

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 7, 2022 at 10:30 a.m.

1.	<u>21-20001</u>-A-7 <u>MJD-2</u> 1 thru 2	ROBERT BROWNFIELD Matthew DeCaminada	MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 3-21-22 [38]
-----------	----------------------------------------------------------------------	-------------------------------------------------------	------------------------------------------------------------------------------------------------------------

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 21, 2022. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The court notes, Debtor filed a Notice of Reschedule Hearing on March 25, 2022, Dckt. 49, to correct the clerical error made in the Notice of Hearing, Dckt. 39. The Notice of Hearing set the hearing date for April 4, 2022, however, the Notice of Reschedule Hearing correctly sets the hearing for April 7, 2022.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of **American Express Bank, FSB** (“Creditor”) against property of the debtor, Robert John Brownfield (“Debtor”) commonly known as **8637 Kingdale Ave, Orangevale, California** 95662 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,433.12 Exhibit B, Dckt. 41. An abstract of judgment was recorded with Sacramento County on November 19, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$700,000.00 as of the petition date. Dckt. 17. The unavoidable consensual liens that total \$461,947.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 37. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$238,053.00 on Amended Schedule C. Dckt. 35.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert John Brownfield (“Debtor”) 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 judgment lien of American Express Bank, FSB, California Superior Court for Sacramento County Case No. 34-2018-00228489-CL-CL-GDS, recorded on November 19, 2018 Document No. 201811190448, with the Sacramento County Recorder, against the real property commonly known as 8637 Kingdale Ave, Orangevale, California 95662, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 21, 2022. By the court’s calculation, 17 days’ notice was provided. 14 days’ notice is required.

The court notes, Debtor filed a Notice of Reschedule Hearing on March 25, 2022, Dckt. 51, to correct the clerical error made in the Notice of Hearing, Dckt. 44. The Notice of Hearing set the hearing date for April 4, 2022, however, the Notice of Reschedule Hearing correctly sets the hearing for April 7, 2022.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien **of American Express National Bank** (“Creditor”) against property of the debtor, Robert John Brownfield (“Debtor”) commonly known as **8637 Kingdale Ave, Orangevale, California** 95662 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,308.54 Exhibit B, Dckt. 46. An abstract of judgment was recorded with Sacramento County on February 8, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of

\$700,000.00 as of the petition date. Dckt. 17. The unavoidable consensual liens that total \$461,947.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 37. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$238,053.00 on Amended Schedule C. Dckt. 35.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert John Brownfield ("Debtor") 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 judgment lien of American Express National Bank, California Superior Court for Sacramento County Case No. 34-2018-00237371-CL-CL-GDS, recorded on February 8, 2019, Document No. 201902081154, with the Sacramento County Recorder, against the real property commonly known as 8637 Kingdale Ave, Orangevale, California 95662, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Not Provided. No Proof of Service is attached to the Objection, Notice, or filed separately as a separate document. The court does not know if this was a clerical error or intentional on the filing party's part.

At the hearing, -----.

~~The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on **xxxx, 201x**. By the court's calculation, **xx** days' notice was provided. 14 days' notice is required.~~

~~----- The Objection to Chapter 7 Trustee's Report of No Distribution was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.~~

The Objection to Chapter 7 Trustee's Report of No Distribution is overruled.

On November 23, 2021, Chapter 7 Trustee, Geoffrey Richards ("Trustee"), filed a "Report of No Distribution."

On November 24, 2021, the court issued Notice the Trustee in the above case has filed a "Report of No Distribution." Dckt. 13. The Notice provides, pursuant to 11 U.S.C. § 704(a)(4), appropriate grounds for hearings on objections to the Trustee's report include failure by the trustee to investigate the financial affairs of the debtor. The Notice also states the "Last Day to File an Objection: December 24, 2021.

CREDITOR'S OBJECTION

On December 20, 2021, Brian Tucker, creditor ("Petitioner"), filed an Objection to the Filing Report of No Distribution on the grounds that the Trustee failed to investigate the financial affairs of the debtor. Dckt. 17. The Objection states Petitioner has first hand knowledge of assets held by the Debtor, and testimony from relatives of the debtor, that indicate the debtor operates from a pool of cash of about \$21,000.00 as a way to evade child support issues in several cases.

