

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

April 17, 2025 at 10:30 a.m.

1. [22-90415](#)-E-7
[GG-15](#)

JOHN MENDOZA
Peter Macaluso

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF GOLDEN GOODRICH
LLP FOR JEFFREY I. GOLDEN,
SPECIAL COUNSEL(S)
3-27-25 [483]**

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 all creditors and parties in interest on March 27, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees 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, -----

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The Motion for Allowanced of Fees and Expenses is xxxxxxx.

Golden Goodrich LLP, the Special Counsel ("Applicant," "Firm") for Gary Farrar, the Chapter 7 Trustee ("Client," "Trustee"), makes a Fourth Interim Request for the Allowance of Fees and Expenses in this case.

April 17, 2025 at 10:30 a.m.

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Fees are requested for the period May 1, 2024, through February 28, 2025. The order of the court approving employment of Applicant was entered on May 19, 2023. Dckt. 75. Applicant requests fees in the amount of \$188,720.00 and costs in the amount of \$3,095.36.

OVERVIEW

This voluntary Chapter 7 Bankruptcy Case commenced by John Mendoza, the Debtor, has presented a run of contested proceedings concerning assets and what constitutes property of the Bankruptcy Estate. As addressed in prior proceedings and this Motion, such proceedings have resulted in large administrative expenses being sought.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include investigated potential undisclosed assets, (ii) conducted 2004 examinations, (iii) prosecuted a 727 action, (iv) prepared and filed a complaint for fraudulent transfer against the Debtor and related persons and entities, and (v) advised the Trustee on these matters. Mot. 2:4-7, Docket 349. The court finds the services were beneficial to Client and the Estate and were reasonable.

DEBTOR’S OPPOSITION

On July April 3, 2025 Debtor filed an Opposition. Docket 497. Debtor states:

- 1. The amount sought is not equitable given the work completed. Opp’n 1:20, Docket 497.
- 2. Applicant is seeking total compensation of \$537,305.00 in the case without even a trial. *Id.* at 2:20-23.
 - a. The court would note on this point, total fees and expenses requested are \$348,726.97 including this application, not \$537,305.00.
- 3. The fees sought are not equitable or even relate to the work completed, and given that no trial has even taken place such request should be denied as unreasonable. *Id.* at 2:26-28.
- 4. The amount requested is neither reasonably necessary, nor reasonable in the amount sought. . *Id.* at 3:13-14.

5. Applicant has not submitted sufficient time records for the court to verify the services were necessary or reasonable. *Id.* at 3:15-27.

APPLICANT'S REPLY

On April 10, 2025, Applicant submitted its Reply pleadings, including a Declaration in support. Dockets 499-500. Applicant states:

1. The fees are requested for, *inter alia*, conducting 2004 examinations, prosecuting the 727 Complaint and the Fraudulent Transfer Complaint, preparing for two trials, and negotiating a proposed global settlement that provides for (i) turnover to the Trustee of 25 real properties which will be marketed and sold for the benefit of the Estate's creditors, and (ii) dismissal of litigation. Reply 2:9-13, Docket 499.
2. Applicant has filed an Exhibit in support which contains 23 pages of detailed time and expense entries. The argument that invoices were not included is simply false. *Id.* at 2:25-26.
3. The Opposition claims the Firm's fees are unreasonable given the lack of any trial. With respect to the 727 Adversary Proceeding, during the fourth interim period the Firm prepared for trial not only by virtue of preparing the pre-trial order, but also preparing exhibit lists and integrating the evidence needed to prove the Trustee's case along with multiple companion actions. Extensive time was spent on this matter in connection with such preparation. The 727 Adversary Proceeding has not settled, and the Firm is prepared on behalf of the Trustee to proceed to trial as soon as it is scheduled. *Id.* at 3:12-18.
 - a. With respect to the Fraudulent Transfer Adversary Proceeding, the Firm prepared extensively for trial, including preparing the pre-trial order and addressing discovery issues. The Firm continued preparing for trial throughout the protracted settlement negotiations. Ultimately, a settlement was reached following multiple versions of an agreement and many hours of negotiations and strategy. In the event the Court does not approve the Trustee's motion for order approving the proposed global settlement [Dkt. 489], the Firm is ready to commence trial on the Fraudulent Transfer Complaint and could begin as early as next week. *Id.* at 3:19-26.
4. Debtor has interfered with settlement negotiations and impeded the Trustee's ability to resolve matters which stem directly from the Debtor's systematic process of fraudulently transferring properties from himself to La Estrella for no consideration for the purpose of hiding such properties from his creditors. The Debtor's own actions have greatly increased the Estate's administrative expenses, including the Firm's fees. *Id.* at 3:14-24.

5. The Firm's efforts have assisted the Trustee in achieving a settlement which, if approved, will result in millions of dollars to the Estate from the liquidation of dozens of real properties, and pay most if not all the debts of the case and possibly result in a surplus, without the need to go to trial. *Id.* at 4:17-20.

DISCUSSION

The detailed billing records of Applicant have been filed in support of the Motion. Exhibit 1; Dckt. 352. In reviewing the line by line entries, while the total is very substantial, it does not appear that there is duplicative billing, "group meeting or conference" billing by multiple attorneys, or billing entries that for which the time spent appears excessive.

The court notes that first, interim fees approved are subject to a final review, and interim approval is not a "final pre-final" order. Second, while the court may provide interim approval, the Trustee will be authorized to pay only a percentage of the interim approved fees. This brings a focus on the legal services being provided, provides for a fair interim payment, and keeps the attorneys' eyes focused on the goal.

While this is a Chapter 7 Case, there is substantial, "non-normal" Chapter 7 litigation going on. Balancing that, there is a very active Debtor with oppositions and failures to comply with the Bankruptcy Code, requiring that the legal services be more extensive.

The Declaration in support includes testimony that the hourly rate for Jeffrey Golden (\$850 in 2024-2025) and Christopher A. Minier (\$700 in 2024-2025) is \$600 for each of these professionals for the legal services provided to the Trustee. Decl.. ¶ 7, Docket 485.

Results of Legal Services

As stated in the Motion, when this Bankruptcy Case was filed, Debtor listed having an interest in five properties: (1) 12539 Quail Drive, Placida, Florida, (2) 1035 W. 18th Street, Merced, California, (3) 115 East Green Street, Marshall, Michigan, (4) 23955 Cedar Hill Lane, Twain Harte, California, and (5) 1027 W. 18th Street, Merced, California. Motion, p. 4:6-23; Dckt. 483. Following the 341 Meeting, the Chapter 7 Trustee began investigating other possible assets and ultimately engaged Applicant as special counsel to investigate and represent the Trustee to recover such assets for the Bankruptcy Estate.

In seeking to recover assets, Applicant also represented the Trustee in an action to deny the Debtor a discharge pursuant to 11 U.S.C. § 727. This related to undisclosed assets (in the court's simplified terms).

The litigation involved not only the Debtor, but Debtor's Daughter, Debtor's Sister, and the La Estrella Entity. A global settlement has been reached, and pursuant thereto transfers are avoided and the Bankruptcy Estate is recovering the following properties for the benefit of the Bankruptcy Estate:

- i. 18375 Main Street, Jamestown, California;
- ii. 20272 Starr King Drive, Soulsbyville, California;
- iii. 20400 Starr King Drive, Soulsbyville, California;
- iv. 1014 W. 18th Street, Merced, California;

v. 1022 W. 18th Street, Merced, California;
vi. 1032 W. 18th Street, Merced, California;
vii. 1040 W. 18th Street, Merced, California;
viii. 18361 Main Street, Jamestown, California;
ix. 18369 Main Street, Jamestown, California;
x. 18371 Main Street, Jamestown, California;
xi. 18373 Main Street, Jamestown, California;
xii. 22622 Twain Harte Drive, Twain Harte, California;
xiii. 2127 O. Street, Merced, California;
xiv. 6845 Camellia Drive, Atwater, California;
xv. 1727 N Street, Merced, California;
xvi. 710 W. 18th Street, Merced, California;
xvii. 1018 W. 18th Street, Merced, California;
xviii. 1026 W. 18th Street, Merced, California;
xix. 2137 O Street, Merced, California;
xx. 2147 O Street, Merced, California;
xxi. 806 W. 22nd Street, Merced, California;
xxii. 812 W. 22nd Street, Merced, California;
xxiii. 1226 Brookdale, Merced, California;
xxiv. 1731 N Street, Merced, California; and
xxv. 18377 Main Street, Jamestown, California.

Settlement Agreement, Recital ¶ C, Terms ¶ 2.1; Exhibit 1, Dckt. 494.

Though the Trustee has not filed a Declaration in support of this Fourth Interim Fee Application, the Trustee has filed a Declaration in support of the Motion to Approve Compromise. In that Declaration, the Chapter 7 Trustee in discussing the benefits of the Settlement states, “Third, it results in a significant if not full pay distribution to the creditors of the estate and potentially millions of dollars.” Dec., ¶ 4; Dckt. 492.

In considering these fee applications, the court notes that the Chapter 7 Trustee has fiduciary duties to the Bankruptcy Estate and has a responsibility for his professional seeking reasonable fees. Additionally, the U.S. Trustee has standing to address numerous issues, including fees sought by professionals. The court is not the only participate in the judicial process who reviews fee applications.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Asset Analysis and Recovery: Applicant spent 98.30 hours in this category at a blended rate of \$352.54 per hour. Applicant coordinated with various counsel to schedule depositions. The Firm prepared subpoenas and noticed depositions for Lupe Martin, Maria Ornelas, and for Ms. Mendoza’s continued deposition. The Firm prepared for and attended the deposition of Lupe Martin on September 24, 2024.

The Firm also prepared notices of pendency of bankruptcy case which were recorded with respect to each of the subject real properties. The Firm prepared document requests and subpoenas for numerous

banks and mortgage lenders, including Bank of the Orient, Deutsche Bank National Trust Company, Dew Claw, LLC, MERS, Newrez LLC dba Shellpoint, Pacific Union Conference Association of Seventh Day Adventists, PHH Mortgage Corp., Rubicon, Select Portfolio Servicing, The Bank of New York Mellon, United Business Bank, Westamerica Bank, BAC Community Bank, Bank of America, Mechanics Bank, Morgan Stanley Smith Barney, Oak Valley Community Bank, The Vanguard Group, Inc., Travis Credit Union, U.S. Bank National Association, and Wells Fargo Bank National Association.

When several financial institutions failed to respond to subpoenas, the Firm prepared a letter to the institutions indicating failure to respond would result in a contempt motion. The Firm drafted a motion for order to show cause. Mot. 10:4-22.

Business Operations: Applicant spent 63.60 hours in this category at a blended rate of \$600. In this category, the Firm advised the Trustee on seeking appointment of a receiver of putting in existing management. The Firm researched issues of standing and appointment of receivers under California law and bankruptcy law and assisted in drafting a motion and stipulation for the Trustee to operate La Estrella. Ultimately, due to the below-described global settlement, it was not necessary to file the motion. *Id.* at 11:5-9.

Regarding this category, the court has looked into the time billed for this task and finds that there are questions of reasonableness. For example, all 63.6 hours were billed at the highest rate of \$600 per hour. These tasks include what appears to be fairly routine research regarding appointment of a receiver, which is typically delegated to associates at a lower billing rate. The billing records reflect at least 12.5 hours of researching the legal issues at a rate of \$600 an hour. There are multiple attorneys working on this issue and all are billing at the partner rate of \$600 per hour. After spending 63.60 hours on this category, it was decided this course of action was not necessary and no Motion was ever filed. The same Motion which required at least 23.9 hours to review and edit billed at \$600 per hour among various attorneys was never filed. Reviewing the Motion continued down the billing time sheet at various intervals despite multiple billing entries of making a final review or finishing edits. There are reasonableness questions surrounding this portion of the request for compensation.

At the hearing, **XXXXXXX**

727 Complaint: Applicant spent 42.80 hours in this category at a blended rate of \$563.43. Applicant spent time engaging in settlement negotiations as the date for the pre-trial conference drew near. Applicant prepared for trial not only by virtue of the pre-trial order, but also preparing exhibit lists and integrating the evidence needed to prove the Trustee's case along with multiple companion actions. Extensive time was spent on this matter in connection with such preparation. Mot. 13:20-23.

Complaint for Fraudulent Transfer: Applicant spent 153.10 hours in this category at a blended rate of \$509.69. Applicant conferred with opposing counsel regarding potential mediation, researched legal issues including statute of limitations and resulting trust claim, analyzed Lupe Martin's filed answer, drafted a motion for summary judgment, prepared for trial. *Id.* at 16:20-23.

Settlement: Applicant spent 12 hours in this category at a blended rate of \$562.08. Applicant worked on a "global settlement" that resolves all disputes among involved parties and results in liquidating various recovered properties that may result in a payment in full to unsecured creditors. *Id.* at 19:15-19.

Employment/Fee Applications: Applicant spent 30.50 hours in this category at a blended rate of \$295.40. Applicant m reduces its requested fees in this category by \$2,000.00, from \$9,010.00 to \$7,010.00. Applicant finalized the Third Application and related filings and prepared for and appeared at the hearing held on June 27, 2024, at which time the Court continued the hearing and then approved the Third Application. The Firm also began preparing this Application. *Id.* at 20:7-17.

The total fees requested for this Interim Fee Application, as adjusted for the hourly rate reduction is:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Jeffrey I. Golden, Attorney	150.70	\$600.00	\$90,420.00
Christopher A. Minier, Attorney	2.90	\$600.00	\$1,740.00
Michael R. Adele, Attorney	51.90	\$600.00	\$31,140.00
Cary Murray, Attorney	37.40	\$600.00	\$22,440.00
Ryan W. Beall, Attorney	35.10	\$550.00	\$19,305.00
Claudia M. Yoshonis, Paralegal	88.40	\$250.00	\$22,100.00
Cynthia B. Meeker, Paralegal	33.20	\$250.00	\$8,300.00
Gabrielle Roosevelt, Paralegal	6	\$250.00	\$1,500.00
Adjustment for Fee Reduction for Work Related to Preparing Fee Application and Responses to Objections			(\$8,225.00)
Total Fees for Period of Application			\$188,720.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$13,860.00	\$13,860.00
Second Interim	\$28,240.00	\$28,240.00
Third Interim	\$103,475.00	\$103,475.00

Total Interim Fees Approved and Paid Pursuant to 11 U.S.C. §§ 330, 331	\$145,575.00	
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Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$3,095.36 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$11,336.61.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Recording fee	-----	\$1,425.60
Courier for delivery of subpoena	-----	\$147.80
Bulk postage	-----	\$31.79
Personal service attempts	-----	\$762.20
Photocopies	\$0.20	\$47.60
Online research	-----	\$680.37
Total Costs Requested in Application		\$3,095.36

In reviewing the Expenses, the court notes several charges that stand out. The first is billing an expense for making a telephonic appearance. The court has long looked at that expense as one that an attorney includes in the hourly billing rate. That very modest expense allows the attorney to take on cases far and wide, broadly expanding the attorney's ability to bill \$600, \$700, and more in hourly rates.

The second is a charge of \$574.57 for "Westlaw research charges. It is unclear to the court why there would be an expense charge for a lawyer maintaining the necessary basic legal tools to provide legal services for which the attorney is then able to bill a client \$600, \$700, and more in hourly rates.

The third charge is for "Court drive pacer fee." It appears that this is an expense for the attorney being able to have at the attorney's finger tips the court's Docket and everything that has been filed in the bankruptcy case or adversary proceeding. While in the "old days" there would be the cost of a courier or runner having to go to the courthouse to get documents, that no longer exists. Again, it is unclear to the court why this is not an expense included in the attorney's hourly rate.

At the hearing, **XXXXXXX**

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fourth Interim Fees in the ~~amount of \$188,720.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330.~~

Costs & Expenses

Fourth Interim Costs in the amount of \$3,095.36 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved.

Amount of Fees and Costs Authorized to Be Paid

Applicant informs the court that WVJP 2021-4, LP (“WVJP 2021”), has been paying the fees, not the Chapter 7 Trustee. Mot. 22:19-24. Applicant seeks authorization to have WVJP 2021 pay the fees. *Id.* The court authorizes WVJP 2021 to pay sum of \$188,720.00 for these Fourth Interim Fees and \$3,095.36 in costs allowed by the court.

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 for the Third Interim Allowance of Fees and Expenses filed by Golden Goodrich LLP (“Applicant,” “Firm”), Special Counsel for Gary Farrar, the Chapter 7 Trustee, (“Client,” “Trustee”) having been presented to the court, and upon review of the pleadings, evidence, opposition stated by Debtor, and good cause appearing,

IT IS ORDERED that Golden Goodrich, LLP is allowed the following fees and expenses as a professional of the Estate:

Golden Goodrich, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$188,720.00;

Expenses in the amount of \$3,095.36;

as the Fourth Interim Allowance of fees and expenses pursuant to 11 U.S.C.
§ 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that WVJP 2021-4, LP (“WVJP 2021”) is
authorized to pay the Fourth Interim Allowed Fees and Costs.

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 and all creditors and parties in interest on March 27, 2025. By the court's calculation, 21 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, -----

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The Motion for Approval of Compromise is granted.

Gary Farrar, the duly appointed Chapter 7 Trustee ("Trustee") requests that the court approve a compromise and settle competing claims pursuant to Fed. R. Bankr. P. 9019. The parties to the proposed settlement agreement are the Trustee for the Estate of John-Pierre Mendoza on the one hand, and Jenae-Desiree Mendoza ("Jenae") and La Estrella Enterprises, LLC ("La Estrella") on the other, on the terms and conditions set forth in the proposed Settlement Agreement ("Agreement") filed as Exhibit 1, Docket 494. The Agreement resolves issues with respect to the Complaint for Fraudulent Transfer, Constructive Trust, Resulting Trust, Unjust Enrichment, Accounting and Declaratory Relief (the "Complaint") filed by the Trustee against Jenae, La Estrella, the Debtor, and Lupe Martin, which was assigned adversary case number 24-09004 (the "Adversary Proceeding").

A summary of the Agreement as provided in the Motion is as follows:

1. All of the Properties identified in the Recitals, including all rights and/or interests appurtenant, including, without limitation, claims for turnover or causes of action related to the properties, the rents and proceeds and Assets thereof, and the rent rolls held by La Estrella shall be transferred via Grant Deed or other appropriate transfer documents to the Trustee. In the event that such guarantees are not transferred within 14 days of entry of the order approving this agreement, the Court may upon transfer title to the properties to the Trustee or his designee.^{FN.1.}

FN. 1. The following Properties are identified in the Recitals portion of the Settlement Agreement:

- i. 18375 Main Street, Jamestown, California;
- ii. 20272 Starr King Drive, Soulsbyville, California;
- iii. 20400 Starr King Drive, Soulsbyville, California;
- iv. 1014 W. 18th Street, Merced, California;
- v. 1022 W. 18th Street, Merced, California;
- vi. 1032 W. 18th Street, Merced, California;
- vii. 1040 W. 18th Street, Merced, California;
- viii. 18361 Main Street, Jamestown, California;
- ix. 18369 Main Street, Jamestown, California;
- x. 18371 Main Street, Jamestown, California;
- xi. 18373 Main Street, Jamestown, California;
- xii. 22622 Twain Harte Drive, Twain Harte, California;
- xiii. 2127 O. Street, Merced, California;
- xiv. 6845 Camellia Drive, Atwater, California;
- xv. 1727 N Street, Merced, California;
- xvi. 710 W. 18th Street, Merced, California;
- xvii. 1018 W. 18th Street, Merced, California;
- xviii. 1026 W. 18th Street, Merced, California;
- xix. 2137 O Street, Merced, California;
- xx. 2147 O Street, Merced, California;
- xxi. 806 W. 22nd Street, Merced, California;
- xxii. 812 W. 22nd Street, Merced, California;
- xxiii. 1226 Brookdale, Merced, California;
- xxiv. 1731 N Street, Merced, California; and
- xxv. 18377 Main Street, Jamestown, California.

