White v. Stump, 266 U.S. at 313. It appears that all this states is that under the Bankruptcy Act in effect in 1924, is that it is the date of filing that which property is exempt would be determined under § 70 of the Bankruptcy Act. This does not appear to apply to say that under the Bankruptcy Code that the amount of the property exempt is frozen as of the filing of the bankruptcy case based on the value of the asset in which the exemption is claim. Rather, merely the Supreme Court will look to the law in effect at the bankruptcy case is filed. Objecting Creditors offers no analysis as to why the Decision in *Wilson* somehow holds that the California exemptions in the 21st Century are not computed as set forth by the Ninth Circuit Court of Appeals in *White*.

The final case cited, without any analysis provided, by Objecting Creditors is *In re Cerchione*, 414 B.R. 540, 548 (9th Cir. BAP 2009), which Objecting Creditor provides the following quote,

> "A debtor's entitlement to claimed exemptions generally is determined as of the date of such debtor's bankruptcy filing.

in support of its contention that the dollar amount of the exemption is locked into the value of the exempt property as of the filing of the case and not when (with the possibility of appreciation in value) the exempt property is cashed out (and the exempt proceeds paid to the debtor) or the exempt property is abandoned to the debtor. Reply, p. 3:26-4:1. A review of the *Crechione* Decision, at the page cited by Objecting Creditor, provides the following analysis:

> Under Idaho Code § 55-1003, a homestead exemption is limited to no more than $100,000. The Cerchiones originally claimed a homestead exemption under § 55-1003 in the amount of $100,000 in the Property. Ultimately, in their amended Schedule C, the Cerchiones claimed an exemption of $ 95,700 in the Property under Idaho Code § 55-1008.
>
> Idaho Code § 55-1008(1) deals with proceeds from the sale of a homestead and provides in relevant part as follows:
>
> > HOMESTEAD EXEMPT FROM EXECUTION--WHEN PRESUMED VALID. (1) Except as provided in section 55-1005, Idaho Code, 6 the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in section 55-1003, Idaho Code. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, . . . up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds. (emphasis added).
>
> A **debtor's entitlement to claimed exemptions generally is determined as of the date of such debtor's bankruptcy filing**. *See In re Chiu*, 266 B.R. at 751 (exemptions are determined as of the date of bankruptcy filing and without reference to subsequent changes in the character of the property claimed exempt); *In re Lane*, 364 B.R. 760, 762-63 (Bankr. D. Or. 2007) ("Generally, only facts existing on the filing date are relevant to determining whether a **debtor qualifies for her homestead exemption**." (citing *Harris v. Herman (In re Herman)*, 120 B.R. 127, 130 (9th Cir. BAP 1990)).

Hopkins v. Cerchione (In re Cerchione), 414 B.R. at 548.

The text cited states that the entitlement to the claimed exemptions is "generally" determined as of the date of filing. However, it does not say that the amount of the exemption is limited by the value of the exempt property as of the date the bankruptcy case is filed.

Though it does not appear that either the Debtor in Possession or Objecting Creditor cited to California exemption law, the court notes that in determining exemptions, California Code of Civil Procedure § 703.100 provides (emphasis added):

> § 703.100. Time for determination of exemptions

(a) **Subject to subdivision (b)**, the **determination whether property is exempt** shall be made under the circumstances existing at the earliest of the following times:

(1) The time of levy on the property.

(2) The time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment.

(3) The time a lien is created under Title 6.5 (commencing with Section 481.010) (attachment) or under this title.

(b) **The court, in its discretion, may take into consideration any of the following changes that have occurred between the time of levy or commencement of enforcement proceedings or creation of the lien and the time of the hearing**:

(1) A change in the use of the property if the exemption is based upon the use of property and if the property was used for the exempt purpose at the time of the levy or the commencement of enforcement proceedings or the creation of the lien but is used for a nonexempt purpose at the time of the hearing.

(2) **A change in the value of the property if the exemption is based upon the value of property.**

(3) A change in the financial circumstances of the judgment debtor and spouse and dependents of the judgment debtor if the exemption is based upon their needs.

Exemption in Certain Vehicles

Creditor states that certain vehicles cannot be exempted under Cal. Code of Civil Procedure § 704.060 but provides little analysis or argument as to why. Vehicles are often found to be tools of the trade when used as such. *See In re McNutt*, 87 B.R. 84, 87 (B.A.P. 9th Cir. 1988) ("[T]he proper inquiry is whether or not the vehicle is used by and is necessary to a debtor for his or her work, trade or occupation. . . The bankruptcy court, based upon the stipulation of the parties in open court, was entitled to find that the truck was used in the debtor's trade, and properly concluded that as a matter of law the truck was a tool of the trade.").

Finally, the court is also not persuaded by Creditor's argument that Debtor in Possession is not a farmer, so Debtor in Possession may not claim exemptions. The argument fails to consider that claiming the exemptions is not limited by the Chapter of the Code under which a debtor files.