Petitioner further states, the trustee has not sufficiently investigated the actual financial affairs of the debtor to ascertain the actual assets within her possession. Additionally, discovering such cash funds would require scrutiny of the balance sheets of bank accounts, income, and expenditures to show that Debtor has funds that have not been disclosed to the trustee, and that the trustee has not sought to discover.

Petitioner notes he can submit, at a hearing, testimony of such undisclosed assets and present witnesses who have first hand knowledge of such assets currently in Debtor's possession. **Petitioner can further show an eight year history of using bankruptcy filing by the Debtor to evade any and all financial responsibility, and the use of undisclosed cash to circumvent collection and child support.**

CREDITOR'S NOTICE

In the initial filing of Creditor's Objection he failed to set a hearing date for the Objection. On February 17, 2022, Creditor filed a Notice of Hearing with the court, setting the hearing date for April 7, 2022, at 10:30 a.m. Dckt. 24.

TRUSTEE'S RESPONSE

On March 21, 2022, Chapter 7 Trustee, Geoffrey Richard filed a Response to Creditor's Objection to Report of No Distribution. Dckt. 26. Trustee states:

- A. On Schedule B, Part 4, Line 16, the debtor listed that she had cash in the amount of \$20.00.
- B. On Schedule B, Part 4, Line 17, the debtor listed a "Checking Account EDD Card with Bank of America" in the amount of \$900.00, and a "Checking Account with Capital One 350" in the amount of \$5.00.
- C. On Schedule C the debtor exempted the cash and bank accounts using the C.C.P. § 703.140(b)(5) Exemption ("Wildcard Exemption") in the total amount of \$925.00.
- D. Debtor did not utilize any additional "Wildcard Exemption" on Schedule C.
- E. On November 7, 2021, debtor provided copies of bank statements for the accounts listed in item 4. The amounts reflected in these statements substantially agree with the amounts listed on Schedule B.

- F. Schedule I reflects that the debtor is not employed and the only source of income is \$1,400.00 per month from unemployment.
- G. Debtor was examined under oath at the telephonic 341 Meeting of Creditors conducted on November 23, 2021. At the hearing the debtor testified that she was familiar with the schedules filed in the case, that those schedules were true and correct, that she signed the schedules, and further testified she listed everything she owns no matter where it is located.
- H. No creditors appeared at the 341 Meeting of Creditors on November 23, 2021.
- I. On **January 13, 2022, Trustee sent Mr. Tucker a letter informing him that he needed to set the matter for hearing, and that documentation to support his allegations must** be served on parties of interest within three days of the setting of the hearing. To date Trustee has not received any documentation from Mr. Tucker to support his allegations.
- J. Mr. **Tucker has never provided any documentation to support his allegation of the alleged “cash pool”** in the amount of \$21,000.00, and the fact that even if this “cash pool” existed it could be exempted by the debtor using the available “wildcard exemption.”

DEBTOR’S ATTORNEY’S STATEMENT

On January 3, 2022, Trustee sent an email to Mr. Scott Johnson Esp, the attorney representing the debtor requesting that he respond to the allegations that Mr. Tucker made in his objection.

Mr. Johnson responded by email that, **“Mr. Tucker is a former property manager/landlord and has been harassing the debtor for the last three years based on back rent that was due and cleaning fees.** He also called my office several times after the case was filed to let me know that it was illegal for the Debtor to attempt to discharge the debt owed to him. With respect to the allegation the Debtor has some pool of money that she “operates” out of, this is apparently an allegation he has been making in threats against the Debtor since 2018 when he threatened to “tell the bankruptcy courts” that she was hiding money **or bring criminal charges against her is she didn’t make a payment arrangement with him.**

The Debtor is and has been undergoing cancer treatments and it took her over thirteen (13) months to pay the attorney’s fees for this case so I can pretty confidently say that the allegation is a complete fabrication. That and the fact that, if the Debtor has such an account, that sum of money would have been completely exempt.” Dckt. 26, p. 2, line 14 to p.3, line 2.