Settlement Agreement, Recital ¶ C, Terms ¶ 2.1; Exhibit 1, Dckt. 494.

2. The Trustee agrees to abandon any interest or rights to any other known asset of La Estrella, including, but not limited to the vehicles owned by La Estrella.

It is not expressly stated in the Settlement Agreement to whom the assets of La Estrella will be abandoned. “Abandonment” is a term of art in bankruptcy, with 11 U.S.C. § 554 addressing abandonment of property

of the bankruptcy estate. In 11 U.S.C. § 354(c) it states that upon the closing of a bankruptcy case any property of the estate that is not otherwise administered by the trustee is abandoned to the debtor.

However, the court's reading of the Settlement Agreement is that the abandonment of any other assets of La Estrella is made to La Estrella.

3. From the sales proceeds of the Assets, including any rights and/or interests appurtenant, after payment of all claims of the estate in a surplus case, the Trustee will pay \$25,000 from each sale of the first four (4) Properties sold and \$100,000 from the sale of the fifth property sold until Jenae has received the sum of \$200,000. Jenae shall receive any sums in excess of creditor claims and administration costs, if any, when the Trustee has concluded the sale of assets.

Under the terms of the Settlement, notwithstanding the transfers having been avoided, any surplus monies remaining from liquidation of the recovered assets will be disbursed to Jenae and not retained in the Bankruptcy Estate as surplus funds for the Debtor. This appears to effectively provide for avoidance of transfers as necessary for creditors to be paid, but have the "transferee beneficiaries" receive any amount in excess of what may have been economically needed to be avoided.

4. The Trustee will dismiss the Complaint with prejudice against Jenae, La Estrella, John and Lupe.

The Complaint to be dismissed with prejudice is in Adversary Proceeding to recover the fraudulent conveyance, 24-09004. Settlement Agreement, Recital B, and it will be dismissed as to the Debtor, Debtor's Daughter, Debtor's Sister, and La Estrella.

The Settlement Agreement does not state when the Complaint will be dismissed with prejudice.

5. Jenae will vacate the property located at 6845 Camellia Street, Atwater California upon 60 days written notice by the Trustee. Jenae shall be entitled to stay in this property rent free until vacating.
6. Upon execution of the Settlement Agreement, through and including this agreement becoming effective La Estrella shall agree to provide immediate access to the Trustee of La Estrella including the business office and all business records for the purposes of inspecting the Properties and all the properties related thereto, and to change the locks so that only the Trustee and the agreed upon authorized property manager will have access. La Estrella will ensure that the Trustee has access to all business records for the Properties including, without limitation, lease agreements including subleases, payment history for monthly rental income and security deposits, loan documents for all liens, contact information and account numbers for open accounts with vendors, service agreements for utilities and services such as cleaning and maintenance, insurance for La Estrella as well as insurance for the Properties, banking information, tax information, documentation regarding all city and county liens, documents in connection

with any litigation filed by or against La Estrella including evictions in progress.

7. La Estrella will turn over to the Trustee all tenant security deposits and cooperate with the Trustee in transferring all leases on the Properties.
8. The Agreement becomes effective on the date the order granting the Trustee's Motion becomes a final order ("Effective Date").
9. Upon receipt of the sale proceeds for all of the Properties and assets by the Trustee, the Parties each hereby agree, represent and warrant that they realize and acknowledge that factual matters now unknown to them may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and they each further agree, represent and warrant that the release contained in this Agreement has been negotiated and agreed upon in light of that realization and that they nevertheless hereby intend to release, discharge and acquit each other from any and all such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which in any way arise out of, are connected with, or relate to, the Levied Funds or the Cases. In furtherance of this intention, the Parties each expressly waive any and all rights conferred upon them by California Civil Code Section 1542 and expressly consent that the releases contained in this Agreement shall be given full force and effect according to each and all of its express terms and provisions. The Parties each expressly waive the operation and application of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Mot. 5:25-7:27.

The court notes that the parties to the Settlement Agreement are: (1) Gary Farrar, Chapter 7 Trustee; (2) La Estrella Enterprises, LLC, Jenae-Desiree Mendoza, and Lupe Martin. The Debtor is not a party to the Settlement Agreement.

DEBTOR OPPOSITION

Debtor filed a Limited Opposition on April 3, 2025. Docket 498. Debtor states:

1. Jenae does not have knowledge to dispute facts surrounding the transfer of real property commonly known as 710 W. 118th [sic] Street, Merced, CA, as that transfer took place with prior bankruptcy approval in the Civic Plaza, LLC case, case no. 11-93308. Opp'n 1:20-24.
2. Jenae does not have a proper or suitable mental condition for entering into this Agreement. *Id.* at 2:1-12.
3. Debtor, Jenae, and Lupe should not be named defendants in the Complaint if everything is now resolved. *Id.* at 2:14-18.

The above point is what the court “thinks” is meant by the following statement made in the Limited Opposition by the Debtor:

3) Both Debtor And Lupe Martin Remain As Defendants

While the Defendant’s sister was the custodian for Jenae Mendoza until she reached the age of 21, and her father, John Mendoza remain defendants in this complaint although the complaint is to be “resolved”.

Ltd. Opp, ¶ (3); Dckt. 498. The Settlement clearly provides that the Complaint will be dismissed with prejudice. both Jenae Mendoza and Lupe Martin

Review of The Civic Plaza, LLC Bankruptcy Case

The Civil Plaza, LLC filed a Chapter 11 bankruptcy case on October 22, 2014. Case No. 14-91454. The Case was dismissed a year later on September 8, 2015. In that Case, the court can identify a Motion to Sell real property identified as 1727 N Street, Merced, California to Lupe Martin and Alfredo Martin. 14-91454; Motion, Dckt. 145.

In reviewing the Petition, the Managing Member of The Civic Plaza, LLC is John-Pierre Mendoza, who is the Debtor in the Bankruptcy Case now before the court. *Id.*; Petition, p. 3, 6, Dckt. 1. On Schedule A/B the only asset of The Civic Plaza, LLC is the 1727 N Street, Merced, California property. *Id.*; Dckt. 1 at 9. In looking at the Motion to Sell the N Street Property, it does not appear that it was disclosed that the buyer, Lupe Martin, was John-Pierre Mendoza’s sister.

However, in re-re-reading the Opposition, the court notes that while stating that it is The Civil Plaza, LLC case, reference is made to Case No. 11-93308. Bankruptcy Case 11-93308 was filed by John-Pierre Mendoza as a voluntary Chapter 11 Case on September 16, 2011. That Case was dismissed on August 2, 2013.

On Schedule A/B in Debtor’s 2011 Case the Debtor lists owing thirty-seven (37) different real properties. 11-93308; Sch A/B, Dckt. 22 at 3-5. The 710 W. 18th Street, Merced, California property is included on that Schedule A/B.

In looking at the Docket for the Debtor’s 2011 Case, the court cannot find any motion to sell property of the 2011 Case Bankruptcy Estate.

It is unclear what The Civic Plaza, LLC bankruptcy case or Debtor's 2011 bankruptcy case have anything to do with the settlement involving the 710 W. 18th Street, Merced, California property in this Bankruptcy Case..

TRUSTEE'S REPLY

Trustee filed a Reply on April 10, 2025. Docket 503. Trustee states:

1. La Estrella is the key party in the settlement, not Jenae. *Id.* at 1:28-2:1.
2. Jenae and La Estrella have interests in the property while John Mendoza does not. *Id.* at 2:1-2.
3. Knowledge of the history of the transfers of the property has nothing to do with the fact that these properties were unquestionably fraudulently transferred to hinder delay defrauded creditors and to conceal these assets from collection or the fact that they rightly should be returned to the estate. *Id.* at 2:3-6.
4. Trustee believes he will prevail and is obtaining what he could without further litigation. Fundamentally, the motion is to authorize the Trustee to enter into a settlement. *Id.* at 2:6-8.

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).

In this case, Debtor's opposition does not discuss any of these factors. The weight of the evidence overwhelmingly supports approving the Agreement, as discussed in more detail below.

With respect to Debtor's concern regarding Jenae not having knowledge of prior transactions involving the 710 W. 18th Street, Merced, California property, Debtor does not show how such would be of any moment with respect to this Settlement. Additionally, the two related bankruptcy cases the Debtor cites to do not have any orders authorizing or providing for the transfer of such property.

With respect to remaining defendants, the Settlement Agreement states that it will be dismissed with prejudice as to all defendants, which includes the Debtor.

At the hearing, **XXXXXXX**

Probability of Success

Trustee has concluded that the probability of success is uncertain in light of various defenses and various litigation issues, however this result allows the Trustee to be successful in litigation for almost all purposes. Mem. 3:14-16, Docket 491.

Difficulties in Collection

If the Trustee were successful through litigation, he might have to then either levy on the Properties of ensure their transfer into the estate. In this case, that will be unnecessary as the Properties will be transferred to the Trustee immediately. *Id.* at 3:18-20.

Expense, Inconvenience, and Delay of Continued Litigation

Trial will be expensive and there are various issues and the parties have already entered into a lengthy pretrial stipulation which is of record. Settlement avoids these costs and further delay. *Id.* at 3:24-26.

Paramount Interest of Creditors

The proposed settlement will allow unsecured creditors to be a paid a significant distribution as well as administrative creditor through the receipt of these Properties and the liquidations of them by the Trustee. Thus the settlement is a significant success and benefits creditors. *Id.* at 4:2-5.

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. The Agreement avoids lengthy litigation and issues with recovery while realizing a massive benefit to the Estate and creditors. The Motion is granted.

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 Gary Farrar, the duly appointed Chapter 7 Trustee (“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 for Approval of Compromise is granted, and the Settlement Agreement, Exhibit 1, Dckt. 494, is approved. The Terms of the Settlement Agreement include:

1. All of the Properties identified in the Recitals, including all rights and/or interests appurtenant, including, without limitation, claims for turnover or causes of action related to the properties, the rents and proceeds and Assets thereof, and the rent rolls held by La Estrella shall be transferred via Grant Deed or other appropriate transfer documents to the Trustee. In the event that such guarantees are not transferred within 14 days of entry of the order approving this agreement, the Court may transfer title to the properties to the Trustee or his designee.
2. The Trustee shall abandon any interest or rights to any other known asset of La Estrella, including, but not limited to the vehicles owned by La Estrella.
3. From the sales proceeds of the Assets, including any rights and/or interests appurtenant, after payment of all claims of the estate in a surplus case, the Trustee shall pay \$25,000 from each sale of the first four (4) Properties sold and \$100,000 from the sale of the fifth property sold until Jenae has received the sum of \$200,000. Jenae shall receive any sums in excess of creditor claims and administration costs, if any, when the Trustee has concluded the sale of assets.
4. The Trustee shall dismiss the Complaint with prejudice against Jenae, La Estrella, John and Lupe.
5. Jenae shall vacate the property located at 6845 Camellia Street, Atwater California upon 60 days written notice by the Trustee. Jenae shall be entitled to stay in this property rent free until vacating.
6. Upon execution of the Settlement Agreement, through and including this agreement becoming effective La Estrella shall provide immediate access to the Trustee of La Estrella including the business office and all business records for the purposes of inspecting the Properties and all the properties related thereto, and to change the locks so that only the Trustee and the agreed upon authorized property manager will have access. La Estrella shall ensure that the Trustee has access to all business records for the Properties

including, without limitation, lease agreements including subleases, payment history for monthly rental income and security deposits, loan documents for all liens, contact information and account numbers for open accounts with vendors, service agreements for utilities and services such as cleaning and maintenance, insurance for La Estrella as well as insurance for the Properties, banking information, tax information, documentation regarding all city and county liens, documents in connection with any litigation filed by or against La Estrella including evictions in progress.

7. La Estrella shall turn over to the Trustee all tenant security deposits and cooperate with the Trustee in transferring all leases on the Properties.

3. [22-90415-E-7](#) **JOHN MENDOZA**
[23-9011](#)
WVJP 2021-4, LP V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR
NON-DISCHARGEABILITY
6-16-23 [1]

Plaintiff's Atty: Brian C. Aton, Jamie P. Dreher
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 6/16/23
Answer: 7/9/23

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 3/13/25

The Pre-Trial Conference is XXXXXXX

APRIL 17, 2025
CONTINUED PRE-TRIAL CONFERENCE

On April 17, 2025, the hearing on the Chapter 7 Trustee's Motion to Approve Settlement in the John Pierre Mendoza Bankruptcy Case, 22-90415. The Settlement provides for the Chapter 7 Trustee to avoid transfers of twenty-five (25) real properties for the benefit of the Bankruptcy Estate. With that recovery, the Trustee projects paying claims in full.

With respect to this Adversary Proceeding seeking to have the debt owed to Plaintiff determined nondischargeable, **XXXXXXX**

MARCH 13, 2025

CONTINUED PRE-TRIAL CONFERENCE

The court's review of the docket for this Adversary Proceeding on March 12, 2025, discloses that no Status Update or Settlement Pleadings have been filed.

The court conducted joint Status Conferences for the three Adversary Proceedings: 23-9011, *WVJP 2021-4, LP. v. John Mendoza* (denial of discharge); *Trustee Farrar v. John Mendoza*, 23-9020 (denial of discharge); and 24-9004, *Trustee Farrar v. John Mendoza, Lupe Martin, Jenae-Desiree Mendoza, and La Estrella Enterprises, LLC* (Fraudulent Transfer, Constructive Trust, Unjust Enrichment, and Accounting).

Counsel for Trustee Farrar reported that a settlement has been reached in Adversary Proceeding 24-9004 by which the transfers of the multiple properties that are the subject of the Adversary Proceeding will be transferred to the bankruptcy estate (in the name of Trustee Farrar). This will fully resolve the Adversary Proceeding. A motion to approve the settlement will soon be filed, with a hearing set for 10:30 a.m. on April 17, 2025.

Trustee Farrar reported that with the settlement, the Bankruptcy Estate should have assets sufficient to pay all claims in full. If so, this would then moot any financial need for prosecuting this Adversary Proceeding, saving all of the Parties and the Bankruptcy Estate otherwise economically unnecessary expenses.

The Chapter 7 Trustee will assemble his information from real estate professionals concerning the values of the properties to be sold and review it with the counsel. If it appears that the claims can be paid in full, the parties may agree to continue the Pre-Trial Conference for the two objections to discharge and allow the Trustee to complete the sales. If there are sufficient funds to pay all claims in full (or substantially in full), the Parties may seek dismissal of the two Objection to Discharge Adversary Proceedings.

The Pre-Trial Conference is continued to 10:30 a.m on April 17, 2025 (Specially Set Time).

FEBRUARY 20, 2025

CONTINUED PRE-TRIAL CONFERENCE

At the Pre-Trial Conference, the Parties reported that a Settlement Agreement has been drafted and signed by all parties except Mr. Mendoza. The agreement includes a provisions regarding Mr. Mendoza and his daughter. Counsel for Mr. Mendoza reported that he is scheduling a meeting with his client, the terms of the settlement appear to be meritorious for Mr. Mendoza's interests, and anticipates that it will be executed shortly.

The Parties requested a short continuance.

The Pre-Trial Conference is continued to 2:00 p.m. on March 13, 2025.

SUMMARY OF COMPLAINT

The Complaint filed by WVJP 2021-4, LP (“Plaintiff”), Dckt. 1, asserts claims for the nondischargeability of debt. Plaintiff is an assignee of a judgment awarded against the Defendant-Debtor. The Complaint includes detailed allegations of multiple transfers of properties, the creation of entities (asserted to be shell entities) which were owned or controlled by Defendant-Debtor for such transfers, and other acts of Debtor.

The First Claim for Relief is one for nondischargeability of debt based on fraud (fraudulent conveyances) pursuant to 11 U.S.C. § 523(a)(2)(A). It is asserted that Defendant-Debtor injured Plaintiff by engaging in fraudulent schemes and committing actual fraud. The fraud consists of alleged fraudulent conveyances by which Defendant-Debtor moved properties through various (shell) entities.

The Second Claim for Relief is for the nondischargeability of Plaintiff’s debt by the various alleged fraudulent conveyances. Having made such alleged fraudulent conveyances, Plaintiff asserts that “injury” was cause Plaintiff.

11 U.S.C. § 523(a)(6) provides that a debt will be nondischargeable “(6) for willful and malicious injury by debtor to another entity;”

Plaintiff seeks judgement for amounts proven at trial, punitive damages, costs and expenses, and that such judgment is nondischargeable.

SUMMARY OF ANSWER

John Pierre Mendoza (“Defendant-Debtor”) has filed an Answer, Dckt. 8, which first states a general denial of each and every allegation in the Complaint. No exceptions to the general denial are stated.

Defendant-Debtor admits the allegations of federal court jurisdiction, venue, and that this is a Core Matter proceeding.

Defendant-Debtor also denied and admits specific allegations as stated in paragraph 3, 4, and 5 of the Answer. Defendant-Debtor also expressly reserves stating affirmative defenses in the future as discovery proceeds.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff WVJP 2021-4, LP alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

JANUARY 16, 2025 PRE-TRIAL CONFERENCE

Plaintiffs Gary Farrar, Trustee, and WVJP 2021-4, LP filed their Combined Pre-Trial Statement on January 9, 2025. Dckt. 39. Defendant-Debtor John Mendoza filed his Pre-Trial Statement on January 2, 2025. Dckt. 38.

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients in related Adversary Proceeding 24-9004, which is to be tried with this Adversary Proceeding. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filing of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza's counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza's (Jenae-Desiree Mendoza's father) counsel that the court should just set the trial and when she doesn't show up to present a defense enter judgments against her and La Estrella Enterprises, LLC.

Counsel for Plaintiff and Counsel for John Mendoza each argued that they could not proceed with the litigation in these related Adversary Proceeds without also including obtaining a judgment in the Adversary Proceeding against Ms. Estrella and La Estrella Enterprises, LLC

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025;**
- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
 - 1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.
- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.

1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

Pre-Trial Conference Statements

The Parties in their respective Pretrial Conference Statements, Dckts. 39 and 38, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

Jurisdiction and Venue:

Plaintiff WVJP 2021-4, LP alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

This is confirmed in the Plaintiffs Pretrial Statement (p. 1:12-18; Dckt. 39) and Defendant-Debtor’s Pretrial Statement (p. 1:22-28; Dckt. 38).

Undisputed Facts-Plaintiff:

Citing to the Defendant-Debtor’s Pre-Trial Statement in Adversary Proceeding 24-09004:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Cedar Hill Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035

18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.

5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, are not relevant]
6. [Whether the Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
7. La Estrella Enterprises, LLC (“La Estrella”) was assigned to Jenae-Desiree Mendoza in 2019.
8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor’s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
9. Since the formation of La Estella, Defendant-Debtor has had “control” over Estrella;
10. The Civic Plaza, LLC (“The Civic Plaza”) was registered October 17, 2014.
11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Citing to Defendant Lupe Martin’s Pretrial Statement Transmitted to Plaintiffs’ Counsel

12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties

Undisputed Facts-Defendant:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled:
 - (a) a vacant lot at 12539 Quail Dr, Placida, FL 33946,
 - (b) a rental house at 1035 18th St., Merced CA 95340,
 - (c) a rental house at 1027 W. 18th St., Merced, Ca 95430,
 - (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and
 - (e) the “Property.”
5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.
6. The Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of

21.