FEBRUARY 13, 2025 HEARING

At the hearing the court addressed with the respective counsel for the Parties various issues, including those identified above. The counsel provided the court with further insight and legal basis for the position asserted.

Asserted Business of the Debtors

Counsel for the Debtor in Possession asserts that the tools and personal property for which the exemptions is claimed is used by Debtors and now the Debtors in Possession for their flower business.

Creditor argues that the exemption does not have *prima facie* value, but the burden is on the Debtors in Possession to first establish that they the right to the exemption since the exemption is based on California law. Creditor cites the court to several cases for this burden of proof assertion for exemptions claimed pursuant to California Code of Civil Procedure § 704.060:

- *In re Pashenee*, 531 B.R. 834 (B.A.P. Cir. 9 2015).

- *Kono v. Meeker*, 196 Cal. App. 4th 81 (2011)

It was confirmed at the hearing, and not appearing to be the subject of any dispute, that Creditor has a lien on all of the assets in which the exemption has been claimed, except for assets for which the lien must be included on the vehicle registration. Thus, it does not appear that the claiming of the exemption is of any detriment to Creditor, raising an issue of whether Creditor has standing to prosecute this Objection to Exemption.

For the *Anderson* Case cited above, counsel explained that there are two Decisions from the Ninth Circuit that have the 988 F.3d 1210 record designation. The Anderson Decision is just a short Ruling that adopts the Bankruptcy Appellate Panel Decision. The court was able to find it using the WestLaw legal data base and now has it for review.

Counsel for the Debtors in Possession reported that an Amended Schedule C would be prepared and filed. The Court requested that once it was drafted, that counsel share it with counsel for Creditor AgWest to see if it further reduced the potential dispute issues (mainly the aggregate amount of the exemption being claimed in these assets).

Further research by the court and further information from the Parties is appropriate.

The hearing is continued to 11:00 a.m. on March 27, 2025 (Specially set day and time).

Debtors in Possession shall file and serve on or before February 24, 2024, supplemental pleadings that: (1) document the status of the title to the trailers and whether they are registered vehicles; (2) a detailed statement of what evidence the Debtors in Possession would produce at an evidentiary hearing in support of their contention that they have a business for which the exemption pursuant to California Code of Civil Procedure § 704.060 is proper, and (3) and any case law or legal authorities relevant to these issues.

Creditor AgWest shall file and serve on or before March 14, 2024, response pleadings to the supplemental pleadings filed by the Debtors in Possession, and any further case law or legal authorities relevant to these issues, if any.

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.

IT IS ORDERED that the Objection to Exemptions is **xxxxxxx**.

2. **24-24250-E-7** **RONNIE/MARCELLA DAY** **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
24-2210 **KMT-2**
HUSTED V. CLONTS **2-13-25 [13]**

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Trustee, Defendant-Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 14, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry of Default Judgment is granted.

Kimberly J. Husted ("Plaintiff-Trustee"), Trustee for the bankruptcy estate of Ronnie Edward Day and Marcella Elizabeth Day ("Debtor") filed the instant Motion for Default Judgment on February 13, 2025. Dckt. 13. Plaintiff-Trustee seeks an entry of default judgment against Monica E. Clonts ("Defendant") in the instant Adversary Proceeding No. 24-02210.

The instant Adversary Proceeding was commenced on December 2, 2024. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on December 3, 2024. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 3.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on January 14, 2025. Dckt. 10.

REVIEW OF COMPLAINT

Plaintiff-Trustee filed a complaint for injunctive relief against Defendant. The Complaint contains the following general allegations as summarized by the court:

A. Ronnie Edward Day and Marcella Elizabeth Day (collectively "Debtors"), commenced a Chapter 7 petition on September 23, 2024. Compl. 2:6-8, Docket 1. Plaintiff-Trustee was appointed as the Chapter 7 Trustee for the Debtors' bankruptcy estate. *Id.*

B. Before the Debtors filed for bankruptcy, Debtors owned real property located at 250 San Joaquin Drive, Red Bluff, CA ("Property"). Compl. 2:9-14, Docket 1.

C. On September 23, 2024, Debtors transferred the real property by gift, and no consideration, to their daughter, Clonts, Defendant. Compl. 2:15-18, Docket 1. The transfer was done through a Quitclaim Deed. *Id.*

D. According to Plaintiff-Trustee, Debtors acknowledged at the 341 meeting of creditors, that the transfer of the real property to Clonts was done in an attempt to protect the property from creditors. Compl. 2:19-24, Docket 1. Plaintiff-Trustee also claims that Debtors learned that a creditor would seek foreclosure of their real property prior to the transfer. *Id.*

E. Plaintiff-Trustee also states that Debtors' Schedule A/B identifies the Debtors' continued ownership of the property, and is valued at $269,190.00. Compl. 2:25-26, Docket 1.