DEBTOR’S RESPONSE

On March 29, 2022, Debtor filed a Response. Dckt. 28. Debtor disputes the assertions by Objector. Debtor has provided her declaration supporting her response. Dckt. 30.

In the Response, Debtor asserts that Objector has “[t]hreatened to press criminal charges based on Debtor’s non-payment of the debt owed to him or his company, . . .” Response, p. 2:4-5; Dckt. 28.

APPLICABLE LAW

Pursuant to United States Bankruptcy Code § 704(a)(4) the trustee shall investigate the financial affairs of the debtor.

California Code of Civil Procedure § 703.140(b)(5) states, “the debtor’s aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550.00) in value plus any unused amount of the exemption provided under paragraph (1), in any property.

The Debtor’s aggregate interest, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275.00) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence. California Code of Civil Procedure § 703.140(b)(1).

DISCUSSION

It was proper for Creditor to raise an objection to the Trustee’s Report of No Distribution based on the argument the Trustee failed to investigate the financial affairs of the debtor. However, Creditor provides zero evidence to substantiate these allegations and offers mere conjecture and promises to provide evidence only at a hearing.

Further, if Debtor did have a “pool of money to operate out of” in the amount of \$21,000.00, this amount of money would be exempt because the total amount exempted would not reach the maximum amount allowed pursuant to California Code of Civil Procedure § 703.140(b)(5). Debtor is claiming \$925.00 exempt under the wildcard exemption, that leaves \$625.00 left under § 703.140(b)(5) (\$1,550.00 - \$925.00 = \$625.00). However, Debtor is allowed to factor in the \$29,275.00 she would get from § 703.140(b)(1) because the total amount under this (b)(1) is not being used. Thus, her total amount available to exempt is \$29,900.00 (\$29,275.00 + \$625.00 = \$29,900.00). The total amount less than the “pool of money to operate from” leaves the Debtor with \$8,900.00 available to exempt (\$29,900.00 - \$21,000.00 = \$8,900.00).

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 Objection to Chapter 7 Trustee’s Report of No Distribution filed by Brian Tucker (“Creditor”) 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 Objection is overruled.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

~~Sufficient Notice Provided.~~ The Proof of Service states that the Motion and supporting pleadings were served on a **Bryan Faliero in Greenville, South Carolina on March 24, 2022**. The court is not clear if this is an authorized agent of Creditor or managing member.

At the hearing, ~~XXXXXXXXXX~~

~~By the court's calculation, 14 days' notice was provided. 14 days' notice is required.~~

~~----- The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----~~

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of the debtor, Robert Gerard Ovalle and Lynette Susan Ovalle ("Debtor") commonly known as 1221 Appalosa Way, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,928.24 and \$11,120.19. Exhibit A & B, Dckt. 67. An abstract of judgment was recorded with San Joaquin County on January 14, 2015 and January 15, 2015, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$350,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$152,667.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$7,333.00 subject to 11 U.S.C. § 349(b)(1)(B).

Unfortunately, Debtor has only served an individual named Bryan Faliero in Greenville, South Carolina. **XXXXXXX**

~~ISSUANCE OF A COURT-DRAFTED ORDER~~

~~An order substantially in the following form shall be prepared and issued by the court:~~

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert Gerard Ovalle and Lynnette Susan Ovalle ("Debtor") 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 judgment lien of CACH, LLC, California Superior Court for San Joaquin County Case No. 39-2013-00297548-CL-CL-STK, recorded on January 14, 2015, Document No. 2015-005193, with the San Joaquin County Recorder, against the real property commonly known as 1221 Appalosa way, Tracy, California, is avoided in its entirety for all amounts in excess of \$7,333.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

~~**IT IS FURTHER ORDERED** that the judgment lien of CACH, LLC, California Superior Court for San Joaquin County Case No. 39-2013-00297554-CL-CL-STK, recorded on January 15, 2015, Document No. 2015-006096, with the San Joaquin County Recorder, against the real property commonly known as 1221 Appalosa Way, Tracy, California, is avoided in its entirety for all amounts in excess of \$7,333.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

The Scheduling Conference is XXXXXXX

APRIL 7, 2022 CONFERENCE

XXXXXXX

MARCH 23, 2022 CONFERENCE

On March 22, 2022, Russell Lester, the Reorganized Debtor under the confirmed Chapter 11 Plan requested that the court set a Scheduling Conference in this case for possible emergency motions that Mr. Lester anticipated having to file. These motions would relate to a delay in performing the Plan, which Mr. Lester asserts is being caused by an unanticipated length of time for governmental review of the granting of a conservation easement. Additionally, Mr. Lester believes that there may be an ambiguity in the confirmed Chapter 11 Plan.