7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.

8. La Estrella was capitalized with \$7,500.00.

9. Since the formation of La Estella, Defendant has had “control” rather advisory role, and as a Father.

10. The Civic Plaza was registered October 17, 2014.

11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Disputed Facts - Plaintiff:

ADV 24-9004

Disputed Facts-Defendant:

1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.”

2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.

3. The Debtor denies having control over either LLC’s.

4. The “vast majority” of these transfers were fraudulent conveyances.

5. There are distinct differences between La Estrella and The Civic Plaza.

6. The Debtor did not, at all times control La Estrella and The Civic Plaza.

7. The Debtor did not intentionally hinder, delay, or defraud creditors.

8. The Defendant did not transfer any properties for less than fair market value.

9. The Defendant did not retain either possession or control of any of the transferred properties.

10. The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.

11. The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.

12. The Defendant did not conceal and property of the Estate Post-Petition Date.

13. The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.

14. The Defendant did not fail to disclose in his schedules his beneficial interests in real property.

15.	The failure to qualify as a homestead exemption is not due to the Defendant failing to reside at the Property, on the day of filing, but from not continuously residing thereon.	
16.	The Trustee should not recover money/property pursuant to 11 U.S.C. 542.	
Disputed Evidentiary Issues-Plaintiff: 1. None identified.		Disputed Evidentiary Issues-Defendant: 1. None identified.
Relief Sought - Plaintiff: 1. The transfers or real property be set aside and declared void. 2. A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property. 3. Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and that under Section 551 all liens avoided will be preserved for the benefit of the estate. 4. That an order be made declaring that Defendants hold all of the transferred real property described above in trust for Plaintiff, whether involuntarily or voluntarily. 5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate. 6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants. 7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers. 8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants. 9. For costs and attorneys' fees. 10. For punitive damages pursuant to statute and according to proof		

11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).

Relief Sought - Defendant:

1. The Non-Discharge of Debtor.
2. “Attorney’s Fees for Trustee’s Counsel in Prosecuting Case.”

Points of Law - Plaintiff:

Adv. 24-9004.

1. Cal Civ Code § 2223.
2. Cal Civ Code § 2224.
3. Imposition of a constructive trust, resulting trust. *In re Real Estate Associates Ltd. Partnership Litig.*, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); *Murphy v. T. Rowe Price Prime Reserve Fund, Inc.*, 8 F.3d 1420, 1422 (9th Cir.); *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1069 (1998); *Martin v. Kehl*, 145 Cal. App. 3d 228, 238 (1983); *Laing v. Laubach*, 233 Cal.App.2d 511, 515 (1965); *Berniker v. Berniker*, 30 Cal. 2d 439, 447-448 (1947); *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485 (1970) *Goodrich v. Briones (In re Schwarzkopf)*, 626 F.3d 1032, 1037 (9th Cir. 2010); *Cadles of W. Va., LLC v. Alvarez*, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal. 2023); *Estrada v. Garcia*, 132 Cal. App. 2d 545, 552 (1955);
4. Resulting trust statute of limitations. *Estate of Yool*, 151 Cal. App. 4th 867, 875 (2007); *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).
5. Cal Civ § 3439.04(a) statute of limitations. *Monastra v. Konica Bus. Machines, U.S.A., Inc.*, 43 Cal. App. 4th 1628, 1645 (1996); *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 786 (1979); *Munoz v. Ashcroft*, 339 F.3d 950, 956-957 (2003).
6. Constructive trust statute of limitations. *Higgins v. Higgins*, 11 Cal. App. 5th 648, 659 (2017).
7. Unjust enrichment statute of limitations. *First Nationwide Savings v. Perry*, 11 Cal. App. 4th 1657, 1670 (1992).
8. Accounting action statute of limitations. *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000); *Estate of Peebles*, 27 Cal. App. 3d 163, 166 (1972).
9. Declaratory relief statute of limitations. *Bank of New York Mellon v. Citibank, N.A.*, 8 Cal. App. 5th 935, 943; *North Star Reinsurance Corp. v. Superior Court*, 10 Cal. App. 4th 1815, 1822 (1992).
10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).
11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).
12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of*

Merced, 146 Cal. App. 4th 1238, 1250 (2007).

Additional for Adv. 23-9020 and 23-9011.

13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).
14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).
15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).
16. Intent inferred from actions of debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985); *United States v. Swenson (In re Swenson)*, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Freelife, Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .
17. 11 U.S.C. § 727(a)(4)(A); *Song v. Acosta (In re Song)*, 2011 Bankr. LEXIS 4796 at *13 (B.A.P. 9th Cir. 2011); *In re Retz*, 606 F.3d at 1196; *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); *In re Caneva*, 550 F.3d at 761.
18. Accuracy of schedules and statement of financial affairs. *In re Searles*, 317 B.R. at 377.
19. 11 U.S.C. § 523(a) and preponderance of the evidence standard. *Grogan v. Garner*, 489 U.S. 279, 291 (1991).
20. 11 U.S.C. § 523(a)(2); *In re Lewis*, 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016); *In re Tran*, 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003).
21. 11 U.S.C. § 523(a)(6); *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1143-47 (9th Cir. 2002); *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001).

Points of Law - Defendant:

1. 11 U.S.C. § 523(a)(2), (a)(6).

Abandoned Issues-Plaintiff:

1. None identified.

Abandoned Issues-Defendant:

1. None identified.

Witnesses-Plaintiff:

1. Gary Farrar, Chapter 7 Trustee.
2. Loris Bakken, Esq.

Witnesses-Defendant:

1. John Pierre Mendoza.
- 2.

3.	John Pierre Mendoza.	Gary Farrar, Chapter 7 Trustee
4.	Jenae-Desiree Mendoza.	
5.	John McCallum.	
6.	Paul Quinn.	
Exhibits - Plaintiff:		
1.	See Attachment A, Dckt. 39 at pp. 32-38.	
Exhibits - Defendant:		
1.	Debtor’s Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.	
2.	2013 John-Pierre Mendoza 2013 Trust Agreement.	
3.	Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 “O” Street, Merced, CA 95340, for \$250,000.00.	
4.	Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.	
5.	Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for \$168,000.00.	
6.	Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.	
7.	Debtor’s Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.	
8.	The Civic Plaza, LLC’s Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.	
9.	JANAE-DESIREE MENDOZA 2015 TAX RETURNS.	
10.	JOHN-PIERRE MENDOZA 2019 TAX RETURNS.	
11.	JOHN-PIERRE MENDOZA 2020 TAX RETURNS.	
12.	JOHN-PIERRE MENDOZA 2021 TAX RETURNS.	
13.	JOHN-PIERRE MENDOZA 2022 TAX RETURNS.	
14.	LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.	
15.	JOHN-PIERRE MENDOZA 2023 TAX RETURNS.	

16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.
17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.
18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024
 1. 23955 Cedar Hill Ln
19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024
 1. 1022 W. 18TH St.
 2. 1027 W. 18th St.
 3. 1032 W. 18TH St.
 4. 1035 W 18th St
 5. 1040 W. 18TH St.
 6. 20272 Starr King Dr.
 7. 20400 Starr King Dr.
 8. 18373 Main St.
 9. 18361 Main St.
 10. 2127 O St.
 11. 1014 W. 18th St.
 12. 22622 Twain Hart Dr.
 13. 18369 Main St.
 14. 18371 Main St.
 15. 18375 Main St.
 16. 6845 W. Camellia Dr.
 17. 1226 Brookdale Dr.
 18. 1727 N St.
20. DWELLING FIRE POLICY EFFECTIVE 7/23-24 (23955 Cedar Hill Lane)
21. RENTS RECEIVED AND AMOUNTS PAID 11/22 - 8/31/24
 1. 1027 w. 18TH St.
 2. 1035 W. 18th St.
 3. 23955 Cedar Hill Ln.
22. 22. PROPERTY ANALYSIS CALENDAR YEAR 2012.
23. PROPERTIES SOLD TO LA ESTRELLA 2014 - 2022.
24. PROPERTY VALUES LA ESTRELLA 2015.
25. PROPERTIES SOLD TO LEEC 1980 - 2006
 1. 1022 W. 18th St.
 2. 1032 W. 18th St.
 3. 1040 W. 18th St.
 4. 20272 Starr King Dr.
 5. 20400 Starr King Dr.

6. 18373 Main St.
7. 18361 Main St.
8. 2127 O St.
9. 1014 W. 18th St.
10. 22622 Twain Harte Rd.
11. 18369 Main St.
12. 18371 Main St.
13. 18375-18377 Main St.
14. 6845 Camellia St.
15. 1226 Brookdale Dr.

26. APPRAISAL 1032 W. 18TH ST. 6/08/11
27. APPRAISAL 1014 W. 18TH ST. 6/08/11
28. APPRAISAL 1226 BROOKDALE RD. 6/10/11
29. APPRAISAL 18375-18377 MAIN ST 9/13/11
30. APPRAISAL 18371 MAIN ST. 9/13/11
31. APPRAISAL 18369 MAIN ST. 9/13/11
32. APPRAISAL 20400 STARR KING DR 9/13/11
33. APPRAISAL 20272 STARR KING DR 9/13/11
34. LOAN MOD. EATON, MICHIGAN 4/01/12
35. 2013 TRUST AGREEMENT 10/15/13
36. OPERATING AG. LA ESTRELLA 4/07/14
37. ART. OF OR. LA ESTRELLA 4/07/14
38. ART. OF OR. CIVIC PLAZA 4/17/14
39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14
40. OP AGREE. LA ESTRELLA, LLC 4/07/14
41. MORTGAGE MODIFICATION 6/24/14
42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14
43. CONTRACT FOR DEED 8/18/14
44. OFFER 18361/18373 MAIN ST 9/30/14
45. GRANT DEED PARCEL 031-044-018 9/18/14

46.	JUDGMENT EATON. MICHIGAN 4/03/15
47.	ORDER GRANTING MOTION TO SELL 4/20/15
48.	PROMISSORY NOTE 6/01/15
49.	2015 FORM 1099-S 6/12/15
50.	SELLER'S CLOSING STATEMENT 6/12/15
51.	PROPERTY MGMT AGREEMENT 7/01/15
52.	DEBTOR'S REPORT OF SALE 8/27/15
53.	ORDER GRANTING SJM 5/23/17
54.	CONTRACT FOR DEED 6/10/17
55.	GRANT DEED 12/18/17
56.	GRANT DEED 12/18/17
57.	GRANT DEED 7/06/16
58.	WARRANTY DEED 7/06/16
59.	SELLER PACKAGE 10/23/19
60.	JPM RESIDENTIAL LEASE 11/23/22
61.	SECOND AMENDED OP AGREEMENT 11/23/22
Discovery Documents:	
1.	Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.
2.	Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.
3.	Deposition of Defendant John Mendoza, taken December 8, 2023.\
4.	Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.
5.	Deposition of Lupe Martin, taken September 24, 2024.
6.	Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.
Discovery Documents:	
1.	None identified.

<p>Further Discovery or Motions:</p> <p>1. None identified.</p>	<p>Further Discovery or Motions:</p> <p>1. None identified.</p>
<p>Stipulations:</p> <p>1. None identified.</p>	<p>Stipulations:</p> <p>1. None identified.</p>
<p>Amendments:</p> <p>1. None identified.</p>	<p>Amendments:</p> <p>1. None identified.</p>
<p>Dismissals:</p> <p>1. None identified.</p>	<p>Dismissals:</p> <p>1. None identified.</p>
<p>Agreed Statement of Facts:</p> <p>1. None identified.</p>	<p>Agreed Statement of Facts:</p> <p>1. None identified.</p>
<p>Attorneys' Fees Basis:</p> <p>1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller & Associates, Inc.</i>, 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.</p>	<p>Attorneys' Fees Basis:</p> <p>1. "Pursuant to 11 U.S.C. §"</p>
<p>Additional Items</p> <p>1. None identified.</p>	<p>Additional Items</p> <p>1. None identified.</p>
<p>Trial Time Estimation: 3-5 days.</p>	<p>Trial Time Estimation: 2 days.</p>

4. [22-90415-E-7](#) **JOHN MENDOZA**
[23-9020](#)
FARRAR V. MENDOZA

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR DENIAL OF
DEBTOR'S DISCHARGE
10-16-23 [1]

Plaintiff's Atty: Jeffrey I. Golden, Beth E. Gaschen
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 10/16/23
Answer: 10/24/23

Nature of Action:
Objection / revocation of discharge

Notes:
Continued from 3/13/25

The Pre-Trial Conference is XXXXXXX

APRIL 17, 2025
CONTINUED PRE-TRIAL CONFERENCE

On April 17, 2025, the hearing on the Chapter 7 Trustee's Motion to Approve Settlement in the John Pierre Mendoza Bankruptcy Case, 22-90415. The Settlement provides for the Chapter 7 Trustee to avoid transfers of twenty-five (25) real properties for the benefit of the Bankruptcy Estate. With that recovery, the Trustee projects paying claims in full.

With respect to this Adversary Proceeding seeking to have no discharge entered for Defendant-Debtor in his Bankruptcy Case, XXXXXXX

MARCH 13, 2025
CONTINUED PRE-TRIAL CONFERENCE

The court's review of the docket for this Adversary Proceeding on March 12, 2025, discloses that no Status Update or Settlement Pleadings have been filed.

The court conducted joint Status Conferences for the three Adversary Proceedings: 23-9011, *WVJP 2021-4, LP. v. John Mendoza* (denial of discharge); *Trustee Farrar v. John Mendoza*, 23-9020 (denial of discharge); and 24-9004, *Trustee Farrar v. John Mendoza, Lupe Martin, Jenae-Desiree Mendoza, and La Estrella Enterprises, LLC* (Fraudulent Transfer, Constructive Trust, Unjust Enrichment, and Accounting).

Counsel for Trustee Farrar reported that a settlement has been reached in Adversary Proceeding 24-9004 by which the transfers of the multiple properties that are the subject of the Adversary Proceeding will be transferred to the bankruptcy estate (in the name of Trustee Farrar). This will fully resolve the Adversary Proceeding. A motion to approve the settlement will soon be filed, with a hearing set for 10:30 a.m. on April 17, 2025.

Trustee Farrar reported that with the settlement, the Bankruptcy Estate should have assets sufficient to pay all claims in full. If so, this would then moot any financial need for prosecuting this Adversary Proceeding, saving all of the Parties and the Bankruptcy Estate otherwise economically unnecessary expenses.

The Chapter 7 Trustee will assemble his information from real estate professionals concerning the values of the properties to be sold and review it with the counsel. If it appears that the claims can be paid in full, the parties may agree to continue the Pre-Trial Conference for the two objections to discharge and allow the Trustee to complete the sales. If there are sufficient funds to pay all claims in full (or substantially in full), the Parties may seek dismissal of the two Objection to Discharge Adversary Proceedings.

The Pre-Trial Conference is continued to 10:30 a.m on April 17, 2025 (Specially Set Time).

FEBRUARY 20, 2025 CONTINUED PRE-TRIAL CONFERENCE

At the Pre-Trial Conference, the Parties reported that a Settlement Agreement has been drafted and signed by all parties except Mr. Mendoza. The agreement includes a provisions regarding Mr. Mendoza and his daughter. Counsel for Mr. Mendoza reported that he is scheduling a meeting with his client, the terms of the settlement appear to be meritorious for Mr. Mendoza's interests, and anticipates that it will be executed shortly.

The Parties requested a short continuance.

The Pre-Trial Conference is continued to 2:00 p.m. on March 13, 2025.

SUMMARY OF COMPLAINT

The Complaint filed by Gary Farrar, the Chapter 7 Trustee in Bankruptcy Case 22-90415, ("Plaintiff-Trustee"), Dckt. 1 , asserts claims for entry of a discharge in Defendant-Debtor's Chapter 7 Bankruptcy Case. The basis for such relief stated in the Complaint include the following. It is alleged that beginning in 2014 Defendant-Debtor has owned as many as 37 properties and has engaged in a series of transfers to prevent creditors from reaching such assets. It is alleged that Defendant-Debtor organized limited liability companies to be the transferees of such properties.

It is alleged that these limited liability companies were controlled by Defendant-Debtor and Defendant-Debtor's family members (including minor children being named as the sole member of the LLC). It is alleged that Defendant-Debtor continues in the control and management of these assets. The Complaint contains a very detailed statement of the basis for the claims asserted against Defendant-Debtor. Denial of discharge is requested pursuant to 11 U.S.C. § 727(a)(2)(B) [transfer, removal, destruction of

property of the estate after the filing of the petition] and § 727(a)(4)(A) [knowing and fraudulent false oath or account in connection with the bankruptcy case].

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (J), and (O). Complaint ¶¶ 1, Dckt. 1. In the Answer, Defendant-Debtor admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 2; Dckt. 1. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

JANUARY 16, 2025 PRE-TRIAL CONFERENCE

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients in related Adversary Proceeding 24-9004, which is to be tried with this Adversary Proceeding. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filing of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza’s counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza’s (Jenae-Desiree Mendoza’s father) counsel that the court should just set the trial and when she doesn’t show up to present a defense enter judgments again her and La Estrella Enterprises, LLC.

Counsel for Plaintiff and Counsel for John Mendoza each argued that they could not proceed with the litigation in these related Adversary Proceeds without also including obtaining a judgment in the Adversary Proceeding against Ms. Estrella and La Estrella Enterprises, LLC

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025;**

- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.
- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.
1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

Pre-Trial Conference Statements

The Parties in their respective Pretrial Conference Statements, Dckts. 35 and 34, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

Jurisdiction and Venue:

Plaintiff WVJP 2021-4, LP alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

This is confirmed in the Plaintiffs Pretrial Statement (p. 1:12-18; Dckt. 35) and Defendant-Debtor’s Pretrial Statement (p. 1:25-28, 2:1-3; Dckt. 34).

Undisputed Facts-Plaintiff:Citing to the Defendant-Debtor's Pre-Trial Statement in Adversary Proceeding 24-09004:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date").
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the "Cedar Hill Property").
3. The Debtor did not qualify for the "Homestead" exemption because he did not continuously reside at the Property.
4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035 18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.
5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, are not relevant]
6. [Whether the Defendant's sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
7. La Estrella Enterprises, LLC ("La Estrella") was assigned to Jenae-Desiree Mendoza in 2019.
8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor's pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
9. Since the formation of La Estella, Defendant-Debtor has had "control" over Estrella;
10. The Civic Plaza, LLC ("The Civic Plaza") was registered October 17, 2014.
11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Citing to Defendant Lupe Martin's Pretrial Statement Transmitted to Plaintiffs' Counsel

12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties

Undisputed Facts-Defendant:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date").
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the "Property").
3. The Debtor did not qualify for the "Homestead" exemption because he did not continuously reside at the Property.
4. The Debtor scheduled:

(a) a vacant lot at 12539 Quail Dr, Placida, FL 33946,

- (b) a rental house at 1035 18th St., Merced CA 95340,
- (c) a rental house at 1027 W. 18th St., Merced, Ca 95430,
- (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and
- (e) the “Property.”