First Claim for Relief—Fraudulent Transfers as to Present and Future Creditors

Plaintiff-Trustee alleges the following for the First Cause of Action:

A. The transfer of the real property was made on or within four years of the Chapter 7 Petition Date. Compl. 3:6, Docket 1.

B. The transfer was made with actual intent to hinder, delay, or defraud a creditor. Compl. 3:7-20, Docket 1. Specifically, Plaintiff-Trustee alleges that the transfer was made to an insider as a gift and for no consideration because of a result of a pending forced sale by a creditor. *Id.* Further, Plaintiff-Trustee states that the transfer was a significant portion of the Debtor's assets. *Id.*

C. As a result, Plaintiff-Trustee believes she is entitled to a judgement against Defendant pursuant to California Civil Code § 3439.04 and 11 U.S.C. §§ 544, 550, and 551. Compl. 3:18-20, Docket 1.

Second Claim for Relief—Fraudulent Transfers as to Present Creditors

Plaintiff-Trustee alleges the following for the Second Cause of Action:

A. Debtor, R. Day, received less than reasonably equivalent value in exchange for the transfer, and the Debtors were insolvent on the date the transfer was made or became insolvent as a result of said transfer. Compl. 3:27-28, Docket 1.

B. As a result, Plaintiff-Trustee believes she is entitled to a judgement against Defendant pursuant to California Civil Code § 3439.05 and 11 U.S.C. §§ 544, 550, and 551. Compl. 4:2-4, Docket 1.

Third Claim for Relief—Avoidance and Recovery of Fraudulent Transfer

Plaintiff-Trustee alleges the following for the Third Cause of Action:

A. The transfer of the real property was made on or within two years before the Chapter 7 Petition Date. Compl. 4:10, Docket 1.

B. The transfer was made with actual intent to hinder, delay, or defraud a creditor. Compl. 4:11-13, Docket 1. Specifically, Plaintiff-Trustee alleges that the transfer was made to an insider as a gift and for no consideration because of a result of a pending forced sale by a creditor. Compl. 4:14-20, Docket 1. Further, Plaintiff-Trustee states that the transfer was a significant portion of the Debtor's assets. *Id.*

C. As a result, Plaintiff-Trustee believes she is entitled to a judgement against Defendant pursuant 11 U.S.C. §§ 548, 550, and 551. Compl. 4:22-24, Docket 1.

Fourth Claim for Relief—Avoidance and Recovery of Fraudulent Transfer

Plaintiff-Trustee alleges the following for the Fourth Cause of Action:

A. The transfer of the real property was made on or within two years before the Chapter 7 Petition Date. Compl. 5:2, Docket 1.

B. The Debtors received less than reasonably equivalent value in exchange for the transfer, and the Debtors were insolvent on the date of the transfer or became insolvent as a result of the transfer. Compl. 5:3-5, Docket 1.

C. As a result, Plaintiff-Trustee believes she is entitled to a judgement against Defendant pursuant 11 U.S.C. §§ 548, 550, and 551. Compl. 5:6-8, Docket 1.

Fifth Claim for Relief—Turnover

Plaintiff-Trustee alleges the following for the Fifth Cause of Action:

A. Defendant is on title of the real property as an accommodation or to hinder creditors from collecting against the property. Compl. 5:14-17, Docket 1.

B. The real property is one that the Trustee may use, sell, or lease under 11 U.S.C. § 363. Compl. 5:18-20, Docket 1.

C. As a result, Plaintiff-Trustee believes she is entitled to a judgement against Defendant pursuant 11 U.S.C. § 542. Compl. 5:21-23, Docket 1.

Prayer

Plaintiff-Trustee requests the following relief in the Complaint's prayer:

A. Avoiding the transfer of the real property and preserving the transfers for the benefit of the estate;

B. Ordering turnover of the real property or its value to the Trustee and declaring the real property as property of the bankruptcy estate; and

C. Other relief the court deems necessary and proper.

Plaintiff-Trustee submits her Declaration in support of the Motion. Docket 16. Plaintiff-Trustee testifies:

1. The public record reflects that prior to the filing of the bankruptcy case, on or about July 23, 2020, the debtor, Ronnie Day, acquired title to the Subject Property as his sole and separate property. Decl. 2:8-10.

2. On or about September 23, 2024, just prior to the filing of the bankruptcy case, R. Day transferred the Subject Property by gift, and for no consideration, to his daughter the Defendant. *Id.* at 2:14-16.

3. At the Debtors' 341 meeting of creditors, the Debtors acknowledged that the Transfer was made in an attempt to protect the Subject Property from the reach of creditors. *Id.* at 2:19-20.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,

(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION
Avoidance of Fraudulent Transfer of Real Property
Under California Civil Code Section 3439.04

The First Cause of Action seeks a declaration avoiding the transfer of the real property between the Defendant and Debtors under California Civil Codes section 3439.04.