At the hearing, counsel for the Debtor explained that the reason for conflicts counsel is that some of the professionals have liens for allowed compensation, so to insure that there are no questions for Mr. Lester, conflicts counsel has been brought in.

The granting of the conservation easement is being delayed, and the Debtor seeks to extend the deadline to close on the easement be extended to the end of May, 2022.

First National Bank of Dixon (“FNB”) believes that if there is an extension, Prudential is covered by its collateral, and get more if there is default interest. However, with the default interest going to Prudential, then there is less for the junior lien holders, such as FNB, administrative expenses, and unsecured claims.

Counsel for Prudential reported that it has local counsel that is working on the conservation easement.

The court continues this Scheduling Conference to April 7, 2022, to be conducted with the hearing on the Reorganized Debtor’s Motion for Preliminary Injunction.

The requested preliminary injunction is XXXXX.

APRIL 7, 2020 HEARING

At the hearing, XXXXXXX

MARCH 24, 2022 HEARING

On March 21, 2022, Russell Lester, the Reorganizing Debtor under his confirmed Chapter 11 Plan (“Plaintiff-Debtor”) filed a Complaint naming First American Title Company and Russ Lester, LLC as defendants. Dckt. 1. The Complaint seeks a judgment for a preliminary injunction. *Id.*; First Claim for Relief. No other relief is sought in the Complaint. On March 22, 2022, Plaintiff-Debtor filed a Motion for Issuance of Temporary Restraining Order and Preliminary Injunction. Dckt. 7. The grounds stated with particularity in the Motion (Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007) state the grounds for the Motion “are more fully set forth in the complaint. . .” *Id.*, ¶ 4. The Motion also states that there are ambiguities in the confirmed Plan, that Plaintiff-Debtor has been delayed in obtaining a conservation easement due to governmental review, and that the Plan appears to cause the Plaintiff-Debtor to automatically lose real property if the conservation easement is not completed by March 31, 2022. *Id.*, ¶¶ 5b-5e. The Plaintiff-Debtor has also requested the court conduct a Status Conference in the related Bankruptcy Case, which the court has set and will conduct at 10:30 a.m. on March 24, 2022 (specially set to the Modesto Division Courthouse - Telephonic Appearances Permitted).

The entry of a temporary restraining order was requested on an ex parte basis. The court having set the Status Conference for March 24, 2022, and knowing that Movant’s counsel and most major “players” in the Bankruptcy Case would be in attendance, the court set this request for a hearing on March 24, 2022, as well.

At the hearing, all parties in interest engaged in a constructive, productive discussion of their respective interests and issues. The consensus is that they are working to find agreement to allow for the prompt closing of the conservation easement and minimize the negative financial consequences for all parties in interest.

The court grants the motion for temporary restraining order, imposing to through and including April 15, 2022, the court finding cause existing to extend the time beyond fourteen days, and within the

twenty-eight day maximum as provided in Federal Rule of Civil Procedure 65(b)(2).

The court shall conduct the initial hearing for issuance of a preliminary injunction at 11:30 a.m. on April 7, 2022. No further pleadings will be filed regarding the issuance of a preliminary injunction, with the court using the April 7, 2022 to issue a “temporary preliminary injunction” if warranted, and the parties in interest do not agree to extend the twenty-eight maximum allowed for a temporary restraining order.

As discussed with the parties in interest, the court uses this procedure to allow them to focus on the issue of extending the time to close the sale of the conservation easement and allowing the parties to avoid expending time and expense on pleadings that may well be unnecessary in light of the good faith work of all parties in interest demonstrated in this case and shown at the March 24, 2022 hearing for the Temporary Restraining Order.