- 5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.
- 6. The Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21.
- 7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.
- 8. La Estrella was capitalized with \$7,500.00.
- 9. Since the formation of La Estella, Defendant has had “control” rather advisory role, and as a Father.
- 10. The Civic Plaza was registered October 17, 2014.
- 11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Disputed Facts-Plaintiff:

ADV 24-9004

- 1. 1. Defendants transferred property with an actual intent to hinder and/or delay (and possibly defraud creditors of the Debtor, including one or more of the following properties (one or more collectively, the “Fraudulently Transferred Property”):
 - i. a. 1727 N Street, Merced, CA.
 - ii. b. Two (2) Parcels consisting of 6 lots located in Merced County California (commonly known as 1022, 1032 and 1040 W. 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed, recorded in Merced County on July 29, 2014, recordation number 2014-022996.
 - iii. c. One (1) lot located in Tuolumne County, California, commonly known as 20272 Starr King Drive, Soulsbyville, CA), transferred to La Estrella via grant deed, recorded in Tuolumne County on December 15, 2014, recordation number 2014013159. The Debtor transferred this property to La Estrella pursuant to California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same, claiming zero transfer taxes.
 - iv. d. 18361 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013398.

- v.
 2. e. 18373 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013399.
 - i. f. Two (2) Parcels located in Jamestown California (commonly known as 18369 and 18371 Main Street, Jamestown, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003567. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor's sister, Lupe Martin, as the "CEO/Manager" of La Estrella.
 - ii. g. One (1) lot located in Soulsbyville California (commonly known as 20400 Starr King Drive, Soulsbyville, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003568. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - iii.
3. h. One (1) Parcel / portion of NE ¼, located in Twain Harte, California (commonly known as 22622 Twain Harte Drive, Twain Harte, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003566. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - i. i. Two (2) lots located in Merced California (commonly known as 1014 W 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015010044. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - ii.
 - iii. j. Four (4) lots located in Merced California (commonly known as 2127 O Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015-010043. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - iv.
 - v. k. One (1) Parcel located in Merced County, California (commonly known as 6845 Camellia Drive, Atwater, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on April 15, 2015, recordation number 2015-012181. The grant deed, signed by the Debtor April 15, 2015, identifies the Debtor as the "Manager" of La Estrella.
 - vi.
 - vii. l. One (1) lot located in Merced County, California (commonly known as 1226 Brookdale Drive, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on August 23, 2017, recordation number 2017027149. The grant deed, signed by the Debtor on August 23, 2017, identifies the Debtor's sister, Lupe Martin, as the "Custodian and Manager" of La Estrella.

viii. m. 18375 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on or about December 18, 2017, recordation number 2017014570, one week after the Abstract of Judgment of the California Sister-State Judgment was recorded on December 11, 2017, in Tuolumne County, California, and without receiving equivalent value in exchange. The grant deed, signed by the Debtor on December 15, 2017, identifies the Debtor's sister, Lupe Martin, as the "CEO, Manager" of La Estrella.

4. The transfers at issue were from Debtor to one or more insider(s), including without limitation the Debtor's daughter and/or sister.
5. The Debtor maintained possession and/or control over the fraudulently transferred property.
6. Before the transfers were made, the Debtor had been sued or threatened with suit.
7. The fraudulent nature of the transfers was concealed and/or not disclosed by the Debtor.
8. The transfers, taken together, were of substantially all the Debtor's assets.
9. The Debtor either removed his assets, and/or concealed his assets by making it appear that they had been removed from his estate when they had not.
10. The Debtor did not receive consideration for the transfers that was reasonably equivalent to the value of the properties transferred by the Debtor.
11. The Debtor was insolvent or became insolvent shortly after some or all of the transfers were made.
12. The transferee of the fraudulently transferred property was not a good faith transferee, did not pay anything for the transfer(s) and may not even have been aware of the transfers at the time they were made (and/or may not have agreed to accept the transfer of the property).
13. In the Debtor's related bankruptcy case, there exists one or more creditors holding unsecured claims that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code, who could have avoided, under California Civil Code § 3439.04, the Fraudulent Transfers.
14. At all material times: (a) the Debtor controlled La Estrella and The Civic Plaza; (b) the Debtor treated the assets of La Estrella and The Civic Plaza as his own; and (c) the Debtor used La Estrella and The Civic Plaza, in conspiracy with (and/or as aided and abetted by) the Defendants, to intentionally hinder, delay, and/or defraud creditors.
15. The Fraudulently Transferred Property was transferred to an insider of the Debtor, to the Debtor himself, or to an entity formed, controlled and operated by the Debtor.
16. The Fraudulently Transferred Property was transferred at the direction of or under the control of the Debtor.

17. The Debtor retained *de facto* possession, custody and/or control of the property transferred, after each of the transfer of the Fraudulently Transferred Property.
18. The Debtor had been sued or threatened with suit before each of the transfers described above were made.
19. Altogether, the transfers of the Fraudulently Transferred Property constituted the transfer of substantially all of the Debtor's assets, and/or left him with insufficient assets to satisfy obligations.
20. The Debtor, Defendants, and others played active roles in the acts and Fraudulent Transfers described above with the actual intent to assist in defrauding the Debtor's creditors; (b) the named Defendant(s) herein, and those acting in concert with them (including without limitation the Debtor's sister and daughter), did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy to deceive and defraud the Debtor's creditors, and to hinder and delay them from collecting amounts owed to them by the Debtor; and (c) the Debtors actions in refinancing the property in May 2022, constituted the last (currently known) overt act in furtherance of the conspiracy to defraud the Debtor's creditors (such that any otherwise applicable statutes of limitation would have been tolled through this date).
21. As of approximately May 2022, according to loan documents apparently created by a lender, the Debtor sought to refinance a loan secured by a property held by La Estrella, in an effort to release a personal guaranty under said loan, thereby using La Estrella's assets for his own personal benefit. When confronted with this transaction in his 2004 examination, the Debtor claimed not to know what a personal guaranty even was – despite having testified to having purchased and sold over 100 properties.
22. The statute of limitations for fraudulent transfer is further extended to the extent that the Internal Revenue Service is a creditor of the Debtor's bankruptcy estate.
23. The Debtor's bankruptcy estate (and/or the Trustee acting on behalf of said estate) is the equitable owner of the trust *res*.
24. Defendants are constructive trustees of said property (and said title ownership) for the benefit of the true owner (the Debtor's bankruptcy estate).
25. The transfers of Fraudulently Transferred Property alleged herein were made under circumstances showing that the transferee(s) were not intended to take the beneficial interest of the transferred property, but rather that they would receive bare record title thereto, while the Debtor continued to enjoy all the beneficial interests of the property despite passage of record title).
26. After transfer, the Debtor still *de facto* exercised ownership and control over said properties, through the transferee companies he created, and which he installed himself and/or his immediately family as said transferee(s)' owner(s) and/or controllers.
27. After transfer, the Debtor treated the Fraudulently Transferred Property as his own, as if there were no separation of ownership or interest between himself and the entities he created.
28. The Civic Plaza was the interim title holder of the commercial property located at 1727 N

Street, Merced, CA, between the Debtor and La Estrella, and in October 2014, the Debtor executed a grant deed of the property to The Civic Plaza stating that the transfer resulted solely in a change in the method of holding title and in which ownership interests remain the same, such that the Debtor was to retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another.

29. Debtor effectively treated The Civic Plaza as an extension of himself, operated it as if it were his dba, and acted as if there were no separate ownership or interest between himself and The Civic Plaza.
30. In November 2021, Transcounty Title Co. handled an escrow for La Estrella involving the disbursement of \$1,424,645.64 in loan proceeds. The Debtor's daughter, acting as La Estrella's manager, attested to signing the documents but later stated she did not recall doing so. The disbursement included hundreds of thousands of dollars in loan payoffs (the "Payoffs"), although she was unaware of the purpose of these Payoffs or whether the loans being paid off were connected to property her father owned personally
31. The Debtor directed these payoffs, and he was able to satisfy his personal debts/loans with these proceeds.
32. With regard to 20272 Starr King Drive, Soulsbyville, California, the Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County on or about December 15, 2014, recordation number 2014013159 (the "20273 Deed") through which the Debtor publicly disclosed a tax exemption for the transfer under California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same.
33. The 20272 Deed evidences: (a) the Debtor's intent that he retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another; and (b) this shows that the Debtor effectively treated La Estrella as an extension of himself, operated it as if it were his dba, and acted as if there were no separation between himself and La Estrella.
34. These filings, essentially asserting that the Debtor's transfers to La Estrella and The Civic Plaza resulted in the mere change in the method of holding title and in which ownership interests remain the same, constitute evidence of the parties' (including the Debtor's) intent, understanding and agreement (whether express, tacit or implied) that the beneficial interest in the properties transferred by the Debtor to La Estrella and The Civic Plaza (i.e., the two properties referenced above and, indeed, all other transfers of property by the Debtor to these entities) was intended to remain with the transferor (i.e., the Debtor), and that the transferred properties in equity and conscience belong to the Debtor's bankruptcy estate and should be used for the benefit of the Debtor's estate.
35. As late as November 8, 2021, the Debtor was still signing documents on behalf of La Estrella, even though he was no longer even a manager of La Estrella – including an Amendment to Authorization to Register Lender and Fee Agreement, which the Debtor signed on behalf of La Estrella and his daughter signed on behalf of herself individually.
36. As late as approximately May 2022, the Debtor was filling out personal financial statements in his own handwriting, on behalf of his daughter, for her use in obtaining loans on behalf of La Estrella – claiming that La Estrella's property had a net worth of nearly \$7 million. So too, as late as approximately May 2022, the Debtor was seeking a loan against

property whose title was in the name of La Estrella, in order to pay off (or otherwise remove) one or more personal obligations of the Debtor – here again, essentially treating La Estrella (and its property) as if it were his own dba.

37. La Estrella was operated by the Debtor as if it were his own dba, such that in equity and good conscience the Court should disregard the corporate or other legal form of La Estrella in order to hold it liable for the debts of the Debtor, as La Estrella was effectively organized and controlled, and its affairs conducted, so as to make it merely an instrumentality, agency, conduit, or adjunct of the Debtor.
38. Notwithstanding the purported transfers of Fraudulently Transferred Property, said properties are (or should be deemed or determined in equity and good conscience to be) held in a resulting trust by Defendant(s) in order to enforce the intent of the parties (including the Debtor) to the transfer, and Defendants can and should be compelled to transfer all of their interests in said transferred property (including without limitation record title thereto) to the Debtor's estate.
39. Such a resulting trust has never been repudiated (nor formally acknowledged) by Defendants, no one material party has had actual knowledge or breach of any repudiation of said trust, no one has indicated that he, she or it is holding the property adversely to Plaintiff (or the Debtor's estate), and/or to the extent there was any repudiation of the trust, or indication that the transferred properties were being held adversely to the transferor (or Plaintiff), said repudiation or indication first arose less than four years from the date of filing of this action.
40. As a result of the foregoing: (a) Defendants received a benefit; and (b) Defendants are unjustly retaining that benefit at the expense of another (in this case, since the Debtor has filed a petition for bankruptcy, at the expense of the Debtor's estate and, more particularly, the Debtor's creditors who, without recovery of said property or the monetary value of the equity lost through the transfers of said property, will not be paid in full on the debts owed to them by the Debtor).
41. Consequently, in equity and good conscience, Defendants can and should be compelled to transfer said property (and record title thereto) to the Debtor's estate, and/or pay the estate an amount equal to the amount by which Defendants have been unjustly enriched as a result of said transfers.
42. As a result of the foregoing: (a) La Estrella is a mere shell and/or instrumentality of the Debtor, that La Estrella is functionally (and functioning as) the Debtor's alter ego, and that all assets and profits of La Estrella belong in equity and good conscience to the Debtor's estate, the Debtor having filed a petition for bankruptcy; and/or (b) there is (or was) a relationship between the Debtor and La Estrella that reflects a degree of confidentiality or closeness.
43. Also as a result of the foregoing, there was (and is): (1) a relationship between the parties that requires an accounting; and (2) a balance due the Plaintiff and that can only be ascertained fully by an accounting.
44. Accordingly, under each of the causes of action alleged above, and under the allegations incorporated herein, Plaintiff (as Trustee of the Debtor's estate) is entitled to an accounting of all assets and profits of La Estrella.

45. As a result of the foregoing, there is an actual and justiciable controversy whether the transferred properties alleged herein were fraudulently transferred (such that a constructive trust should be imposed over the properties for the benefit of the Debtor's estate), or whether the properties were legitimately transferred with an actual or implied promise that only legal title would transfer and that beneficial ownership would remain with the Debtor (such that a resulting trust should be acknowledged over the properties for the benefit of the Debtor's estate), or whether the transfers and conduct herein alleged involved no wrongdoing capable of remediation for the benefit of the Debtor's estate.
46. Accordingly, the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.

ADV 23-9020

47. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed property of the Estate post-Petition Date, including, without limitation to amended according to proof at trial, the following:
- a. (a) 1727 N Street, Merced, California;
 - b. (b) 18375 Main Street, Jamestown, California;
 - c. (c) 1226 Brookdale Drive, Merced, California;
 - d. (d) 20272 Starr King Drive, Soulsbyville, California;
 - e. (e) 1014 W. 18th Street, Merced, California;
 - f. (f) 1022 W. 18th Street, Merced, California;
 - g. (g) 1032 W. 18th Street, Merced, California;
 - h. (h) 1040 W. 18th Street, Merced, California;
 - i. (i) 18361 Main Street, Jamestown, California;
 - j. (j) 18369 Main Street, Jamestown, California;
 - k. (k) 18371 Main Street, Jamestown, California;
 - l. (l) 18373 Main Street, Jamestown, California;
 - m. (m) 22622 Twain Harte Drive, Twain Harte, California;
 - n. (n) 2127 O Street, Merced, California; and
 - o. (o) 6845 Camellia Drive, Atwater, California.
48. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed and hid assets in which Defendant has an interest by failing to list in his Schedules all assets in which Defendant has an interest.

49. That Defendant knowingly and fraudulently made a false oath or account, including, without limitation to amendment according to proof at trial, the following: (a) failing to disclose in his Schedules his beneficial interests in real property; (b) claiming on his schedules that his residence is the Property.

ADV 23-9011

50. Defendant-Debtor committed actual fraud by fraudulently conveying real property to shell entities controlled by Defendant-Debtor. La Estrella was formed by Defendant-Debtor, with the sole member being Defendant-Debtor's then-13 year old daughter. At the time of the transfers at issue, La Estrella's purported "sole member" had not reached the age of majority. Defendant-Debtor identified himself as the CEO or Manager and therefore beneficiary of the transfers.
51. Defendant-Debtor, as the beneficiary and recipient of these transfers, obtained the properties through the fraudulent conveyance. Defendant-Debtor did not obtain reasonably equivalent value for any of the conveyances and has not been paid on any of the notes or deeds of trusts on which he is the beneficiary.
52. Defendant-Debtor intentionally engaged in the fraudulent conveyances for the purpose of defrauding Plaintiff and frustrating Plaintiff's efforts to enforce its debt.
53. Defendant-Debtor's activities described above were conducted with knowledge that he was engaged in a fraudulent scheme.
54. Defendant-Debtor injured Plaintiff by knowingly engaging in the fraudulent schemes and committing actual fraud.
55. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, had the subjective motive to inflict injury to his creditors, including but not limited to Plaintiff.
56. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, believed injury to his creditors was substantially certain to result from the transfers.
57. Defendant-Debtor's willful and malicious conduct caused Plaintiff's injury.

Disputed Facts-Defendant:

1. The Debtor has not "systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors."
2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.
3. The Debtor denies having control over either LLC's.

4.	The “vast majority” of these transfers were fraudulent conveyances.		
5.	There are distinct differences between La Estrella and The Civic Plaza.		
6.	The Debtor did not, at all times control La Estrella and The Civic Plaza.		
7.	The Debtor did not intentionally hinder, delay, or defraud creditors.		
8.	The Defendant did not transfer any properties for less than fair market value.		
9.	The Defendant did not retain either possession or control of any of the transferred properties.		
10.	The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.		
11.	The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.		
12.	The Defendant did not conceal and property of the Estate Post-Petition Date.		
13.	The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.		
14.	The Defendant did not fail to disclose in his schedules his beneficial interests in real property.		
15.	The failure to qualify as a homestead exemption is not due to the Defendant failing to reside at the Property, on the day of filing, but from not continuously residing thereon.		
16.	The Trustee should not recover money/property pursuant to 11 U.S.C. 542.		
17.	The Defendant should not be denied a discharge pursuant to 11 U.S.C. 727(a)(2).		
18.	The Defendant should not be denied a discharge pursuant to 11 U.S.C. 727(a)(4)(A).		
<table> <tr> <td> Disputed Evidentiary Issues-Plaintiff: 1. None Identified. </td><td> Disputed Evidentiary Issues-Defendant: 1. None identified. </td></tr> </table>		Disputed Evidentiary Issues-Plaintiff: 1. None Identified.	Disputed Evidentiary Issues-Defendant: 1. None identified.
Disputed Evidentiary Issues-Plaintiff: 1. None Identified.	Disputed Evidentiary Issues-Defendant: 1. None identified.		
Relief Sought-Plaintiff: 1. The transfers or real property be set aside and declared void. 2. A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property. 3. Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and that under Section 551 all liens avoided will be preserved for the benefit of the estate. 4. That an order be made declaring that Defendants hold all of the transferred real property described			

above in trust for Plaintiff, whether involuntarily or voluntarily.

5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate.
6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants.
7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers.
8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants.
9. For costs and attorneys' fees.
10. For punitive damages pursuant to statute and according to proof
11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).

Relief Sought-Defendant:

1. The Non-Discharge of Debtor.
2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.

Points of Law-Plaintiff:

Adv. 24-9004

1. Cal Civ Code § 2223.
2. Cal Civ Code § 2224.
3. Imposition of a constructive trust, resulting trust. *In re Real Estate Associates Ltd. Partnership Litig.*, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); *Murphy v. T. Rowe Price Prime Reserve Fund, Inc.*, 8 F.3d 1420, 1422 (9th Cir.); *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1069 (1998); *Martin v. Kehl*, 145 Cal. App. 3d 228, 238 (1983); *Laing v. Laubach*, 233 Cal.App.2d 511, 515 (1965); *Berniker v. Berniker*, 30 Cal. 2d 439, 447-448 (1947); *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485 (1970) *Goodrich v. Briones (In re Schwarzkopf)*, 626 F.3d 1032, 1037 (9th Cir. 2010); *Cadles of W. Va., LLC v. Alvarez*, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal.

2023); *Estrada v. Garcia*, 132 Cal. App. 2d 545, 552 (1955);

4. Resulting trust statute of limitations. *Estate of Yool*, 151 Cal. App. 4th 867, 875 (2007); *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).
5. Cal Civ § 3439.04(a) statute of limitations. *Monastra v. Konica Bus. Machines, U.S.A., Inc.*, 43 Cal. App. 4th 1628, 1645 (1996); *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 786 (1979); *Munoz v. Ashcroft*, 339 F.3d 950, 956-957 (2003).
6. Constructive trust statute of limitations. *Higgins v. Higgins*, 11 Cal. App. 5th 648, 659 (2017).
7. Unjust enrichment statute of limitations. *First Nationwide Savings v. Perry*, 11 Cal. App. 4th 1657, 1670 (1992).
8. Accounting action statute of limitations. *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000); *Estate of Peebles*, 27 Cal. App. 3d 163, 166 (1972).
9. Declaratory relief statute of limitations. *Bank of New York Mellon v. Citibank, N.A.*, 8 Cal. App. 5th 935, 943; *North Star Reinsurance Corp. v. Superior Court*, 10 Cal. App. 4th 1815, 1822 (1992).
10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).
11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).
12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of Merced*, 146 Cal. App. 4th 1238, 1250 (2007).

Additional for Adv. 23-9020 and 23-9011.