Plaintiff-Trustee states that Debtors commenced a voluntary Chapter 7 petition on September 23, 2024. Compl. 2: 6-8, Docket 1. Four years prior on July 23, 2020, the debtor, Ronnie Day, acquired title to the real property in dispute from his mother, Neitta I. Addy by a Grant Deed. Exhibit A, Docket 15. On the same day Debtor commenced the Chapter 7 petition, he transferred the real property by gift to his daughter, Clonts. Compl. 2:15-18, Docket 1. The transfer was accomplished by a Quitclaim Deed. Exhibit B, Docket 15. Because the transfer was made to an insider and was made as a gift for no consideration, Plaintiff-Trustee moves to avoid the transfer under California Civil Code § 3439.04 and 11 U.S.C. §§ 540(b), 550, 551.

California Civil Codes section 3439.04 states in relevant parts:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . (1) [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor [or] (2) [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation.

Further 11 U.S.C. § 544(b) reads in relevant parts:

> [T]he trustee may avoid an transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim . . .

And should the transfer be avoided the trustee under 11 U.S.C. § 550 may:

> recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee.

According to the Bankruptcy Appellate Panel of the Ninth Circuit, section 544(b)(1) authorizes a trustee to avoid "any transfer of an interest of the debtor in property . . . that is voidable under applicable law–i.e., state law." *In re EPD Inv. Co., LLC*, 523 B.R. 680, 685 (Bankr. App. 9th Cir. 2015). The court in *EPD Inv. Co.*, held that the California Uniform Fraudulent Transfer Act in Cal. Civ. Code §§ 3439-3439.12 is an applicable state law within the guidelines of 11 U.S.C. § 544(b)(1). *Id.* ("A trustee's right to bring a state-law fraudulent transfer action under § 544(b) is a creation of the Bankruptcy Code; it is not an action to assert an independent state law created right"). Thus, "[t]o decide whether a transfer is avoidable under California's [UVTA], [the court] must interpret California law." *In re Tenorio*, No. 6:15-BK-21717-SC, 2018 WL 989691 at *7 (Bankr. App. 9th Cir. Feb 8, 2018) (internal citations and quotations omitted).

In determining whether a transfer was an actual fraudulent transfer under California law, the court may consider certain "badges of fraud":

> (1) whether the transfer or obligation was to an insider;
> (2) whether the debtor retained possession or control of the property transferred after the transfer;
> (3) whether the transfer or obligation was disclosed or concealed;
> (4) whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
> (5) whether the transfer was of substantially all the debtor's assets;
> (6) whether the debtor absconded;
> (7) whether the debtor removed or concealed assets;
> (8) whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
> (9) whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
> (10) whether the transfer occurred shortly before or shortly after a substantial debt was incurred; and
> (11) whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.
> *Tenorio*, 2018 WL 989691 at *11; Cal. Civ. Code § 3439.04(b).

Further, "[n]o single factor necessarily is determinative, and no minimum or maximum number of factors dictates a particular outcome . . . . [T]he list should not be applied formulaically. Instead, the trier of fact should consider all of the relevant circumstances surrounding the transfer." *Tenorio*, 2018 WL 989691 at *11 (citing *In re Ezra*, 537 B.R. 924, 931 (Bankr. App. 9th Cir. 2015)).

First, looking at the facts at hand, it is clear that Defendant is an insider. In *Tenorio*, the Bankruptcy Appellate Panel of the Ninth Circuit found a "close friend of thirty-five years" an insider because they were regarded as "family." *Tenorio*, 2018 WL 989691 at * 11. Likewise here, Defendant is Debtor's

daughter. Unlike a family friend, Defendant is related to Debtor, thus, the court finds this to be a factor tilting in favor of finding that there is a badge of fraud.

Second, the real property valued at $269, 190.00 is a significant portion of Debtors' assets. Exhibit D, Docket 15. This factor similarly leans in favor of finding for a badge of fraud.

Third, Debtor made the transfer after a Notice of Levy was issued. Exhibit C, Docket 15. The notice was mailed on August 8, 2024. *Id.* And Debtor made the transfer to Defendant on September 23, 2024. Exhibit B, Docket 15. Thus, Debtor made a transfer after a threat with suit. This factor again leans in favor of finding that there was fraud.

Fourth, Debtor transferred the real property to Defendant in the form of a gift and for no consideration. Exhibit B, Docket 15. This again leans in favor of finding that there was fraud.

Although Debtor did disclose at the 341 meeting of creditors that the transfer was made in an attempt to protect the property from creditors, the court finds the factor insufficient to disprove fraud. This lone factor in favor of Defendant cannot overcome the four others above.

Thus, taking the factors in mind, the court finds that Debtor's transfer of real property to Defendant was fraudulent under California Civil Code § 3439.04.

Avoidance of Fraudulent Transfer of Real Property
Under California Civil Code Section 3439.05

The Second Cause of Action seeks a declaration avoiding the transfer of the real property between the Defendant and Debtors under California Civil Code section 3439.05.