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

PRELIMINARY INJUNCTION ORDER

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

The Motion for Preliminary Injunction filed by Russell Lester, the reorganized Debtor under the confirmed Chapter 11 Plan, 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 Request for a Preliminary Injunction is **xxxxxx**.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2022. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion for Approval of Compromise is <u>granted</u>.

Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Richard Brendan Mohr, Jr. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are asserted in Adversary Proceeding, Case No. 21-2073, to recover preferential payments made to the Settlor by the Debtor under 11 U.S.C. §§ 547 & 550(a). The Trustee alleges that on or about April 19, 2020 through April 19, 2021, the Debtor paid Settlor at least \$23,700.00 on the \$290,000.00 loan Settlor provided to Debtor on or about December 5, 2018. At the February 10, 2022, hearing the Trustee offered to settle the Adversary proceeding for \$15,000.00, pending court approval, based on Settlor's financial situation.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set

forth in the Declaration of Trustee Kimberly J. Husted in support of the Motion, Dckt. 63):

- A. On March 14, 2022, Settlor agreed to the \$15,000.00 settlement, pending court approval and delivery to the Trustee a \$15,000.00 check.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

While the Trustee would likely obtain a judgment for at least \$22,000.00 the Settlor admitted receiving during the preference period under 11 U.S.C. § 547, there would be significant administrative expenses incurred by the estate that would greatly diminish any additional funds the estate may gain in a judgment if the Trustee went to trial.

Difficulties in Collection

Settlor is not in a financial position to pay the full judgment. Collection of any judgment would likely be solely a lien on Settlor's real property. The Trustee would then be faced with selling the judgment at a discount or waiting potentially over a decade or more to get a payment from the lien. Therefore, in the business judgment of the Trustee, an immediate payment to the estate of \$15,000.00 and avoiding additional administrative expenses in proceeding to a trial is in the best interest of the estate.

Expense, Inconvenience, and Delay of Continued Litigation

The Trustee has proof of payments made by the Debtor to the Settlor during the preference

period and the Settlor admitted to receiving \$22,000.00. The Trustee would need to prove Debtor was in fact insolvent during the entire one year preference period. Further, there would be significant administrative expenses incurred by the estate that would greatly diminish any additional funds the estate may gain in a judgment if the Trustee went to trial.

Paramount Interest of Creditors

The estate will likely be able to distribute more funds to creditors and also be able to distribute the funds sooner than if this compromise is not approved and a trial is necessary.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Trustee would accrue more administrative expenses trying to sell the judgment, would sell the judgment at a discount rate, or wait potentially over a decade to get a payment from the lien. The Motion is granted.

Dismissal of Adversary Proceeding

With respect to this Adversary Proceeding, no Settlement Agreement has been provided to the court. At the hearing, **XXXXXXX**

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 Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, (“Movant”) 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 Motion for Approval of Compromise between Movant and Richard Brendan Mohr, Jr. (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Declaration of Kimberly J. Husted filed in support of the Motion (Dckt. 63).

~~———— **IT IS FURTHER ORDERED** that the Adversary Proceeding, Case No. 21-2073, is dismissed with prejudice.~~

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, RBS Citizens, N.A., Citizens Financial Group, Inc., and Office of the United States Trustee on January 24, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is XXXXXXX .

This Motion requests an order avoiding the judicial lien of RBS Citizens, N.A. ("Creditor") against property of the debtor, Bobbie Gail McMahan ("Debtor") commonly known as 12 Garden Park Drive, Chico CA 95973, California ("Property").

Debtor asserts that Creditor hold a judicial lien against the Property "in the amount of \$225,000.00." Motion, Dckt. 12.

Debtor had not provided a copy of the recorded abstract of judgment. Rather, there is a copy of an abstract of judgment (with no recording information) issued on May 14, 2018, for the judgment entered on January 6, 2015. Exhibit, Dckt. 14 at 11.