13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).
14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).
15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).
16. Intent inferred from actions of debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985); *United States v. Swenson (In re Swenson)*, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Freelife, Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .
17. 11 U.S.C. § 727(a)(4)(A); *Song v. Acosta (In re Song)*, 2011 Bankr. LEXIS 4796 at *13 (B.A.P. 9th Cir. 2011); *In re Retz*, 606 F.3d at 1196; *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); *In re Caneva*, 550 F.3d at 761.
18. Accuracy of schedules and statement of financial affairs. *In re Searles*, 317 B.R. at 377.

19.	11 U.S.C. § 523(a) and preponderance of the evidence standard. <i>Grogan v. Garner</i> , 489 U.S. 279, 291 (1991).														
20.	11 U.S.C. § 523(a)(2); <i>In re Lewis</i> , 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016); <i>In re Tran</i> , 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003).														
21.	11 U.S.C. § 523(a)(6); <i>Carrillo v. Su (In re Su)</i> , 290 F.3d 1140, 1143-47 (9th Cir. 2002); <i>Petralia v. Jercich (In re Jercich)</i> , 238 F.3d 1202, 1209 (9th Cir. 2001).														
Points of Law-Defendant:															
1.	11 U.S.C. § 727(a)(2), (a)(4)(A).														
<table border="1"> <tr> <td>Abandoned Issues-Plaintiff:</td><td>Abandoned Issues-Defendant:</td></tr> <tr> <td>1. None identified.</td><td>1. None identified.</td></tr> </table>		Abandoned Issues-Plaintiff:	Abandoned Issues-Defendant:	1. None identified.	1. None identified.										
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Witnesses-Plaintiff:	Witnesses-Defendant:														
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2. Loris Bakken, Esq.	2. Gary Farrar, Chapter 7 Trustee														
3. John Pierre Mendoza.															
4. Jenaë-Desiree Mendoza.															
5. John McCallum.															
6. Paul Quinn.															
Exhibits-Plaintiff:															
1.	See Attachment A, Dckt. 39 at pp. 32-38.														
Exhibits-Defendant:															
1.	Debtor's Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.														
2.	2013 John-Pierre Mendoza 2013 Trust Agreement.														
3.	Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 "O" Street, Merced, CA 95340, for \$250,000.00.														
4.	Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.														

5. Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for \$168,000.00.
6. Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.
7. Debtor's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.
8. The Civic Plaza, LLC's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.
9. JANAE-DESIREE MENDOZA 2015 TAX RETURNS.
10. JOHN-PIERRE MENDOZA 2019 TAX RETURNS.
11. JOHN-PIERRE MENDOZA 2020 TAX RETURNS.
12. JOHN-PIERRE MENDOZA 2021 TAX RETURNS.
13. JOHN-PIERRE MENDOZA 2022 TAX RETURNS.
14. LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.
15. JOHN-PIERRE MENDOZA 2023 TAX RETURNS.
16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.
17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.
18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024
1. 23955 Cedar Hill Ln
19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024
 1. 1022 W. 18TH St.
 2. 1027 W. 18th St.
 3. 1032 W. 18TH St.
 4. 1035 W 18th St
 5. 1040 W. 18TH St.
 6. 20272 Starr King Dr.
 7. 20400 Starr King Dr.
 8. 18373 Main St.
 9. 18361 Main St.
 10. 2127 O St.
 11. 1014 W. 18th St.
 12. 22622 Twain Hart Dr.
 13. 18369 Main St.
 14. 18371 Main St.
 15. 18375 Main St.

16. 6845 W. Camellia Dr.
17. 1226 Brookdale Dr.
18. 1727 N St.
20. DWELLING FIRE POLICY EFFECTIVE 7/23-24 (23955 Cedar Hill Lane)
21. RENTS RECEIVED AND AMOUNTS PAID 11/22 - 8/31/24
 1. 1027 w. 18TH St.
 2. 1035 W. 18th St.
 3. 23955 Cedar Hill Ln.
22. 22. PROPERTY ANALYSIS CALENDAR YEAR 2012.
23. PROPERTIES SOLD TO LA ESTRELLA 2014 - 2022.
24. PROPERTY VALUES LA ESTRELLA 2015.
25. PROPERTIES SOLD TO LEEC 1980 - 2006
 1. 1022 W. 18th St.
 2. 1032 W. 18th St.
 3. 1040 W. 18th St.
 4. 20272 Starr King Dr.
 5. 20400 Starr King Dr.
 6. 18373 Main St.
 7. 18361 Main St.
 8. 2127 O St.
 9. 1014 W. 18th St.
 10. 22622 Twain Harte Rd.
 11. 18369 Main St.
 12. 18371 Main St.
 13. 18375-18377 Main St.
 14. 6845 Camellia St.
 15. 1226 Brookdale Dr.
26. APPRAISAL 1032 W. 18TH ST. 6/08/11
27. APPRAISAL 1014 W. 18TH ST. 6/08/11
28. APPRAISAL 1226 BROOKDALE RD. 6/10/11
29. APPRAISAL 18375-18377 MAIN ST 9/13/11
30. APPRAISAL 18371 MAIN ST. 9/13/11
31. APPRAISAL 18369 MAIN ST. 9/13/11
32. APPRAISAL 20400 STARR KING DR 9/13/11
33. APPRAISAL 20272 STARR KING DR 9/13/11

34. LOAN MOD. EATON, MICHIGAN 4/01/12
35. 2013 TRUST AGREEMENT 10/15/13
36. OPERATING AG. LA ESTRELLA 4/07/14
37. ART. OF OR. LA ESTRELLA 4/07/14
38. ART. OF OR. CIVIC PLAZA 4/17/14
39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14
40. OP AGREE. LA ESTRELLA, LLC 4/07/14
41. MORTGAGE MODIFICATION 6/24/14
42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14
43. CONTRACT FOR DEED 8/18/14
44. OFFER 18361/18373 MAIN ST 9/30/14
45. GRANT DEED PARCEL 031-044-018 9/18/14
46. JUDGMENT EATON, MICHIGAN 4/03/15
47. ORDER GRANTING MOTION TO SELL 4/20/15
48. PROMISSORY NOTE 6/01/15
49. 2015 FORM 1099-S 6/12/15
50. SELLER'S CLOSING STATEMENT 6/12/15
51. PROPERTY MGMT AGREEMENT 7/01/15
52. DEBTOR'S REPORT OF SALE 8/27/15
53. ORDER GRANTING SJM 5/23/17
54. CONTRACT FOR DEED 6/10/17
55. GRANT DEED 12/18/17
56. GRANT DEED 12/18/17
57. GRANT DEED 7/06/16
58. WARRANTY DEED 7/06/16

59.	SELLER PACKAGE 10/23/19	
60.	JPM RESIDENTIAL LEASE 11/23/22	
61.	SECOND AMENDED OP AGREEMENT 11/23/22	
Discovery Documents-Plaintiff:		Discovery Documents-Defendant:
1.	Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.	1. None identified.
2.	Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.	
3.	Deposition of Defendant John Mendoza, taken December 8, 2023.\	
4.	Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.	
5.	Deposition of Lupe Martin, taken September 24, 2024.	
6.	Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.	
Further Discovery or Motions-Plaintiff:		Further Discovery or Motions-Defendant:
1.	None identified.	1. None identified.
Stipulations-Plaintiff:		Stipulations-Defendant:
1.	None identified.	1. None identified.
Amendments-Plaintiff:		Amendments-Defendant:
1.	None identified.	1. None identified.
Dismissals-Plaintiff:		Dismissals-Defendant:
1.	None identified.	1. None identified.
Agreed Statement of Facts-Plaintiff:		Agreed Statement of Facts-Defendant:
1.	None identified.	1. None identified.

Attorneys' Fees Basis-Plaintiff: 1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller & Associates, Inc.</i> , 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.	Attorneys' Fees Basis-Defendant: 1. "Pursuant to 11 U.S.C. §"
Additional Items-Plaintiff 1. None identified.	Additional Items-Defendant 1. None identified.
Trial Time Estimation: 3-5 days.	Trial Time Estimation: 2 days.

5. [22-90415-E-7](#) **JOHN MENDOZA**
[24-9004](#)
FARRAR V. MENDOZA ET AL

**CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR FRAUDULENT
TRANSFER, CONSTRUCTIVE TRUST,
RESULTING TRUST, UNJUST
ENRICHMENT, ACCOUNTING AND
DECLARATORY RELIEF
3-28-24 [1]**

Plaintiff's Atty: Jeffrey I. Golden

Defendant's Atty:

Peter G. Macaluso [John Pierre Mendoza]

Calvin John Massey [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]

David C. Johnston [Lupe Martin]

Adv. Filed: 3/28/24

Answer:

4/25/24 [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]

4/30/24 [John Pierre Mendoza]

7/10/24 [Lupe Martin]

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Continued from 3/13/25

The Pre-Trial Conference is XXXXXXX

APRIL 17, 2025
CONTINUED PRE-TRIAL CONFERENCE

On April 17, 2025, the hearing on the Chapter 7 Trustee's Motion to Approve Settlement in the John Pierre Mendoza Bankruptcy Case, 22-90415. The Settlement provides for the Chapter 7 Trustee to avoid transfers of twenty-five (25) real properties for the benefit of the Bankruptcy Estate. With that recovery, the Trustee projects paying claims in full.

The Settlement Agreement provides for the dismissal of this Adversary Proceeding.

At the Pre-Trial Conference, **XXXXXXX**

MARCH 14, 2025
CONTINUED PRE-TRIAL CONFERENCE

The court's review of the docket for this Adversary Proceeding on March 12, 2025, discloses that no Status Update or Settlement Pleadings have been filed.

The court conducted joint Status Conferences for the three Adversary Proceedings: 23-9011, *WVJP 2021-4, LP. v. John Mendoza* (denial of discharge); *Trustee Farrar v. John Mendoza*, 23-9020 (denial of discharge); and 24-9004, *Trustee Farrar v. John Mendoza, Lupe Martin, Jenae-Desiree Mendoza, and La Estrella Enterprises, LLC* (Fraudulent Transfer, Constructive Trust, Unjust Enrichment, and Accounting).

Counsel for Trustee Farrar reported that a settlement has been reached in Adversary Proceeding 24-9004 by which the transfers of the multiple properties that are the subject of the Adversary Proceeding will be transferred to the bankruptcy estate (in the name of Trustee Farrar). This will fully resolve the Adversary Proceeding. A motion to approve the settlement will soon be filed, with a hearing set for 10:30 a.m. on April 17, 2025.

Trustee Farrar reported that with the settlement, the Bankruptcy Estate should have assets sufficient to pay all claims in full. If so, this would then moot any financial need for prosecuting this Adversary Proceeding, saving all of the Parties and the Bankruptcy Estate otherwise economically unnecessary expenses.

The Chapter 7 Trustee will assemble his information from real estate professionals concerning the values of the properties to be sold and review it with the counsel. If it appears that the claims can be paid in full, the parties may agree to continue the Pre-Trial Conference for the two objections to discharge and allow the Trustee to complete the sales. If there are sufficient funds to pay all claims in full (or substantially in full), the Parties may seek dismissal of the two Objection to Discharge Adversary Proceedings.

The Pre-Trial Conference is continued to 10:30 a.m on April 17, 2025 (Specially Set Time).

FEBRUARY 20, 2025
CONTINUED PRE-TRIAL CONFERENCE

At the Pre-Trial Conference, the Parties reported that a Settlement Agreement has been drafted and signed by all parties except Mr. Mendoza. The agreement includes a provisions regarding Mr. Mendoza

and his daughter. Counsel for Mr. Mendoza reported that he is scheduling a meeting with his client, the terms of the settlement appear to be meritorious for Mr. Mendoza's interests, and anticipates that it will be executed shortly.

The Parties requested a short continuance.

The Pre-Trial Conference is continued to 2:00 p.m. on March 13, 2025.

SUMMARY OF COMPLAINT

The Complaint filed by Gary Farrar ("Plaintiff-Trustee"), Dckt. 1, asserts claims for avoidable transfers of property to his minor daughter and to a series of limited liability companies under the Defendant-Debtor's control. The named defendants in this Adversary Proceeding are: (1) John Pierre Mendoza (the Debtor), La Estrella Enterprises, LLC, Lupe Martin, and Jenae-Desiree Mendoza.

The First Cause of Action seeks to recover the transfers as fraudulent conveyances. The Second Cause of Action seeks to impose a constructive trust for the transferred properties. The Third Cause of Action asserts that a resulting trust exists with respect to the properties transferred. The Fourth Cause of Action asserts a claims for unjust enrichment. The Fifth Cause of Action seeks an accounting from La Estrella Enterprises, LLC. The Sixth Cause of Action is for declaratory relief, requesting that "the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy." This does not appear to be a request for declaratory relief, but a court summary of the First Five Causes of Action.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Chapter 7 Trustee Gary Farrar, "Plaintiff-Trustee, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 7, Dckt.1. In the Co-Defendants Answer filed by La Estrella Enterprises, LLC and Jenae-Desiree Mendoza, they admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 7; Dckt. 7. In the Debtor-Answer, Defendant John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 7; Dckt. 7.

JANUARY 16, 2025 PRE-TRIAL CONFERENCE

Motion for Counsel to Withdraw From Representation for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients. Dckts. 85, 89. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filling of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza's counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza's (Jenae-Desiree Mendoza's father) counsel that the court should just set the trial and when she doesn't show up to present a defense enter judgments against her and La Estrella Enterprises, LLC.

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025;**
- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
 - 1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.
- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.
 - 1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

Pre-Trial Conference Statements

The Parties in their respective Pretrial Conference Statements, Dckts. 83, 80, 79, 78, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant John Pierre Mendoza

Jurisdiction and Venue:

Plaintiff WVJP 2021-4, LP alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

This is confirmed in the Plaintiffs Pre-Trial Statement (p. 1:12-18; Dckt. 83), Defendant Martin’s Pre-Trial Statement (p. 1:26-27, 2:1; Dckt. 80), Defendants Jenae-Desiree Mendoza and La Estrella Enterprises, LLC Pre-Trial Statement (p. 1:25-28, 2:1-2; Dckt. 79), and Defendant-Debtor John Mendoza’s Pre-Trial Statement (p. 1:27-28, 2:1-3; Dckt. 78).

Undisputed Facts-Plaintiff:

Citing to the Defendant-Debtor’s Pre-Trial Statement in Adversary Proceeding 24-09004:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Cedar Hill Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035 18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.
5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, are not relevant]
6. [Whether the Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
7. La Estrella Enterprises, LLC (“La Estrella”) was assigned to Jenae-Desiree Mendoza in 2019.
8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor’s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].

9. Since the formation of La Estrella, Defendant-Debtor has had “control” over Estrella;
10. The Civic Plaza, LLC (“The Civic Plaza”) was registered October 17, 2014.
11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Citing to Defendant Lupe Martin’s Pretrial Statement Transmitted to Plaintiffs’ Counsel

12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties

Undisputed Facts-Defendant:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled:
 - (a) a vacant lot at 12539 Quail Dr, Placida, FL 33946,
 - (b) a rental house at 1035 18th St., Merced CA 95340,
 - (c) a rental house at 1027 W. 18th St., Merced, Ca 95430,
 - (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and
 - (e) the “Property.”
5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.
6. The Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21.
7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.
8. La Estrella was capitalized with \$7,500.00.
9. Since the formation of La Estrella, Defendant has had “control” rather advisory role, and as a Father.
10. The Civic Plaza was registered October 17, 2014.
11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.

Disputed Facts-Plaintiff:

ADV 24-9004

1. Defendants transferred property with an actual intent to hinder and/or delay (and possibly defraud creditors of the Debtor, including one or more of the following properties (one or more collectively, the “Fraudulently Transferred Property”):
 - a. 1727 N Street, Merced, CA.
 - b. Two (2) Parcels consisting of 6 lots located in Merced County California (commonly known as 1022, 1032 and 1040 W. 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed, recorded in Merced County on July 29, 2014, recordation number 2014-022996.
 - c. One (1) lot located in Tuolumne County, California, commonly known as 20272 Starr King Drive, Soulsbyville, CA), transferred to La Estrella via grant deed, recorded in Tuolumne County on December 15, 2014, recordation number 2014013159. The Debtor transferred this property to La Estrella pursuant to California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same, claiming zero transfer taxes.
 - d. 18361 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013398.
 - e. 18373 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013399.
 - f. Two (2) Parcels located in Jamestown California (commonly known as 18369 and 18371 Main Street, Jamestown, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003567. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor’s sister, Lupe Martin, as the “CEO/Manager” of La Estrella.
 - g. One (1) lot located in Soulsbyville California (commonly known as 20400 Starr King Drive, Soulsbyville, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003568. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - h. One (1) Parcel / portion of NE ¼, located in Twain Harte, California (commonly known as 22622 Twain Harte Drive, Twain Harte, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003566. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
 - i. Two (2) lots located in Merced California (commonly known as 1014 W 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015010044. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the “CEO/Manager” of La Estrella.

j. Four (4) lots located in Merced California (commonly known as 2127 O Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015-010043. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.

k. One (1) Parcel located in Merced County, California (commonly known as 6845 Camellia Drive, Atwater, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on April 15, 2015, recordation number 2015-012181. The grant deed, signed by the Debtor April 15, 2015, identifies the Debtor as the "Manager" of La Estrella.

l. One (1) lot located in Merced County, California (commonly known as 1226 Brookdale Drive, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on August 23, 2017, recordation number 2017027149. The grant deed, signed by the Debtor on August 23, 2017, identifies the Debtor's sister, Lupe Martin, as the "Custodian and Manager" of La Estrella.

m. 18375 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on or about December 18, 2017, recordation number 2017014570, one week after the Abstract of Judgment of the California Sister-State Judgment was recorded on December 11, 2017, in Tuolumne County, California, and without receiving equivalent value in exchange. The grant deed, signed by the Debtor on December 15, 2017, identifies the Debtor's sister, Lupe Martin, as the "CEO, Manager" of La Estrella.

2. The transfers at issue were from Debtor to one or more insider(s), including without limitation the Debtor's daughter and/or sister.
3. The Debtor maintained possession and/or control over the fraudulently transferred property.
4. Before the transfers were made, the Debtor had been sued or threatened with suit.
5. The fraudulent nature of the transfers was concealed and/or not disclosed by the Debtor.
6. The transfers, taken together, were of substantially all the Debtor's assets.
7. The Debtor either removed his assets, and/or concealed his assets by making it appear that they had been removed from his estate when they had not.
8. The Debtor did not receive consideration for the transfers that was reasonably equivalent to the value of the properties transferred by the Debtor.
9. The Debtor was insolvent or became insolvent shortly after some or all of the transfers were made.
10. The transferee of the fraudulently transferred property was not a good faith transferee, did not pay anything for the transfer(s) and may not even have been aware of the transfers at the time they were made (and/or may not have agreed to accept the transfer of the property).
11. In the Debtor's related bankruptcy case, there exists one or more creditors holding unsecured claims that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under

section 502(e) of the Bankruptcy Code, who could have avoided, under California Civil Code § 3439.04, the Fraudulent Transfers.