California Civil Code section 3439.05 states in relevant part:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

As established above, Debtor transferred the real property to Defendant as a gift on the same day Debtor filed a voluntary Chapter 7 petition. The Ninth Circuit held that under California law, a transfer is fraudulent if there "was no reasonably equivalent value for transfer, and the debtor was insolvent or became insolvent after the transfer." *U.S. Dubey*, 473 Fed. Appx. 691 (9th Cir. 2012); *In re Yan Sui*, 582 Fed. Appx. 740 (9th Cir. 2014) (finding that summary adjudication on the trustee's fraudulent transfer claim under section 3439.05 was appropriate because the defendant transferred his interest in the real property without receiving anything in exchange).

Here, Debtor received no consideration from the transfer of the real property to Defendant. Further, the transfer occurred on the same day that Debtor filed a voluntary Chapter 7 petition. Thus, Debtor was insolvent before or/and after the transfer made to Defendant. Accordingly, the court finds the transfer

voidable under California Civil Code section 3439.05 and finds the second cause of action in favor of Plaintiff-Trustee.

Avoidance and Recovery of Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)

The Third Cause of Action seeks a declaration avoiding the transfer of the real property between the Defendant and Debtors under 11 U.S.C. § 548(a)(1)(A).

Section 548 (a)(1)(A) of the Bankruptcy Code states in relevant parts:

> [t]he trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily . . . made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

In determining "actual intent" the Ninth Circuit notes that a court may "make a finding of fraudulent intent under section 548(a)(1) on the basis of circumstantial evidence" as "direct proof . . . will rarely be available." *In re Agric. Reserach and Tech. Group, Inc.*, 916 F.2d 528, 534-35 (9th Cir. 1990). For instance, courts have "found that knowledge that a transaction will operate to the detriment of creditors is sufficient for actual intent." *Id.* (citing *In re American Properties, Inc.*, 14 B.R. 637, 643 (D. Kan. 1981)).

Here, according to Plaintiff-Trustee, Debtors knowingly transferred the real property in order to avoid creditors. The court finds this persuasive. According to the evidence, Debtor had knowledge that the property would be foreclosed due to the Notice of Levy. A few weeks after receiving the notice, Debtor transferred the property to his daughter as a gift. This is enough circumstantial evidence to show that Debtor had the "actual intent" to avoid foreclosure of his property which would undoubtedly be to the detriment of his creditors. *Agric. Research and Tech Group, Inc.*, 916 F.2d at 535. The court thus finds in favor of Plaintiff-Trustee on the third cause of action.

Avoidance and Recovery of Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B)

The Fourth Cause of Action seeks a declaration avoiding the transfer of the real property between the Defendant and Debtors under 11 U.S.C. § 548(a)(1)(B).

Section 548(a)(1)(B) of the Bankruptcy Code states in relevant parts:

> [t]he trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily . . . received less than a reasonably equivalent value in exchange for such transfer or obligation and was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

In determining what constitutes as a "reasonably equivalent value," the Ninth Circuit held that "[v]alue is defined . . . and includes the satisfaction or securing of a present or antecedent debt of the debtor." *In re Fitness Holdings Intern., Inc.*, 714 F.3d 1141, 1145 (9th Cir. 2013) (internal quotations omitted). This may, for example, include "[p]ayment of a preexisting debt" "if the payment is dollar-for-dollar." *Id.*

No such value was given in this instant matter. The evidence shows that Debtor transferred the property to Defendant for no consideration. There was no indication that Defendant made any payment "dollar-for-dollar" for the property nor were there any indication that Debtor transferred the property to satisfy a debt. Additionally, Debtor made the transfer the same day he filed a Chapter 7 petition. Thus, Debtor was insolvent at the time the transfer was made. Accordingly, the court finds that there was a fraudulent transfer under 11 U.S.C. § 548(a)(1)(B) and finds the Fourth Cause of Action in favor of Plaintiff-Trustee.

Turnover

The Fifth Cause of Action seeks a declaration for turnover pursuant to 11 U.S.C. § 542.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Plaintiff-Trustee claims that although Defendant is on title for the real property, Debtor is the true owner as Defendant is merely on title as an accommodation or to hinder creditors.

CONCLUSION

Applying these factors, the court finds that Plaintiff-Trustee has sufficiently shown that Debtor fraudulently transferred the real property to Defendant. As a result, the Trustee cannot effectively maintain the bankruptcy estate.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are meritorious. The court has not been shown that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding.

The court finds that avoiding the transfer of the real property is appropriate under 11 U.S.C. §§ 544, 548. Thus, the Trustee under 11 U.S.C. § 550(a) may recover the property transferred. And any transfer avoided is persevered for the benefit of the estate pursuant to 11 U.S.C. § 551.

Attorney's Fees and Costs, if any, may be sought pursuant to post-judgment costs bill(s) and motion for prevailing party attorney's fees and costs (if any are allowable under applicable law).

The court does not award punitive damages.

The court grants the default judgment in favor of Plaintiff-Trustee.