Included with the Exhibits is what appears to be a portion of an unauthenticated preliminary title report. *Id.* at 12-13. Item 10 is for an abstract of judgment for Creditor in the amount of \$150,728.83, which is stated to have been recorded on June 5, 2018. The recording information is stated

to be “Recorded in: Butte County Official Records Serial No. 2018-19030. *Id.* at 10.

There is no date given for when the unauthenticated excerpt from a preliminary title report was generated. However, the current property tax information is November 2019 and February 2020.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$415,400.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$157,221.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. The court notes that Debtor’s Motion refers to Schedule D in Exhibit 1, however, Exhibit 1 does not appear to contain Schedule D. See Exhibit 1, Dckt. 14. The court may refer to Debtor’s voluntary petition (Dckt. 1) for Schedule D, but Debtor is reminded that such relevant information should be included in Debtor’s Exhibits.

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$33,179.00 on Schedule C. Dckt. 1. However, in Debtor’s Motion, Debtor claims an exemption in the amount of \$258,179.00. Motion at 2, Dckt. 12. It appears Debtor inadvertently wrote their Net Equity as a claimed exemption on Schedule C, rather than their proper Homestead Exemption.

The hearing was continued to allow Debtor to file a copy of the recorded judgment lien to be avoided.

March 17, 2022 Hearing

On March 14, 2022, Debtor filed a supplemental exhibit, the Abstract of Judgment with the recording information, and Declaration authenticating the Exhibit. Dckts. 26, 27. With this supplemental evidence, the court may properly rule on the Motion and issue an effective order for recording with the County Recorder.

A judgment was entered against Debtor in favor of Creditor in the amount of \$150,728.83. Exhibit, Dckt. 27. An abstract of judgment was recorded with Butte County on June 5, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$415,400.00 as of the petition date. Dckt. 1 at 11. The unavoidable consensual liens that total \$157,221.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1 at 20.

In the Motion it is asserted that Debtor has claimed an exemption in the amount of \$258,179.00 in the Property. However, as addressed above, Schedule C states an exemption of \$33,179.00. Sch C, Dckt. 1 at 18; and filed as Exhibit A in support of the Motion, Dckt. 14 at 9.

Applying the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), the determination of the extent to which the Abstract of Judgment impairs the lien is as follows:

FMV of the Property.....	\$415,400.00
Consensual Lien.....	(\$157,221.00)
Homestead Exemption.....	(\$ 33,179.00)

=====

\$ 225,000 in value for the Judgment Lien in excess of the

consensual liens and homestead exemption

In the Motion, it is asserted that the amount of the judgment as of the commencement of this case (\$225,000). Motion, ¶ 6; Dckt. 12. This is exactly equal to the value of the property that is in excess of the consensual liens and homestead exemption.

Therefore, the fixing of the judicial lien impairs Debtor's exemption, for the amount stated on Schedule C, of the real property, and its fixing is avoided in excess of \$225,000.00 subject to 11 U.S.C. § 349(b)(1)(B).

It appears that there may have been a clerical error on Schedule C and Debtor misstated the amount of the exemption which could be claimed against a judgment lien created in 2018. If even at the lower amount of the homestead exemption in 2018, there would be a substantial equity to be exempted.

April 7, 2022 Hearing

No Amended Schedule C has been filed by Debtor. At the hearing xxxxxxxxxxxxxxxx

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Bobbie Gail McMahan ("Debtor") 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 Motion to Avoid Judicial Lien is xxxxxx.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Amend Order was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Amend Order is granted.</p>

J. Michael Hopper, Chapter 7 Trustee, is seeking to amend the Court's Order, Dckt. 193; DNL-14, granting the Trustee's Motion for Order Authorizing Sale Free and Clear of Liens for the 19,957.452 square meters of land in Manuabo, Puerto Rico, pursuant to Federal Rules of Civil Procedure § 60, as incorporated by Rule 9024 of the Federal Rules of Bankruptcy Procedure.