12. At all material times: (a) the Debtor controlled La Estrella and The Civic Plaza; (b) the Debtor treated the assets of La Estrella and The Civic Plaza as his own; and (c) the Debtor used La Estrella and The Civic Plaza, in conspiracy with (and/or as aided and abetted by) the Defendants, to intentionally hinder, delay, and/or defraud creditors.
13. The Fraudulently Transferred Property was transferred to an insider of the Debtor, to the Debtor himself, or to an entity formed, controlled and operated by the Debtor.
14. The Fraudulently Transferred Property was transferred at the direction of or under the control of the Debtor.
15. The Debtor retained *de facto* possession, custody and/or control of the property transferred, after each of the transfer of the Fraudulently Transferred Property.
16. The Debtor had been sued or threatened with suit before each of the transfers described above were made.
17. Altogether, the transfers of the Fraudulently Transferred Property constituted the transfer of substantially all of the Debtor's assets, and/or left him with insufficient assets to satisfy obligations.
18. The Debtor, Defendants, and others played active roles in the acts and Fraudulent Transfers described above with the actual intent to assist in defrauding the Debtor's creditors; (b) the named Defendant(s) herein, and those acting in concert with them (including without limitation the Debtor's sister and daughter), did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy to deceive and defraud the Debtor's creditors, and to hinder and delay them from collecting amounts owed to them by the Debtor; and (c) the Debtors actions in refinancing the property in May 2022, constituted the last (currently known) overt act in furtherance of the conspiracy to defraud the Debtor's creditors (such that any otherwise applicable statutes of limitation would have been tolled through this date).
19. As of approximately May 2022, according to loan documents apparently created by a lender, the Debtor sought to refinance a loan secured by a property held by La Estrella, in an effort to release a personal guaranty under said loan, thereby using La Estrella's assets for his own personal benefit. When confronted with this transaction in his 2004 examination, the Debtor claimed not to know what a personal guaranty even was – despite having testified to having purchased and sold over 100 properties.
20. The statute of limitations for fraudulent transfer is further extended to the extent that the Internal Revenue Service is a creditor of the Debtor's bankruptcy estate.
21. The Debtor's bankruptcy estate (and/or the Trustee acting on behalf of said estate) is the equitable owner of the trust *res*.
22. Defendants are constructive trustees of said property (and said title ownership) for the benefit of the true owner (the Debtor's bankruptcy estate).
23. The transfers of Fraudulently Transferred Property alleged herein were made under circumstances

showing that the transferee(s) were not intended to take the beneficial interest of the transferred property, but rather that they would receive bare record title thereto, while the Debtor continued to enjoy all the beneficial interests of the property despite passage of record title).

24. After transfer, the Debtor still *de facto* exercised ownership and control over said properties, through the transferee companies he created, and which he installed himself and/or his immediately family as said transferee(s)' owner(s) and/or controllers.
25. After transfer, the Debtor treated the Fraudulently Transferred Property as his own, as if there were no separation of ownership or interest between himself and the entities he created.
26. The Civic Plaza was the interim title holder of the commercial property located at 1727 N Street, Merced, CA, between the Debtor and La Estrella, and in October 2014, the Debtor executed a grant deed of the property to The Civic Plaza stating that the transfer resulted solely in a change in the method of holding title and in which ownership interests remain the same, such that the Debtor was to retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another.
27. Debtor effectively treated The Civic Plaza as an extension of himself, operated it as if it were his dba, and acted as if there were no separate ownership or interest between himself and The Civic Plaza.
28. In November 2021, Transcounty Title Co. handled an escrow for La Estrella involving the disbursement of \$1,424,645.64 in loan proceeds. The Debtor's daughter, acting as La Estrella's manager, attested to signing the documents but later stated she did not recall doing so. The disbursement included hundreds of thousands of dollars in loan payoffs (the "Payoffs"), although she was unaware of the purpose of these Payoffs or whether the loans being paid off were connected to property her father owned personally
29. The Debtor directed these payoffs, and he was able to satisfy his personal debts/loans with these proceeds.
30. With regard to 20272 Starr King Drive, Soulsbyville, California, the Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County on or about December 15, 2014, recordation number 2014013159 (the "20273 Deed") through which the Debtor publicly disclosed a tax exemption for the transfer under California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same.
31. The 20272 Deed evidences: (a) the Debtor's intent that he retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another; and (b) this shows that the Debtor effectively treated La Estrella as an extension of himself, operated it as if it were his dba, and acted as if there were no separation between himself and La Estrella.
32. These filings, essentially asserting that the Debtor's transfers to La Estrella and The Civic Plaza resulted in the mere change in the method of holding title and in which ownership interests remain the same, constitute evidence of the parties' (including the Debtor's) intent, understanding and agreement (whether express, tacit or implied) that the beneficial interest in the properties transferred by the Debtor to La Estrella and The Civic Plaza (i.e., the two properties referenced above and, indeed, all other transfers of property by the Debtor to these entities) was intended to

remain with the transferor (i.e., the Debtor), and that the transferred properties in equity and conscience belong to the Debtor's bankruptcy estate and should be used for the benefit of the Debtor's estate.

33. As late as November 8, 2021, the Debtor was still signing documents on behalf of La Estrella, even though he was no longer even a manager of La Estrella – including an Amendment to Authorization to Register Lender and Fee Agreement, which the Debtor signed on behalf of La Estrella and his daughter signed on behalf of herself individually.
34. As late as approximately May 2022, the Debtor was filling out personal financial statements in his own handwriting, on behalf of his daughter, for her use in obtaining loans on behalf of La Estrella – claiming that La Estrella's property had a net worth of nearly \$7 million. So too, as late as approximately May 2022, the Debtor was seeking a loan against property whose title was in the name of La Estrella, in order to pay off (or otherwise remove) one or more personal obligations of the Debtor – here again, essentially treating La Estrella (and its property) as if it were his own dba.
35. La Estrella was operated by the Debtor as if it were his own dba, such that in equity and good conscience the Court should disregard the corporate or other legal form of La Estrella in order to hold it liable for the debts of the Debtor, as La Estrella was effectively organized and controlled, and its affairs conducted, so as to make it merely an instrumentality, agency, conduit, or adjunct of the Debtor.
36. Notwithstanding the purported transfers of Fraudulently Transferred Property, said properties are (or should be deemed or determined in equity and good conscience to be) held in a resulting trust by Defendant(s) in order to enforce the intent of the parties (including the Debtor) to the transfer, and Defendants can and should be compelled to transfer all of their interests in said transferred property (including without limitation record title thereto) to the Debtor's estate.
37. Such a resulting trust has never been repudiated (nor formally acknowledged) by Defendants), no one material party has had actual knowledge or breach of any repudiation of said trust, no one has indicated that he, she or it is holding the property adversely to Plaintiff (or the Debtor's estate), and/or to the extent there was any repudiation of the trust, or indication that the transferred properties were being held adversely to the transferor (or Plaintiff), said repudiation or indication first arose less than four years from the date of filing of this action.
38. As a result of the foregoing: (a) Defendants received a benefit; and (b) Defendants are unjustly retaining that benefit at the expense of another (in this case, since the Debtor has filed a petition for bankruptcy, at the expense of the Debtor's estate and, more particularly, the Debtor's creditors who, without recovery of said property or the monetary value of the equity lost through the transfers of said property, will not be paid in full on the debts owed to them by the Debtor).
39. Consequently, in equity and good conscience, Defendants can and should be compelled to transfer said property (and record title thereto) to the Debtor's estate, and/or pay the estate an amount equal to the amount by which Defendants have been unjustly enriched as a result of said transfers.
40. As a result of the foregoing: (a) La Estrella is a mere shell and/or instrumentality of the Debtor, that La Estrella is functionally (and functioning as) the Debtor's alter ego, and that all assets and profits of La Estrella belong in equity and good conscience to the Debtor's estate, the Debtor having filed a petition for bankruptcy; and/or (b) there is (or was) a relationship between the Debtor and La Estrella that reflects a degree of confidentiality or closeness.

41. Also as a result of the foregoing, there was (and is): (1) a relationship between the parties that requires an accounting; and (2) a balance due the Plaintiff and that can only be ascertained fully by an accounting.
42. Accordingly, under each of the causes of action alleged above, and under the allegations incorporated herein, Plaintiff (as Trustee of the Debtor's estate) is entitled to an accounting of all assets and profits of La Estrella.
43. As a result of the foregoing, there is an actual and justiciable controversy whether the transferred properties alleged herein were fraudulently transferred (such that a constructive trust should be imposed over the properties for the benefit of the Debtor's estate), or whether the properties were legitimately transferred with an actual or implied promise that only legal title would transfer and that beneficial ownership would remain with the Debtor (such that a resulting trust should be acknowledged over the properties for the benefit of the Debtor's estate), or whether the transfers and conduct herein alleged involved no wrongdoing capable of remediation for the benefit of the Debtor's estate.
44. Accordingly, the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.

ADV 23-9020

45. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed property of the Estate post-Petition Date, including, without limitation to amended according to proof at trial, the following:
- (a) 1727 N Street, Merced, California;
 - (b) 18375 Main Street, Jamestown, California;
 - (c) 1226 Brookdale Drive, Merced, California;
 - (d) 20272 Starr King Drive, Soulsbyville, California;
 - (e) 1014 W. 18th Street, Merced, California;
 - (f) 1022 W. 18th Street, Merced, California;
 - (g) 1032 W. 18th Street, Merced, California;
 - (h) 1040 W. 18th Street, Merced, California;
 - (i) 18361 Main Street, Jamestown, California;
 - (j) 18369 Main Street, Jamestown, California;
 - (k) 18371 Main Street, Jamestown, California;
 - (l) 18373 Main Street, Jamestown, California;
 - (m) 22622 Twain Harte Drive, Twain Harte, California;

(n) 2127 O Street, Merced, California; and

(o) 6845 Camellia Drive, Atwater, California.

46. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed and hid assets in which Defendant has an interest by failing to list in his Schedules all assets in which Defendant has an interest.

47. That Defendant knowingly and fraudulently made a false oath or account, including, without limitation to amendment according to proof at trial, the following: (a) failing to disclose in his Schedules his beneficial interests in real property; (b) claiming on his schedules that his residence is the Property.

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48. Defendant-Debtor committed actual fraud by fraudulently conveying real property to shell entities controlled by Defendant-Debtor. La Estrella was formed by Defendant-Debtor, with the sole member being Defendant-Debtor's then-13 year old daughter. At the time of the transfers at issue, La Estrella's purported "sole member" had not reached the age of majority. Defendant-Debtor identified himself as the CEO or Manager and therefore beneficiary of the transfers.

49. Defendant-Debtor, as the beneficiary and recipient of these transfers, obtained the properties through the fraudulent conveyance. Defendant-Debtor did not obtain reasonably equivalent value for any of the conveyances and has not been paid on any of the notes or deeds of trusts on which he is the beneficiary.

50. Defendant-Debtor intentionally engaged in the fraudulent conveyances for the purpose of defrauding Plaintiff and frustrating Plaintiff's efforts to enforce its debt.

51. Defendant-Debtor's activities described above were conducted with knowledge that he was engaged in a fraudulent scheme.

52. Defendant-Debtor injured Plaintiff by knowingly engaging in the fraudulent schemes and committing actual fraud.

53. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, had the subjective motive to inflict injury to his creditors, including but not limited to Plaintiff.

54. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, believed injury to his creditors was substantially certain to result from the transfers.

55. Defendant-Debtor's willful and malicious conduct caused Plaintiff's injury.

Disputed Facts-Defendant:

1. The Debtor has not "systematically transferred, conveyed, or gifted his assets for the purpose of

defrauding creditors.”		
2.	The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.	
3.	The Debtor denies having control over either LLC’s.	
4.	The “vast majority” of these transfers were fraudulent conveyances.	
5.	There are distinct differences between La Estrella and The Civic Plaza.	
6.	The Debtor did not, at all times control La Estrella and The Civic Plaza.	
7.	The Debtor did not intentionally hinder, delay, or defraud creditors.	
8.	The Defendant did not transfer any properties for less than fair market value.	
9.	The Defendant did not retain either possession or control of any of the transferred properties.	
10.	The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.	
11.	The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.	
12.	The Defendant did not conceal and property of the Estate Post-Petition Date.	
13.	The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.	
14.	The Defendant did not fail to disclose in his schedules his beneficial interests in real property.	
15.	The failure to qualify as a homestead exemption is not due to the Defendant failing to reside at the Property, on the day of filing, but from not continuously residing thereon.	
16.	The Trustee should not recover money/property pursuant to 11 U.S.C. 542.	
Disputed Evidentiary Issues-Plaintiff:		Disputed Evidentiary Issues-Defendant:
1.	None Identified.	1. None identified.
Relief Sought-Plaintiff:		
1.	The transfers or real property be set aside and declared void.	
2.	A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property.	
3.	Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and	

that under Section 551 all liens avoided will be preserved for the benefit of the estate.

4. That an order be made declaring that Defendants hold all of the transferred real property described above in trust for Plaintiff, whether involuntarily or voluntarily.
5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate.
6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants.
7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers.
8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants.
9. For costs and attorneys' fees.
10. For punitive damages pursuant to statute and according to proof
11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).

Relief Sought-Defendant:

1. The Non-Discharge of Debtor.
2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.

Points of Law-Plaintiff:

Adv. 24-9004.

1. Cal Civ Code § 2223.
2. Cal Civ Code § 2224.
3. Imposition of a constructive trust, resulting trust. *In re Real Estate Associates Ltd. Partnership Litig.*, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); *Murphy v. T. Rowe Price Prime Reserve Fund, Inc.*, 8 F.3d 1420, 1422 (9th Cir.); *Burlesci v. Petersen*, 68 Cal. App. 4th 1062, 1069 (1998); *Martin v. Kehl*, 145 Cal. App. 3d 228, 238 (1983); *Laing v. Laubach*, 233 Cal.App.2d 511, 515 (1965);

Berniker v. Berniker, 30 Cal. 2d 439, 447-448 (1947); *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485 (1970) *Goodrich v. Briones (In re Schwarzkopf)*, 626 F.3d 1032, 1037 (9th Cir. 2010); *Cadles of W. Va., LLC v. Alvarez*, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal. 2023); *Estrada v. Garcia*, 132 Cal. App. 2d 545, 552 (1955);

4. Resulting trust statute of limitations. *Estate of Yool*, 151 Cal. App. 4th 867, 875 (2007); *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).
5. Cal Civ § 3439.04(a) statute of limitations. *Monastra v. Konica Bus. Machines, U.S.A., Inc.*, 43 Cal. App. 4th 1628, 1645 (1996); *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 786 (1979); *Munoz v. Ashcroft*, 339 F.3d 950, 956-957 (2003).
6. Constructive trust statute of limitations. *Higgins v. Higgins*, 11 Cal. App. 5th 648, 659 (2017).
7. Unjust enrichment statute of limitations. *First Nationwide Savings v. Perry*, 11 Cal. App. 4th 1657, 1670 (1992).
8. Accounting action statute of limitations. *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000); *Estate of Peebles*, 27 Cal. App. 3d 163, 166 (1972).
9. Declaratory relief statute of limitations. *Bank of New York Mellon v. Citibank, N.A.*, 8 Cal. App. 5th 935, 943; *North Star Reinsurance Corp. v. Superior Court*, 10 Cal. App. 4th 1815, 1822 (1992).
10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).
11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).
12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of Merced*, 146 Cal. App. 4th 1238, 1250 (2007).

Additional for Adv. 23-9020 and 23-9011.

13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).
14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).
15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).
16. Intent inferred from actions of debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985); *United States v. Swenson (In re Swenson)*, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Freelife, Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .
17. 11 U.S.C. § 727(a)(4)(A); *Song v. Acosta (In re Song)*, 2011 Bankr. LEXIS 4796 at *13 (B.A.P. 9th Cir. 2011); *In re Retz*, 606 F.3d at 1196; *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); *In re Caneva*, 550 F.3d at 761.

18.	Accuracy of schedules and statement of financial affairs. <i>In re Searles</i> , 317 B.R. at 377.	
19.	11 U.S.C. § 523(a) and preponderance of the evidence standard. <i>Grogan v. Garner</i> , 489 U.S. 279, 291 (1991).	
20.	11 U.S.C. § 523(a)(2); <i>In re Lewis</i> , 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016); <i>In re Tran</i> , 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003).	
21.	11 U.S.C. § 523(a)(6); <i>Carrillo v. Su (In re Su)</i> , 290 F.3d 1140, 1143-47 (9th Cir. 2002); <i>Petralia v. Jercich (In re Jercich)</i> , 238 F.3d 1202, 1209 (9th Cir. 2001).	
Points of Law-Defendant:		
1.	11 U.S.C. § 542.	
Abandoned Issues-Plaintiff:		Abandoned Issues:
1.	None identified.	1. None identified.
Witnesses-Plaintiff::		Witnesses:
1.	Gary Farrar, Chapter 7 Trustee.	1. John Pierre Mendoza.
2.	Loris Bakken, Esq.	2. Gary Farrar, Chapter 7 Trustee
3.	John Pierre Mendoza.	3. Lupe Martin
4.	Jenae-Desiree Mendoza.	4. Jenae-Desiree Mendoza
5.	John McCallum.	
6.	Paul Quinn.	
Exhibits-Plaintiff::		
1.	See Attachment A, Dckt. 39 at pp. 32-38.	
Exhibits-Defendant:		
1.	Debtor’s Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.	
2.	2013 John-Pierre Mendoza 2013 Trust Agreement.	
3.	Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 “O” Street, Merced, CA 95340, for \$250,000.00.	

4. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.
5. Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for \$168,000.00.
6. Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.
7. Debtor's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.
8. The Civic Plaza, LLC's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.
9. JANAE-DESIREE MENDOZA 2015 TAX RETURNS.
10. JOHN-PIERRE MENDOZA 2019 TAX RETURNS.
11. JOHN-PIERRE MENDOZA 2020 TAX RETURNS.
12. JOHN-PIERRE MENDOZA 2021 TAX RETURNS.
13. JOHN-PIERRE MENDOZA 2022 TAX RETURNS.
14. LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.
15. JOHN-PIERRE MENDOZA 2023 TAX RETURNS.
16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.
17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.
18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024
 1. 23955 Cedar Hill Ln
19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024
 1. 1022 W. 18TH St.
 2. 1027 W. 18th St.
 3. 1032 W. 18TH St.
 4. 1035 W 18th St
 5. 1040 W. 18TH St.
 6. 20272 Starr King Dr.
 7. 20400 Starr King Dr.
 8. 18373 Main St.
 9. 18361 Main St.
 10. 2127 O St.
 11. 1014 W. 18th St.