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

The Motion for Entry of Default Judgment filed by Kimberly J. Husted ("Plaintiff-Trustee"), Trustee for the bankruptcy estate of Ronnie Edward Day and Marcella Elizabeth Day ("Debtor"), having been presented to the court, no opposition having been filed by Defendant Monica E. Clonts ("Defendant"), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment granted and the transfer of the real property commonly known as 250 San Joaquin Drive, Red Bluff California ("Property") avoided and preserved for the benefit of the estate pursuant to 11 U.S.C. §§ 544, 548, 550, 551 and California Civil Code §§ 3439.04 and 3439.05.

IT IS FURTHER ORDERED that Ronnie Edward Day, Marcella Elizabeth Day ("Debtor") and/or Defendant shall deliver on or before **XXXXXXX**, possession of the real property commonly known as 250 San Joaquin Drive, Red Bluff, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

Attorney's Fees and Costs, if any, may be sought pursuant to post-judgment costs bill(s) and motion for prevailing party attorney's fees and costs (if any are allowable under applicable law).

No other relief is granted pursuant to the Motion for Entry of Default Judgment.

Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order.

3. 23-23959-E-13 LASHUNDA PHILLIPS
24-2176 CRG-1
PHILLIPS ET AL V. BANKERS HEALTHCARE GROUP, LLC

DISCOVERY MOTION AND REQUEST FOR ATTORNEYS FEES AND/OR MOTION FOR SANCTIONS
2-25-25 [25]

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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant and Defendant's attorney on February 25, 2025. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Compel Discovery and Request for Attorney's Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Compel Discovery and Request for Attorney's Fees is granted.

Debtor-Plaintiff Lashunda Kelly Phillips and Robert Phillips ("Debtor-Plaintiff") moves the court for an order compelling discovery and issuing sanctions pursuant to Fed. R. Bankr. P. 7037 and Fed. R. Civ. P. 37(a) and (d) against Creditor-Defendant Bankers Healthcare Group, LLC ("Defendant"). Debtor-Plaintiff seeks the following:

1) an order granting Plaintiffs' Motion to Compel Discovery Responses and Sanctions;

2) an order finding that Defendant is in breach of its discovery obligations;

3) an order that Defendant is to fully comply with the discovery requests within 7 days of the order;

4) an order finding that Defendant be prohibited from conducting any further discovery in this case;

5) an order finding that Plaintiff be allowed additional time to perform follow-up discovery including the depositions of Defendant's employees once they are identified;

6) an order finding that Defendant pay Plaintiffs' attorney's fees and costs for bringing this motion in the approximate amount of $2,750.00, plus 1 hour of anticipated attorney time for the appearance at the hearing on this motion for a total of approximately $3,275.00.

Mot. 2:9-21.

Debtor-Plaintiff pleads as follows:

1. On December 16, 2024, Debtor-Plaintiff served Interrogatories, Requests for Production, and Requests for
2. Admission on Defendant. *Id.* at 3:7-8.

3. Defendant responded on January 16, 2025, with boilerplate objections, improper claims of privilege, and incomplete responses. *Id.* at 3:9-10.

4. Plaintiffs sent a meet-and-confer letter on February 6, 2025, identifying the deficiencies and demanding supplementation. This letter asked Defendant to provide discovery answers by February 11, 2025. *Id.* at 3:11-13.

5. On February 13, 2025, Defendant responded but failed to cure the deficiencies, continuing to improperly withhold documents and information. *Id.* at 3:15-16.

Debtor-Plaintiff files the Declaration of Carl R. Gustafson, Debtor-Plaintiff's attorney, in support to authenticate the facts alleged. Docket 27.

DEFENDANT'S OPPOSITION

Defendant filed an Opposition on March 13, 2025. Docket 37. Defendant states:

1. Defendant has been attempting to provide all requested documents subject to well-founded objections. *Id.* at 2:6-7.

2. Defendant acknowledges that there was an unexplained delay from the provision of its initial responses and objections to Plaintiff's initial discovery requests until the first actual production occurred, but that delay was not in bad faith. *Id.* at 2:7-9.

In its Memorandum of Points and Authorities, Defendant states:

1 On February 13, 2025, BHG transmitted eighty-four (84) documents consisting of four hundred thirty-six (436) pages to counsel for the Plaintiffs. On investigation, it appears that a miscommunication within BHG's counsel's firm led to the delay in the transmission of those responsive materials. Mem. at 3:4-7.

2 On February 20, 2025, the Plaintiffs requested a privilege log, which was provided on March 5, 2025. The privilege log identifies eighty-one (81) communications. *Id.* at 3:8-9.

3 On March 3, 2025, BHG provided supplemental production of documents, consisting of two documents and twenty-three (23) pages. *Id.* at 3:10-12.

4 On March 5, BHG provided a second supplemental production of documents, consisting of twenty-two (22) documents and ninety-one (91) pages. *Id.* at 3:12-14.