Trustee requests the Court's Order entered on December 10, 2021, Dckt. 193, be amended to reflect the following language:

- A. (a) the steps the Trustee is authorized to take to carry out the estate's obligations to complete the sale of Finca 6487, include the signing of any deed or document needed to complete the sale and signing said deed or document on behalf of co-owner Elizabeth Cammacho Arroyo a/k/a Elizabeth Quiles ("Spouse") whose interest in Finca is community property within the meaning of 11 U.S.C. Section 541 (c)(2);

- B. (b) the interest of the Spouse shall attach to the net proceeds, which the Trustee shall segregate pending agreement of the Spouse or further order of the Court.

As discussed below, and as clearly stated in the Motion, the time period to amend this court's prior order pursuant to Federal Rule of Civil Procedure 59 and Federal Rule of Bankruptcy Procedure 7059 and 9014(c) has long expired. Trustee seeks to have this court "amend" the prior final order pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. As discussed below, such backdoor amendment, violating the express provisions of Federal Rule of Civil Procedure 59 as enacted by the United States Supreme Court, is improper.

Fortunately, Trustee has identified facts and provided a basis for the court to correct a "clerical error" pursuant to Federal Rule of Civil Procedure 60(a), Federal Rule of Bankruptcy Procedure 9024.

Trustee seeks an amendment because the Trustee did not discover the Spouse had changed her mind about cooperating with the sale until after the 28-day period had run on moving to amend. On December 10, 2021, the court entered its order granting DNL-14 (Doc. 193) which provides, among other things, that the sale is free and clear of the interest of the Spouse. The Trustee's special counsel advised that to complete the sale, Puerto Rico law requires that both the Spouse and Trustee sign a Power of Attorney ("POA") authorizing the transaction. The Spouse initially consented to the sale free and clear of her interest in Finca 6487 by executing a stipulation that was filed as Exhibit C to DNL-14. The stipulation provides:

"1. The sale shall be free and clear of any lien, encumbrance or interest that the Former Spouse has asserted or could assert against the Subject Property pursuant to 11 U.S.C. Section 363(f)(2).

2. The Trustee may use 100% of the net sale proceeds to pay claims allowed against the Debtor's bankruptcy estate in accordance with the priorities set forth in the United States Bankruptcy Code."

On March 14, 2022, the Trustee learned that the Spouse will not sign the POA unless she receives payment from escrow. The Trustee's special counsel has advised that, if authorized by express order of this Court to do so, the sale can be completed with a POA signed by the Trustee on the Spouse's behalf.

APPLICABLE LAW

Federal Rule of Civil Procedure § 60(b) states, "on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (6) any other reason that justifies relief."

Rule 60(b)(1), provides for relief from acts constituting mistake or surprise, is best

understood from analyzing fact patterns of the cases applying these principles. *In re Walker*, 332 B.R. 820, 829 (Bankr. D. Nev. 2005). Under these fact patterns, mistake or surprise may be found in circumstances where there is some reason for confusion or misunderstanding by the parties. *Id.*

However, Rule 60(b) is available to only set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment. *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007).

DISCUSSION

Here, the Trustee is attempting to amend an order with the purpose of adding additional relief to the prior order. This is improper under the standards of Rule 60(b).

However, upon further review of the evidence provided by the Trustee, there may be a “clerical” error in the Court’s Order on December 10, 2021. Dckt. 193. The court may correct a clerical mistake or a mistake arising from oversight or omission one is found in a judgment, order, or other part of the record. Federal Rule of Civil Procedure § 60(a). Paragraph 2 of the order states, “The Trustee may sell the interest of Enrique Quiles Vazquez a/k/a Enrique Quiles (“Debtor”) and Elizabeth Camacho Arroyo a/k/a Elizabeth Quiles (“Spouse”) in the following real property...” Dckt. 193; P. 1, Lines 26-28. Trustee is seeking to amend this language to be more specific based on the advice of special counsel.

Trustee’s special counsel advised Trustee that both the Spouse and Trustee need to sign a POA authorizing the transaction. This is not necessary because based on the Stipulation Agreement, the Spouse “expressly consents to the Trustee’s sale of the Subject Property as authorized by the DNL-9 order.” Dckt. 198, Exhibit B; P. 7, Lines 7-8. This specific language authorizes the Trustee to sell the property free and clear of liens pursuant to United States Bankruptcy Code § 363(f)(2).