12. 22622 Twain Hart Dr.
 13. 18369 Main St.
 14. 18371 Main St.
 15. 18375 Main St.
 16. 6845 W. Camellia Dr.
 17. 1226 Brookdale Dr.
 18. 1727 N St.
20. DWELLING FIRE POLICY EFFECTIVE 7/23-24 (23955 Cedar Hill Lane)
 21. RENTS RECEIVED AND AMOUNTS PAID 11/22 - 8/31/24
 1. 1027 w. 18TH St.
 2. 1035 W. 18th St.
 3. 23955 Cedar Hill Ln.
 22. 22. PROPERTY ANALYSIS CALENDAR YEAR 2012.
 23. PROPERTIES SOLD TO LA ESTRELLA 2014 - 2022.
 24. PROPERTY VALUES LA ESTRELLA 2015.
 25. PROPERTIES SOLD TO LEEC 1980 - 2006
 1. 1022 W. 18th St.
 2. 1032 W. 18th St.
 3. 1040 W. 18th St.
 4. 20272 Starr King Dr.
 5. 20400 Starr King Dr.
 6. 18373 Main St.
 7. 18361 Main St.
 8. 2127 O St.
 9. 1014 W. 18th St.
 10. 22622 Twain Harte Rd.
 11. 18369 Main St.
 12. 18371 Main St.
 13. 18375-18377 Main St.
 14. 6845 Camellia St.
 15. 1226 Brookdale Dr.
 26. APPRAISAL 1032 W. 18TH ST. 6/08/11
 27. APPRAISAL 1014 W. 18TH ST. 6/08/11
 28. APPRAISAL 1226 BROOKDALE RD. 6/10/11
 29. APPRAISAL 18375-18377 MAIN ST 9/13/11
 30. APPRAISAL 18371 MAIN ST. 9/13/11
 31. APPRAISAL 18369 MAIN ST. 9/13/11

32. APPRAISAL 20400 STARR KING DR 9/13/11
33. APPRAISAL 20272 STARR KING DR 9/13/11
34. LOAN MOD. EATON, MICHIGAN 4/01/12
35. 2013 TRUST AGREEMENT 10/15/13
36. OPERATING AG. LA ESTRELLA 4/07/14
37. ART. OF OR. LA ESTRELLA 4/07/14
38. ART. OF OR. CIVIC PLAZA 4/17/14
39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14
40. OP AGREE. LA ESTRELLA, LLC 4/07/14
41. MORTGAGE MODIFICATION 6/24/14
42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14
43. CONTRACT FOR DEED 8/18/14
44. OFFER 18361/18373 MAIN ST 9/30/14
45. GRANT DEED PARCEL 031-044-018 9/18/14
46. JUDGMENT EATON. MICHIGAN 4/03/15
47. ORDER GRANTING MOTION TO SELL 4/20/15
48. PROMISSORY NOTE 6/01/15
49. 2015 FORM 1099-S 6/12/15
50. SELLER'S CLOSING STATEMENT 6/12/15
51. PROPERTY MGMT AGREEMENT 7/01/15
52. DEBTOR'S REPORT OF SALE 8/27/15
53. ORDER GRANTING SJM 5/23/17
54. CONTRACT FOR DEED 6/10/17
55. GRANT DEED 12/18/17
56. GRANT DEED 12/18/17

57.	GRANT DEED 7/06/16	
58.	WARRANTY DEED 7/06/16	
59.	SELLER PACKAGE 10/23/19	
60.	JPM RESIDENTIAL LEASE 11/23/22	
61.	SECOND AMENDED OP AGREEMENT 11/23/22	
Discovery Documents-Plaintiff::		Discovery Documents-Defendant:
1.	Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.	1. None identified.
2.	Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.	
3.	Deposition of Defendant John Mendoza, taken December 8, 2023.\	
4.	Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.	
5.	Deposition of Lupe Martin, taken September 24, 2024.	
6.	Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.	
Further Discovery or Motions-Plaintiff::		Further Discovery or Motions-Defendant:
1.	None identified.	1. None identified.
Stipulations-Plaintiff:		Stipulations-Defendant:
1.	None identified.	1. None identified.
Amendments-Plaintiff::		Amendments-Defendant:
1.	None identified.	1. None identified.
Dismissals-Plaintiff::		Dismissals-Defendant:
1.	None identified.	1. None identified.
Agreed Statement of Facts-Plaintiff::		Agreed Statement of Facts-

1. None identified.	Defendant: 1. None identified.
Attorneys' Fees Basis-Plaintiff:: 1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller & Associates, Inc.</i> , 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.	Attorneys' Fees Basis-Defendant: 1. "Pursuant to 11 U.S.C. §"
Additional Items-Plaintiff: 1. None identified.	Additional Items-Defendant: 1. None identified.
Trial Time Estimation: 3-5 days.	Trial Time Estimation: 2 days.

**Defendants Jenae-Desiree Mendoza and
La Estrella Enterprises, LLC**

Defendant Lupe Martin

<p>Undisputed Facts:</p> <ol style="list-style-type: none"> The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date"). The Defendant Jenae-Desiree Mendoza is the Debtor's daughter, who resides at 6845 Camellia Drive, Atwater, California, and is no longer a minor. The Defendant's sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21. La Estrella was assigned to Jenae-Desiree Mendoza in 2019. La Estrella was capitalized with \$7,500.00, by the Debtor. 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> Defendant John Pierre Mendoza ("Defendant Mendoza") transferred real property to Defendant La Estrella Enterprises, LLC ("Defendant La Estrella") for the benefit of his daughter, Jenae-Desiree Mendoza ("Defendant Jenae-Desiree"), who was then a minor. Defendant Martin was named as a custodian for her minor niece, Defendant Jenae-Desiree. Defendant Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties. Defendant Martin did not exercise any control over the properties transferred to Defendant La Estrella, did not receive the rent, did not service the debt, and did not maintain the properties. Defendant Martin has disclaimed any interest in the properties transferred to
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	Defendant La Estrella.
<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.” 2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers. 3. The Debtor did have sole control over La Estrella. 4. The transfers were fraudulent conveyances. 5. The Defendant, Jenae-Desiree Mendoza did not control La Estrella. 6. The Defendants did not intentionally hinder, delay, or defraud creditors. 7. The Defendants did not transfer any properties. 8. The Trustee should not recover money/property pursuant to 11 U.S.C. 542. 9. Since the formation of La Estrella, Debtor not Defendant Jenae-Desiree Mendoza has had control of all transactions. 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Defendant Martin disputes that she was involved in a conspiracy with the other Defendants. 2. Defendant Martin disputes that she has any information which would be responsive to claim for an accounting asserted by Gary Farrar, Chapter 7 Trustee (the “Plaintiff”). 3. Defendant Martin disputes that she holds any property of the estate. 4. Defendant Martin denies that has been unjustly enriched.
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None identified. 	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None identified.
<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. The Non-Discharge of Debtor. 2. Attorney’s Fees for Trustee’s Counsel in Prosecuting Case. 	<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. The adversary complaint seeks to set aside fraudulent transfers made by Defendant Mendoza, seeks to impose a constructive trust and/or resulting trust, seeks damages for unjust enrichment, seeks an accounting, and requests declaratory relief.
<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. §523(a)(2) & (a)(6). 	<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. § 544, which essentially

	<p>incorporates California Civil Code § 3409.</p> <p>2. 11 U.S.C. § 548 is not applicable because the transfers occurred more than two years before the petition date.</p> <p>3. Defendant Martin has asserted the defense of the statute of limitations, California Civil Code § 3439.09</p>
<p>Abandoned Issues:</p> <p>1. None identified.</p>	<p>Abandoned Issues:</p> <p>1. None identified.</p>
<p>Witnesses:</p> <p>1. John Pierre Mendoza.</p> <p>2. Gary Farrar, Chapter 7 Trustee.</p> <p>3. Jenae-Desiree Mendoza.</p>	<p>Witnesses:</p> <p>1. Gary Farrar, Trustee.</p> <p>2. John Pierre Mendoza.</p> <p>3. Jenae-Desiree Mendoza.</p>
<p>Exhibits:</p> <p>1. None.</p>	<p>Exhibits:</p> <p>1. None identified.</p>
<p>Discovery Documents:</p> <p>1. None.</p>	<p>Discovery Documents:</p> <p>1. Deposition or Rule 2004 Examination Transcripts (no specific ones identified).</p>
<p>Further Discovery or Motions:</p> <p>1. None identified.</p>	<p>Further Discovery or Motions:</p> <p>1. None identified.</p>
<p>Stipulations:</p> <p>1. None identified.</p>	<p>Stipulations:</p> <p>1. None identified.</p>
<p>Amendments:</p> <p>1. None identified.</p>	<p>Amendments:</p> <p>1. None identified.</p>
<p>Dismissals:</p>	<p>Dismissals:</p>

1. None identified.	1. None identified.
Agreed Statement of Facts: 1. None identified.	Agreed Statement of Facts: 1. Believes that an agreed statement of facts is feasible.
Attorneys' Fees Basis: 1. "Pursuant to 11 U.S. C. §."	Attorneys' Fees Basis: 1. California Civil Code § 3439.07 does not provide for attorney's fees.
Additional Items 1. None identified.	Additional Items 1. None identified.
Trial Time Estimation: Two Days.	Trial Time Estimation: Three Days.

**BORIS A. & MARINA S.
CHECHELNITSKY, TRUSTEES OF
THE BORIS A. & MARINA S.
CHECHELNITSKY REVOCABLE
LIVING TRUST DATED JANUARY**

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, other parties in interest, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Motion for Relief from the Automatic Stay is continued to xxxxxxx.

April 17, 2025 Hearing

The court continued the hearing based on information that the Parties had worked a out a deal resulting in a sale of the Property. However, Trustee withdrew his Motion to Sell on March 21, 2025, reporting that the stalking horse bidder had backed out of the sale.

At the hearing, xxxxxxx

COURT'S CONTINUANCE OF HEARING

On December 12, 2024, the hearing on this Motion for Relief From the Automatic Stay was conducted in conjunction with Motions by the Chapter 7 Trustee for an order compelling the Debtor, along

with Debtor's counsel, to fulfill the Debtor's statutory obligation (11 U.S.C. § 334) to appear at the 341 Meeting of Creditors (Debtor and Debtor's counsel having failed to appear at the originally scheduled and the first continued 341 Meeting), and the Chapter Trustee's Motion to set a deadline for the Debtor to make any changes to claimed exemptions. For this Motion for Relief From the Stay, the court stated that it would grant the Motion.

As the court prepared its written ruling for the Civil Minutes and re-read the Trustee's exhibits, it appears to the court that in granting such relief the Debtor and Debtor's counsel may well not fully appreciate the impact of such relief and possible foreclosure of the property while it is property of the Bankruptcy Estate (and beyond the control of the Debtor). The Debtor must actively work to protect his claimed exemptions, and that the duties and obligations of a Chapter 7 Trustee run to the Bankruptcy Estate and not the Debtor (who in this case is represented by counsel to provide not only legal advice, but commencing such proceedings as are in the Debtor's interest to protect the Debtor's exempt assets).

In light of the grounds upon which this Motion has sought relief, the substantial equity cushion in which Debtor has claimed his three figure homestead exemption, and the email communications between Debtor's Counsel and the Chapter 7 Trustee, the court determines that conducting a continued expedited final hearing on this Motion is necessary and proper.

The court has continued this for an expedited final hearing at 11:30 a.m. on December 19, 2024, specially set in the Sacramento Division Courthouse.

The basis for such conclusion is stated below.

REVIEW OF MOTION

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitzsky and Marina S. Chechelnitzsky, Trustees of the Boris A. Chechelnitzsky and Marina S. Chechelnitzsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") seeks relief from the automatic stay with respect to David Martinez's ("Debtor") real property commonly known as 425 Osprey Drive, Patterson, California 95363 ("Property"). Movant has provided the Declaration of Chris Boulter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 120.

Movant argues Debtor has not made 17 monthly installment payments, including multiple postpetition payments, with a current payment delinquency of (\$35,872.72). Mot. 3:14-20, Docket 117; Decl. ¶ 9, Docket 120. Good through December 1, 2024, the total outstanding payoff balance on Movant's loan has increased to approximately (\$242,691.46), which consists of a principal balance of (\$181,000.00), accrued interest of (\$38,156.29), late charges of (\$4,009.38), and total fees, costs and charges in the sum of (\$19,525.79). Decl. ¶ 10, Docket 120.

Movant states that there is a debt of at least approximately (\$119,815.00) secured by a senior deed of trust that encumbers this Property. Guild Mortgage filed Proof of Claim 2-1 on January 23, 2024, which stated its secured claim to be (\$114,044.83). There were no prepetition defaults as of the time the proof of claim was filed. The monthly loan payment and the monthly escrow payment for the Guild Mortgage Claim is stated to be \$1,250.28. POC 2-1, Proof of Claim Attachment.

Movant using the Debtor's stated value for the Property of \$500,000.00, after deducting Movant's secured claim, the (\$114,004.83) Guild Mortgage secured claims stated in Proof of Claim 2-1, and estimated costs of sale of (\$40,000), which is stated to be Debtor's estimate and would equal 8% of a \$500,000 gross sale, there is \$132,448.31 in equity for the Debtor. As discussed below, the Debtor has exempted this equity pursuant to his homestead exemption. Scheduled C; Dckt. 15 at 11.

The grounds stated in the Motion note that the Chapter 7 Trustee has communicated that the Trustee will not be opposing this Motion in light of the Debtor having exempted all of the equity in this Property with his homestead exemption. Motion, p. 2:15-17; Dckt. 117. However, Debtor and his counsel have not taken any action with respect to the Property in which Debtor has his six figure homestead exemption claimed.

TRUSTEE'S RESPONSE

Peter L. Fear, the Chapter 7 Trustee ("Trustee") filed a Response on December 2, 2024, noting Debtor has failed to appear at either of the 341 Meetings in this case. Docket 137. Trustee states:

1. Debtor's schedules disclose an interest in another parcel of real property, located at 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property"), which Trustee believes has equity available for distribution to creditors of the bankruptcy estate. *Id.* at ¶ 5.
2. Trustee intends to sell the Las Palmas Property, but the bankruptcy estate would be prejudiced if the Property were foreclosed upon, and Debtor subsequently amended his exemptions to claim an exemption in the Las Palmas Property. *Id.* at ¶ 6.
3. Trustee has brought a motion (the "Exemption Motion") to limit the time for Debtor to amend his claimed homestead exemption in the Property or to amend any portion of the Las Palmas Property, which is set for hearing on December 12, 2024, at 10:30 a.m. *Id.* at ¶ 8.
4. Until the Exemption Motion is granted, Trustee believes the estate would be prejudiced if the Property was foreclosed upon. *Id.* at ¶ 9.
5. As a result, Trustee requests that the granting of the Motion be delayed unless and until the Exemption Motion is granted, and any foreclosure by Movant delayed until after the time period for the Debtor to amend his exemptions has expired pursuant to that motion. *Id.* at ¶ 10.

Homestead Exemption and Impact on Bankruptcy Estate

Peter Fear, the Chapter 7 Trustee, appeared at the hearing and has filed an informational response (Dckt. 137) to the Motion. The Trustee reports that the Debtor has elected to claim his homestead exemption in this Property. Schedule C; Dckt. 15 at 1. In the Schedules Debtor has valued the Property at \$500,000.00 (Sch. A/B; Dckt. 15 at 3), and has identified two claims secured by the Property: (1) Guild

Mortgage for (\$116,278.88) and (2) Movant for (\$210,000). Sch. D, ¶¶ 2.1, 2.3; Dckt. 1 at 13, 14. Movant computes the claim to be approximately (\$242,691). Dec., ¶ 10; Dckt. 120.

Based on Debtor's valuation, the homestead exemption claimed (the actual possible homestead exemption that can be claimed is much higher) exhausts all of the value of the Property, leaving nothing for the Chapter 7 Trustee to administer for the Bankruptcy Estate.

In his response the Trustee states that the Debtor and his counsel have now failed to appear at the first two 341 Meeting of Creditors. Con. Non Opp, ¶ 4; Dckt. 137. The Trustee also reports that he has been attempting to communicate with the Debtor's counsel concerning this Property, and by separate Motion is seeking an order to compel the attendance of the Debtor at the continued 341 Meeting and for the court to set a deadline for Debtor to file amended exemptions.

In the Trustee's Motion to Reduce Time Allowed to Amend Exemptions (Dckt. 99), the Trustee recounts the communication attempts with Debtor's counsel and to see if the Debtor wanted to proceed with the Trustee selling the exempt property. Motion to Reduce, ¶¶ 10, 11, 12, 13, 14, 15; Dckt. 99. Exhibits A, B, C, and D are copies of email communications concerning the Property and the Debtor's exemption. Dckt. 102.

In an email dated October 8, 2024, from the Chapter 7 Trustee to Debtor's counsel, Mr. Moore, the Trustee poses the following question to Debtor's counsel:

The meeting of creditors was today and there was no appearance by the debtor or his counsel. I understand that the lender on the Osprey property wants to move aggressively to foreclose. It appears to me that there is a substantial amount of exempt equity in the property. Would the Debtor prefer for me to sell the real property and work out some split of the equity so that he doesn't lose all of it in a foreclosure sale?

Exhibit A; Dckt. 102.

The Trustee states that the response to the October 8, 2024 email was a call on October 30, 2024, from Mr. Moore's assistant who connected the Trustee with another attorney in that office. Dec., ¶ 16; Dckt. 101. The Trustee further testifies that after that call he received an email from Mr. Moore and an email discussion ensued on October 30, 2024. A copy of the email discussion thread is filed as Exhibit B, Dckt. 102.

The response from Mr. Moore was that the Debtor was open to selling the Property and paying the creditors with secured claims, but Mr. Moore was unsure of the Trustee's "fees" for working out a deal to do that. *Id.*; October 30, 2024 at 3:15 p.m. email from Mr. Moore. Mr. Moore also notes that there are less than \$10,000.00 of unsecured claims in the Bankruptcy Case.

The Trustee responded with an email at 4:58 p.m. on October 30, 2024, stating that they could move forward and work to get the Osprey Property sold prior to any foreclosure sale, and that it would be likely that with the sale of the Osprey Property all claims could be paid and no other assets would need to be sold.

The Trustee testifies that later on October 30, 2024, the Trustee received a reply from Debtor's attorney, Mr. Moore, rejecting an agreement for the sale of the Property in which Debtor had exempted all of the value in excess of the liens. Dec., ¶ 18; Dckt. 101. A copy of Mr. Moore's response email at 8:13 p.m. on October 30, 2024, is provided as Exhibit C; Dckt. 102. Mr. Moore's response is:

You want me to agree to waive a 173k exemption for less than 10k in unsecured debt? That may be enough to not sell the other property? I must be reading your email incorrectly. If I am not, I will file a motion to sell the property myself if that's the case and argue the motion for relief from stay on property one. As far as property two, we will have to file motions I guess.

Id.

What appears to stand out in this response is that Debtor's counsel appears to state that the entire exemption of \$173,000 would be waived to pay only (\$10,000) in unsecured claims. Mr. Moore then states that he will file a motion himself to sell the Property and then argue against the Motion for Relief From the Stay.

It is unclear what motion Mr. Moore, as Debtor's counsel, would file with respect to the Property in which the exemption is claimed, other than a motion to have the property immediately abandoned so the Debtor could sell the Property and pocket the exempt equity in excess of the secured claims.

No motions have been filed by the Debtor and the Debtor has not opposed this Motion for Relief from the Stay so Movant can foreclose on this Property in which the Debtor has claimed his homestead exemption. It appears that Debtor and Debtor's counsel do not understand the role of a Chapter 7 trustee and that trustee's duties to the Bankruptcy Estate. The Trustee is not going to sell property in which all proceeds are claimed as exempt.

The Trustee testifies that he has heard nothing further from Debtor's counsel. Dec., ¶¶ 19, 21; Dckt. 101. He testifies that he sent a follow up email on November 4, 2024, to Mr. Moore, Debtor's counsel, as a (in the court's terminology) "last ditch effort" to see if the Property in which the exemption is claimed could be sold rather than having the automatic stay terminated and the foreclosure sale proceed. *Id.*; ¶ 20. A copy of the November 4, 2024, email from the Trustee to Mr. Moore and counsel for Movant is provided as Exhibit D, Dckt. 102, which states:

Messrs. Moore and Graff:

I have been in conversations with both of you about the property at 425 Osprey Drive. I have told Mr. Graff [Movant's counsel] that I would not oppose a stay relief motion if the Debtor refused to waive some portion of the homestead exemption, such that it made sense for me to sell the property. Mr. Moore has not yet affirmatively stated what he would do, but he seemed disinclined to advise his client to waive any portion of the homestead exemption. This has been dragging on for about a month now. I need to sell either the Las [sic] Palmas property or the Osprey Drive property, or possibly both. But I am not going to wait around any further on this.

Here are the Debtor's options:

1. Stipulate to carve-out at least \$20k from the exempt sale proceeds on Osprey for the bankruptcy estate. I will then sell the Osprey property, pay off the lender, and pay any net proceeds over \$20k to the Debtor. I will also sell Las [sic] Palmas, because that [a \$20,000 carve out] will not be enough to pay all claims in this case.