5 All in, BHG has produced a detailed privilege log and one hundred and eight (108) documents, totaling five hundred fifty (550) pages. *Id.* at 3:14-16.

6 Defendant provides its answers to the interrogatories in the Memorandum.

DEBTOR-PLAINTIFF'S REPLY

Debtor-Plaintiff filed a Reply on March 20, 2025. Docket 45. Debtor-Plaintiff states:

1 It is undisputed that BHG failed to timely produce requested discovery documents, necessitating Plaintiffs' motion. *Id.* at 2:1-2.

2 Defendant claims inadvertence or counsel's error caused delays, that does not excuse its obligations under the Federal Rules of Civil Procedure. *Id.* at 2:6-7.

3 Defendant attempts to argue that Plaintiffs' requests are ambiguous or overly broad, but these claims lack merit. The requests are narrowly tailored to elicit information directly relevant to the claims at issue, including BHG's collection efforts, internal policies, and communications regarding Plaintiffs' accounts. BHG's continued delay tactics should not be rewarded. *Id.* at 3:5-8.

APPLICABLE LAW

Fed. R. Civ. P. 37(a), as incorporated into bankruptcy through Fed. R. Bankr. P. 7037, states:

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action. . .

(3) Specific Motions.

> (A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.
>
> (B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:
>
> > (i) a deponent fails to answer a question asked under Rule 30 or 31 ;
> >
> > (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4) ;
> >
> > (iii) a party fails to answer an interrogatory submitted under Rule 33 ; or
> >
> > (iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34. . .

(5) Payment of Expenses; Protective Orders.

> (A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:
>
> > (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
> >
> > (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
> >
> > (iii) other circumstances make an award of expenses unjust.

A leading treatise on Federal Rules of Civil Procedures, Moore's Federal Practice, states on the subject:

> After deciding a motion to compel discovery, a district court must award the prevailing party its reasonable expenses, including attorney's fees, unless one of three exceptions applies. If the motion to compel is granted in part and denied in part, the court may, after giving an opportunity to be heard, apportion the reasonable expenses

> for the motion. Expense shifting sanctions are defined as the "reasonable expenses incurred" in making or opposing the motion, including attorney's fees. . .
> . . .
>
> Before imposing expense shifting sanctions on a party who unsuccessfully made or opposed a motion to compel discovery or mandatory disclosures, a court must give the persons or parties to be sanctioned an opportunity to be heard.
>
> Courts may comply with this requirement either by holding an oral hearing on adequate notice, or by considering written submissions from the affected parties. There is no absolute right to present oral argument. . .
>
> Sanctions imposed against a party or attorney responsible for taking the position that the court rejected when ruling on a motion to compel are limited to the reasonable expenses incurred in connection with the motion, including attorney's fees. This limitation stands in sharp contrast to the wide range and broad scope of sanctions that courts may impose after a court order has been violated (see § 37.50–37.51).

7 MOORE'S FEDERAL PRACTICE - CIVIL § 37.23[1], [5], & [6].

> There is a split in authority as to whether Rule 37(d) sanctions may be imposed when a party has responded to interrogatories or a request for inspection, but the response is so inadequate that it is tantamount to a complete failure to respond. Some courts believe that sanctions are available only if a party has failed completely to serve a timely response to interrogatories or a request for inspection. According to these authorities, if a party serves a response that contains answers that are incomplete, evasive, or false, the aggrieved party may file a motion to compel (see §§ 37.01–37.06), but any sanctions will be limited to expense shifting sanctions (see § 37.23). More consequential sanctions may be available if an order compelling discovery is entered, and then violated (see §§ 37.50–37.51).

7 MOORE'S FEDERAL PRACTICE - CIVIL § 37.91[2].

As an initial matter, Defendant is reminded of its duty to engage in discovery in good faith. *See Payne v. Exxon Corp.*, 121 F.3d 503 (9th Cir. 1997) (affirming the district court's discovery sanctions when party failed to comply with at least four discovery orders). It is undisputed that Defendant has failed to comply with discovery in a timely manner in this case. As an example, Debtor-Plaintiff provides evidence that Defendant is objecting to commonly known terms such as "debt" as vague. Support Document 2:2-7, Docket 33. Such objections are frivolous and made to stalwart discovery attempts. That type of behavior is considered in whether or not to issue sanctions.

> Another example Debtor-Plaintiff provided is as follows:
>
> 3) Interrogatory No. 2: Describe in detail all actions taken by you or your representatives to collect on the debt owed by Lashunda Kelly Phillips or Robert Phillips after November 3, 2023.

> a) Response: BHG objects to this Interrogatory on the basis that it is vague, overly burdensome, and overly broad. "Action" is not defined, and its common definition is so broad that it could encompass many irrelevant "actions" or "acts" that were in furtherance of the collection of a debt. BHG further objects on the grounds that the question imprecisely and unnecessarily lumps in debts owed by Lashunda whether or not related to the debt complained of.