Therefore, it is proper to amend the Court’s Order from December 10, 2021 to add the omitted language. Dckt. 193.

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 Motion to Amend Order filed by J. Michael Hopper, Chapter 7 Trustee, 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 Motion to Amend Order is granted and the December 10, 2021 order (Dckt. 193) is amended to add the following provisions:

(a) the steps the Trustee is authorized to take to carry out the estate’s obligations to complete the sale of Finca 6487, include the signing of any deed or document needed to complete the sale and signing said deed or document on behalf of co-owner Elizabeth Camacho Arroyo a/k/a Elizabeth Quiles (“Spouse”) whose interest in Finca is community property within the

meaning of 11 U.S.C. Section 541 (c)(2);

(b) the interest of the Spouse shall attach to the net proceeds, which the Trustee shall segregate pending agreement of the Spouse or further order of the Court.

IT IS FURTHER ORDERED counsel for the Trustee will prepare the order that reflects the requested language and lodge it with the court.

FINAL RULINGS

10. [12-28879-E-11](#)
[UST-1](#)

ANNETTE HORNSBY
Sunita Kapoor

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7, MOTION
TO DISMISS CASE
2-18-22 [[383](#)]

Final Ruling: No appearance at the April 7, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, Debtor in possession's Attorney, creditors, and parties requesting special notice on February 18, 2022. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss Case is granted and the case is dismissed.

The Chapter 11 Trustee, Tracy Hope Davis, ("Trustee") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(F) & (H).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on May 8, 2012.
2. On April 10, 2015, the Court entered an Order Confirming Reorganized Debtor's amended plan of reorganization.
3. Reorganized Debtor has not filed post-confirmation quarterly reports for the Second Quarter of 2017 through the Fourth Quarter of 2021.

4. Debtor's failure to file these post-confirmation quarterly reports is cause to dismiss or convert this case. See 11 U.S.C. § 1112(b)(4) (f) and (H); see also 11 U.S.C. § 1106(a)(7); Fed. R. Bank. P. 2015(a)(5); United States Trustee Chapter 11 Operating and Reporting Guidelines, at § 7 (available at <https://www.justice.gov/ust-regions-r17/region-17-general-information#ch11>); 28 C.F.R. § 58.8.
5. Dismissal of the case appears to be appropriate because Reorganized Debtor has already confirmed a plan of reorganization, and based upon 11 U.S.C. § 1141(b), it appears that all property of the bankruptcy estate vested in Reorganized Debtor upon confirmation.
6. The Motion is based upon the memorandum of points and authorities filed herewith (the MPA); the Brugger Declaration; the record in this case; and such evidence as may be filed to supplement the Motion, or as may be introduced at the hearing on the Motion. Judicial notice is requested of all documents filed in this case, including those referenced herein and in the MPA, pursuant to Rule 201 of the Federal Rules of Evidence.
7. The UST moves the Court to enter an order dismissing this case pursuant to Bankruptcy Code Section 1112(b). Alternatively, this case should be converted to Chapter 7, if the Court ultimately determines that such relief is in the best interests of the Reorganized Debtor's creditors and the estate.

Motion, Dckt. 383.

Trustee filed the Declaration of Laurie Brugger, Paralegal Specialist employed by the United States Department of Justice, Office of the United States Trustee, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 386.

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Further, United States Bankruptcy Code § 1112(b)(4)(F) allows dismissal or conversion due to Debtor in Possession's "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter."

Additionally, United States Bankruptcy Code § 1112(b)(4)(H) allows dismissal or conversion due to Debtor in Possession's "failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any)."

Here, Trustee asserts Debtor has not filed post-confirmation quarterly reports for the Second Quarter of 2017 through the Fourth Quarter of 2021.

Trustee argues there is cause to dismiss the case because debtor has failed to file post-confirmation quarterly reports. Further, Trustee argues dismissal is appropriate because Debtor in Possession has already confirmed a plan of reorganization and it appears all property of the bankruptcy estate vested in Debtor in Possession upon confirmation.

Trustee's arguments are well taken. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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 Motion To Dismiss filed by Tracy Hope Davis ("Trustee") 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 Motion is granted and the case is dismissed.