Id. at 3:5-12. Such a response is inadequate. The question is narrowly tailored and obviously pertinent to the facts of this case. Objecting on the basis that "action" is vague again appears to be an effort hinder the process. There is nothing vague about the term "action."

A further example is provided:

> 9) Interrogatory No. 11 Request: Provide a detailed accounting for each attempt to collect and each collection on the debt after November 3, 2023 including the date, time, the full name of the person, whether they were automatic and the legal basis for those collections.
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> a) Response: BHG objects to this Interrogatory to the extent it calls for a "legal basis" on the grounds that such inquiry is not a factual inquiry and not the subject of discovery requests. *See Dale v. Correct Care Servs*, No. 2:19-cv-1207, 2020 US. Dist. LEXIS 223355, at *18-19 (W.D. Pa. Nov. 30, 2020) (quoted above in Answer to Interrogatory No. 5). Subject to the foregoing objection(s), see attached "Exhibit A".

Id. at 8:7-15. Again, such a response is inadequate. Defendant is being asked to produce specific, relevant information to the case. Defendant's failure to provide a factual accounting based on a limited objection to the interrogatory is unjustified.

However, the Ninth Circuit has strictly construed the interpretation of Fed. R. Civ. P. 37(d). *Fjelstad v. American Honda Motor Co.*, 762 F.2d 1334, 1339–1340 (9th Cir. 1985) (reversing sanctions based on answers deemed incomplete, evasive, and in some cases, false). The court cannot issue sanctions pursuant to Rule 37(d) at this stage of the litigation as Defendant has provided answers to interrogatories, even if the answers are woefully insufficient.

That said, the court is authorized to award moving party attorney's fees pursuant to Fed. R. Civ. P. 37(a)(5)(A). In fact, the language of that Rule states the court "must" award attorneys fees to the prevailing party, unless the presumption is rebutted by showing:

> A. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action,
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> B. The opposing party's nondisclosure, response, or objection was substantially justified, or
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> C. Other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(5)(A).

The record reflects that Debtor-Plaintiff filed this Motion after attempting in good faith to obtain discovery without court action. After Defendant failed to adequately answer interrogatories by the deadline of January 16, 2025, Debtor-Plaintiff met and conferred with Defendant to resolve the issue. The issue was not adequately resolved.

The record also shows that Defendant's response to failing to produce discovery was not substantially justified. Defendant's justification in failing to adequately engage in discovery is as follows:

> BHG [Defendant] acknowledges that there was an unexplained delay from the provision of its initial responses and objections to Plaintiff's initial discovery requests until the first actual production occurred, but that delay was not in bad faith (indeed, it was not even BHG's error—the delay was counsel's error).

Opp'n 2:7-10, Docket 37. Indeed, failure to engage in discovery being counsel's error does not render the response substantially justified.

Finally, the court is not presented with any other circumstances that would make an award of expenses unjust. The timeline shows that Defendant missed its original deadline to file adequate answers to the interrogatories by January 16, 2025. Gustafson Decl. ¶ 4, Docket 27. Debtor-Plaintiff then attempted to set a meet-and-confer and provided a further deadline of February 11, 2025. *Id.* at ¶ 5. Defendant missed that deadline again, responding on February 13, 2025. *Id.* at ¶ 6. Then, Defendant began slowly producing documents to Debtor-Plaintiff on February 13 and 20, and on March 3 and 5, well after provided deadlines. Mem. 2:25-3:15, Docket 42. These circumstances would not render an award unjust.

Therefore, pursuant to Fed. R. Civ. P. 37(a)(5)(A), the court awards the moving party, as the prevailing party, reasonable attorney's fees in the amount of $3,275 for the time spent in bringing this Motion and appearing at the hearing.

The court is further ordering Defendant to comply with discovery requests pursuant to Fed. R. Civ. P. 37(a)(3)(B). Debtor-Plaintiff has shown that they have attempted to, in good faith, confer with the party failing to make disclosure or discovery in an effort to obtain it without court action. Defendant has been obstructing the process by providing late and inadequate answers.

Therefore, the Motion is granted and Defendant is compelled to comply with discovery requests by **XXXXXXX** pursuant to Fed. R. Civ. P. 37(a).

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

> The Motion to Compel Discovery and Request for Attorney's Fees filed by Debtor-Plaintiff Lashunda Kelly Phillips and Robert Phillips ("Debtor-Plaintiff"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion to Compel Discovery and Request for Attorney's Fees is granted, and Creditor-Defendant Bankers Healthcare Group, LLC

("Defendant") is compelled to provide, in good faith, adequate discovery responses by **xxxxxxx** pursuant to Fed. R. Civ. P. 37(a)(3)(B).

IT IS FURTHER ORDERED that Defendant is ordered to pay Debtor-Plaintiff's attorney's fees for time spent in prosecuting this Motion in the amount of $3,275 pursuant to Fed. R. Civ. P. 37(a)(5)(A).