2. Not agree to waive any exemption in the Osprey property. I will stipulate to stay relief with Mr. Graff's client and will sell Las [sic] Palmas.

3. Agree to waive the entirety of the homestead exemption. I will sell Osprey, use the net proceeds to pay claims, and will turn over any surplus amount to the Debtor. I anticipate this would provide enough to not need to sell Las [sic] Palmas, so I will not list it unless something unexpected happens and Osprey does not generate enough funds to pay all claims in the case.

Debtor has delayed interacting with me about this for about a month, so he needs to act fast. If I do not have an affirmative choice from him as to either 1 or 3 no later than close of business on Thursday, November 7, I will assume he wants to do 2, and will stipulate with Mr. Graff's client for stay relief.

I look forward to hearing from you.

Exhibit D; Dckt. 102.

The statement in Paragraph 1 above is a common form of stipulation for a trustee to sell exempt property in which the debtor will take the majority of the sales proceeds. The Trustee recovers something for the estate that can be applied to the claims and expenses. The Trustee would then proceed to sell the Los Palmas property to pay the claims secured by that property, and then surplus proceeds from that sale would go to the Debtor.

The version in Paragraph 3 would be for the Debtor to waive the homestead exemption in its entirety, the Trustee would sell the Property that is the Debtor's residence, pay all claims with those proceeds, and then have the balance of the proceeds (there being under \$10,000 in unsecured claims) and the Los Palmas property abandoned back to the Debtor. ^{FN.1.}

FN. 1. The Los Palmas property is listed on Schedule A/B as having a value of \$230,000, and on Schedule D Debtor lists it as securing only one claim in the amount of (\$110,000.00). Dckt. 15. On Schedule E/F Debtor lists owing an unsecured priority tax claim of (\$5,541.09) and general unsecured claims of (\$7,571.00). *Id.*

No proof of claim has been filed by a creditor asserting a claim secured by the Los Palmas property, no priority tax claim has been filed, and only two general unsecured claims, which aggregate \$3,812.89, have been filed in this Case.

The Debtor, though claiming an exemption in all of the value of the Property, has not filed an opposition to the Motion. The Debtor having claimed the exemption, there is no value for the Bankruptcy Estate in this Bankruptcy Case.

Though the Trustee is bringing to the attention of the court the interests of the Debtor, and the inaction of Debtor and Debtor's counsel, there is not a basis for the Trustee to oppose this Motion in light of the Debtor's homestead exemption, which exhausts all value in the Property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$242,691.46 (Declaration ¶ 10, Docket 120), while the value of the Property is determined to be \$500,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B 3, Docket 15.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Regarding Trustee's Response, the court would note Trustee has not provided any law that would support the court delaying granting such a motion. In order for a debtor to be eligible to claim the homestead exemption, the property must be that debtor's domicile, not mere residence. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.06 (discussing requirements for a "domicile" and for a "residence," noting a homestead exemption may only be applied to a debtor's domicile). It appears to the court Debtor would be unable to simply change the homestead exemption if Movant forecloses on the Property as Debtor has testified under penalty of perjury his homestead, his domicile, is the Property. Trustee expresses concern over Debtor amending the Schedules to claim an exemption in the Los Palmas Property, but Trustee does not cite which exemption Debtor may attempt to claim. As discussed, debtor cannot claim the homestead exemption in the Los Palmas Property if it is not his domicile.

California law defines a "homestead" in which an exemption may be claimed to as follows:

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a

dwelling within the six-month period provided by Section 704.720, “homestead” also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor’s spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). The homestead exemption is not one that can be moved at whim, but must fulfill certain statutory requirements.

At the hearing, counsel for the Movant reported that this case has been pending for more than a year, with no payments made by Debtor.

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant’s Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

December 19, 2024 Hearing

On December 17, 2024, a Stipulation between David Martinez, the Debtor, and Peter Fear, the Chapter 7 Trustee, was filed. Dckt. 151. The Stipulation is quite simple. In it the Debtor irrevocably waives any exemption that he could claim in the 425 Osprey Drive, Patterson, California Property, and that he will not claim any exemption in that Property in the future.

With the exemption waived, the Trustee will proceed with the marketing and sale of that Property for the benefit of the Bankruptcy Estate. As noted below, it is the creditors whose claim that is secured by the second deed of trust are moving for relief from stay on this Property. The Debtor's claim of a homestead exemption precluded the Trustee from selling the Property, the exemption exhausting what appears to be a six figure equity in the Property. There are only less than \$10,000 of unsecured claims, as of this point in time, to be paid in this case. Thus, as a practical economic matter, it appears that a substantial part of the formerly exempt equity will still go back to the Debtor, as well as the other parcel of real property in this Bankruptcy Estate.

At the hearing, counsel for the Chapter 7 Trustee reported that the Debtor appeared at the 341 Meeting, confirming that the Trustee is going forward with the marketing of the Osprey Property.

Counsel for the Movant requested a continuance for administrative purposes.

The hearing Motion for Relief from the Automatic Stay is 10:00 a.m. on February 20, 2025.

February 20, 2025 Hearing

The court continued the hearing on this Motion for administrative purposes, Debtor and Trustee having reached economic terms that will allow Debtor to retain equity in the his residence and allow Trustee to liquidate the Osprey Property.

At the hearing, counsel for Movant reported that the stipulation has been signed and is being filed with the court. The Trustee received an offer and will be filing a Motion to Sell the Property.

The Parties requested that the court continue the hearing.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on April 17, 2025.

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 for Relief from the Automatic Stay filed by Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common (“Movant”) having been presented to the court, the Debtor and the Chapter 7 Trustee having entered into a Stipulation for the marketing and sale of the Property securing Movant’s Claim, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is
XXXXXXX.

CH 11 Status Conference
on April 17, 2025, 2:00 p.m. Calendar

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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 20, 2025. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is seven days late of the required notice period. At the hearing, **XXXXXXX**

The Motion for Allowance of Professional 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 for Allowance of Professional Fees is granted.

Art Buildings LLC, Debtor and Debtor-in-Possession herein ("Debtor") moves for authority to pay compensation and reimburse expenses of the Law Offices of Michael Jay Berger (the "Firm" or "Applicant"), counsel for the Debtor in Possession, on a first interim basis.

First Interim Fees are requested for the period July 20, 2024, through March 9, 2025. The order of the court approving employment of Applicant was entered on August 30, 2024. Dckt. 43. Applicant requests fees in the amount of \$33,086.50 and costs in the amount of \$488.14.

The agreed upon retainer was \$25,000.00. On July 19, 2024, Debtor's Managing Member, Satpreet Thiara paid Applicant the \$25,000.00 retainer plus the \$1,738.00 Chapter 11 filing fee as a gift contribution to the Debtor. Mr. Satpreet is not a creditor of the Debtor and is not seeking repayment of the \$25,000.00 retainer. Applicant incurred \$1,681.50 in fees for the work done on behalf of the Debtor prior to the filing of this bankruptcy case plus the \$1,738.00 filing fee. These amounts were withdrawn from

Applicant's client trust account prior to the filing of the case. The unearned retainer of \$23,308.50 is maintained in Applicant's client trust account.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to

a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assisting in operating the business, administering this case, dealing with claims administration and objections, some litigation, and working on the Disclosure Statement and Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Business Operations: Applicant spent 2.70 hours in this category. Applicant reviewed dealings with its lender, filed monthly operating reports, and reviewed communications between Debtor and the IRS. Mot. 4:23-27.

General Case Administration: Applicant spent 30.80 hours in this category. Applicant performed tasks associated with administering this case, including bringing the case into compliance with requirements of the Office of the U.S. Trustee. Applicant appeared at hearings and generally prosecuted the case. *Id.* at 5:10-6:3.

Claims Administration and Objections: Applicant spent 4.90 hours in this category. Applicant reviewed a lawsuit filed in Canada against individuals guaranteeing Debtor's debt and advised accordingly. *Id.* at 7:12-16.

Fee/Employment Applications: Applicant spent 7.60 hours in this category. Applicant drafted this First Interim Fee Application. *Id.* at 6:27-7:2.

Litigation: Applicant spent 1.20 hours in this category. Applicant drafted this First Interim Fee Application. *Id.* at 6:27-7:2.

Meeting of Creditors: Applicant spent 1.70 hours in this category. Applicant represented Debtor at the 341 Meeting. *Id.* at 7:27-28.

Plan and Disclosure Statement: Applicant spent 21.90 hours in this category. Applicant prepared Debtor's Disclosure Statement and Plan of Reorganization. *Id.* at 8:10-21.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael Jay Berger, Attorney	15	\$645.00	\$9,675.00
Sofya Davtyan, Attorney	21.4	\$595.00	\$12,733.00
Robert Poteete, Attorney	18.9	\$475.00	\$8,977.50
Karine Manvelian, Paralegal	6.2	\$275.00	<u>\$1,705.00</u>
Total Fees for Period of Application			\$33,086.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$488.14 pursuant to this application. Most of the costs involve postage, copying, filing fees, and a recording cost. However, Applicant seeks reimbursement for court calls on four separate occasions in the total amount of \$126.20. Ex. 2, Docket 110. Court call is not a reimbursable expense. Applicant is free to appear at court in person. Therefore, costs of \$361.94 are permitted, not \$488.14.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$33,086.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor. Applicant is authorized to apply the retainer in the amount of \$23,308.50 toward this award amount.

Costs & Expenses

First and Final Costs in the amount of \$361.94 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor.

Applicant is allowed, and Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$33,086.50
Costs and Expenses	\$361.94

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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 for Allowance of Fees and Expenses filed by Art Buildings LLC, Debtor and Debtor-in-Possession herein (“Debtor”) on behalf of the Law Offices of Michael Jay Berger (the “Firm” or “Applicant”) 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 Law Offices of Michael Jay Berger is allowed the following fees and expenses as a professional of the Estate:

The Law Offices of Michael Jay Berger , Professional employed by Debtor

Fees in the amount of \$33,086.50
Expenses in the amount of \$361.94,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Debtor is authorized to pay the fees and costs allowed by this Order. Applicant is authorized to apply the retainer in the amount of \$23,308.50 toward this award amount.

MENDOZA V. FRANCHISE TAX BOARD

Item 8 thru 9

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 Counsel for Plaintiff-Debtor on March 4, 2025. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

The Motion for Partial Summary Judgment 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.

<p>The Motion for Partial Summary Judgment is XXXXXX.</p>

Defendant and creditor in this Adversary Proceeding, California Franchise Tax Board (“Defendant,” “FTB”) moves this court for an order granting partial summary judgment / adjudication pursuant to Fed. R. Bank. P. 7056 incorporating fed. R. Civ. P. 56. Defendant seeks summary judgment for counts one and three of Debtor-Plaintiff Martha Mendoza’s (“Plaintiff,” “Mendoza”) complaint. Defendant states with particularity as to the relief sought:

1. FTB’s statement of undisputed facts, which accompany this motion, demonstrates that Mendoza was required to report to FTB changes or corrections made by the Internal Revenue Service (IRS) to her 2012 and 2013 federal income tax returns pursuant to California Revenue and Taxation Code (RTC) § 18622(a). Mendoza never reported those changes or corrections to FTB. The Ninth Circuit Court of Appeals, *Berkovich v. Cal. Franchise Tax Board (In re Berkovich)*, 15 F.4th 997 (2021), determined that the report required by RTC § 18622(a) is an “equivalent report or notice” within the meaning 11 U.S.C. § 523(a)(1)(B). Because Mendoza was required to file reports with FTB, and because the undisputed facts demonstrate that Mendoza failed to do so, the tax and interest on tax owed by Mendoza to FTB for those tax years are excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(B).

2. Additionally, FTB has valid and enforceable state tax liens that are unaffected by the bankruptcy case. FTB properly assessed tax for the 2012 and 2013 taxable years based upon valid federal tax information. FTB's statutory state tax liens arose by operation of law when those liabilities became "due and payable." Cal. Rev. & Tax. Code § 19221(a); Cal. Gov't Code § 7170. After providing the required notices to Mendoza, FTB properly recorded a Notice of State Tax Lien, thereby perfecting those liens. It is well settled that valid, perfected liens and other security interests pass through bankruptcy unaffected unless the liens were properly avoided in the bankruptcy proceeding. *Dewnsnup v. Timm*, 502 U.S. 410, 418 (1992); *Johnson v. Home State Bank*, 501 U.S. 78, 83–84 (1991) ("Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*."). Mendoza has not alleged a cognizable legal theory to support her allegations that FTB's state tax liens or Notice of State Tax Lien were somehow altered or avoided in her no-asset, Chapter 7 Bankruptcy Case. Indeed, FTB's state tax liens cannot be avoided under Sections 545, 522(f), or other bankruptcy law. Thus, Mendoza's discharge had no effect on those perfected and enforceable state tax liens.

Mot. 2:15-3:2.

Count One of the Complaint is titled "First Claim for Relief (For Determination of Dischargeability of Debtor)". Compl. 5:18, Docket 1. Count One seeks to determine that Proof of Claim 5-1 of the FTB is dischargeable as the claim falls outside the parameters of 11 U.S.C. § 523(a)(1)(B)(ii).

In Count Three titled "Third Claim for Relief (To Determine Nature, Extent, and Validity of Secured Claim)," Plaintiff alleges that FTB's claim is not secured or the secured claim be deemed satisfied in full. In the alternative, Count three prays the court find that the alleged tax debt securing the secured claim was never accurately assessed and no tax is owed. Compl. 6:14-27.

Defendant's Pleadings in Support

Defendant files in support of their Motion a Memorandum of Points and Authorities (Docket 32) ("Memo"), the Declarations of Mui Dang (Docket 30), Rebecca Keller (Docket 33), and Donny P. Le (Docket 34), various Exhibits (Dockets 36-37), and a Statement of Undisputed Facts (Docket 35).

Defendant asserts in its Memo that Plaintiff filed her Chapter 7 case on January 20, 2023. Mem. 6:8. FTB timely filed a claim in the Bankruptcy Case asserting a secured claim consisting of tax (excluding interest and penalties) in the amounts of \$155,528.75 for 2012 and \$378,935.00 for 2013. *Id.* at 6:11-13. On May 2, 2023, Mendoza received a discharge under 11 U.S.C. § 727. *Id.* at 6:15. The Complaint consists of four enumerated claims for relief, including the two at issue here, to determine the dischargeability of Mendoza state tax debts (First Claim for Relief) and to determine the nature, extent, and validity of FTB's secured claim (Third Claim for Relief). *Id.* at 6:21-24.

Count One should be dismissed because Plaintiff never informed FTB of changes on her tax returns as assessed by the IRS. Prior to filing her Bankruptcy Case, Mendoza filed a petition in the United

States Tax Court (the “Tax Petition”), commencing the action “*Martha Isidro Mendoza, Petitioner v. Commissioner of Internal Revenue, Respondent* (the ‘Tax Court Action’).” *Id.* at 7:3-5. Consistent with the Tax Court Decision, on June 20, 2017, IRS assessed Mendoza for additional federal income tax due for 2012 and 2013 taxable years in the amounts of \$474,131.00 and \$1,195,486.00, respectively. *Id.* at 7:22-24. Under Revenue and Taxation Code § 18622(a), Mendoza was required to report the IRS’s changes to her 2012 and 2013 federal income taxes to the FTB and to concede or state why those changes were erroneous within six months of the final federal determination. A failure to report the changes in violation of Revenue and Taxation Code § 18622(a) renders the debt excepted to discharge pursuant to 11 U.S.C. § 523(a)(1)(B)(i).

There is no merit to object to FTB’s secured status so Count Three should be dismissed. Pursuant to RTC § 19221(a) and California Government Code § 7170, a statutory state tax lien arose by operation of law once the assessments became final on September 18, 2018, because that is the date the liability became “due and payable” as provided in RTC §19221 (b)(4). Mem. 9:6-8. The Bankruptcy Case discharge does not alter Defendant’s secured status.

In the Declaration of M. Dang, M. Dang testifies as to the nature of the process of sharing tax information between the IRS and the FTB. Decl., Docket 30. M. Dang testifies:

1. On November 8, 2017, IRS provided FTB with the final Revenue Agent’s Reports (RARs) for Mendoza related to the IRS’s adjustments to Mendoza’s federal income tax returns for taxable years 2012 and 2013. *Id.* at ¶ 12.
2. On June 19, 2018, FTB requested and IRS provided to FTB the Account Transcripts for Mendoza for taxable years 2012 and 2013 which shows that the IRS made additional tax assessments by examination for those tax years on June 20, 2017. *Id.* at ¶ 13. M. Dang authenticates this Exhibit at Exhibit 9. M. Dang further authenticates Exhibits 10 and 11.

In the Declaration of Rebecca Keller, R. Keller authenticates exhibits 7, 8, 10, and 11. R. Keller provides insight as to how the FTB assessed Plaintiff’s taxes for the years 2012 and 2013, relying on the IRS’ information. Decl. ¶ 14, Docket 33.

Finally, Donny P. Le in his Declaration authenticates Exhibits 1, 2, 3, 4, 5, 6, 9, and 12. Decl., Docket 34.

Plaintiff’s Opposition

Plaintiff filed pleadings in opposition on March 27, 2025. Dockets 47-51. Plaintiff testifies in her Declaration in support of the Opposition:

1. The tax dispute for the years 2012 and 2013 were largely assessed against her for a ½ interest in community property with her ex-spouse, Roberto Arredondo, resulting from income taxes owed by Mr. Arredondo running a business. The property was solely Mr. Arredondo’s and was improperly assessed against Plaintiff. Decl. ¶ 12, Docket 48.

2. Plaintiff and Mr. Arredondo were separated in 2010 so the property in question could not have been community property. *Id.* at ¶ 6.
3. Plaintiff does not recognize the Tax court Decision and testifies she never signed any of the documents in that case. *Id.* at ¶ 13.
4. Debtor has never had a trial on the merits of her tax liability she allegedly owes. *Id.* at ¶ 16.
5. Debtor was never made aware of the reporting requirement of Revenue and Taxation Code § 18622(a) by the FTB or IRS. This is a violation of her due process. *Id.* at ¶¶ 19, 20.
6. The IRS reported to the FTB the change in assessment, so the requirements of Revenue and Taxation Code § 18622(a) have been met and the debt is not excepted from discharge. *Id.* at ¶ 23.

Mr. Arredondo submits a Declaration in support of the Opposition and testifies:

1. He and Plaintiff separated with the intent to terminate the marriage in September of 2010. Decl. ¶ 2, Docket 49.
2. The business income from 2012 and 2013 assessed against Plaintiff was solely Mr. Arredondo's separate property. *Id.* at ¶ 3.
3. The IRS assessment is overstated and Mr. Arredondo is working on filing amended returns for the years 2012 and 2013. *Id.* at ¶ 8.

APPLICABLE LAW

Summary Judgment

In an adversary proceeding, summary judgment is proper when “[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). “[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is ‘material’ only if it could affect the outcome of the suit under the governing law.” *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756 (1978). “[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,], but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

**Count One: First Claim for Relief
(For Determination of Dischargeability of Debtor)**

11 U.S.C. § 523(a) states:

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

Subsections (A), (B), and (C) are linked with the disjunctive conjunction, “or.” Therefore, any of those subsections would except a debt from discharge. Importantly, Plaintiff appeals to 11 U.S.C.

§ 523(a)(1)(B)(ii) in support of Count One in finding the debt was discharged, and Defendant appeals to 11 U.S.C. § 523(a)(1)(B)(i) in support of excepting the debt from discharge.

11 U.S.C. § 523(a)(1)(B)(i) interplays with the reporting requirements of state law, specifically, Revenue and Taxation Code § 18622(a). Revenue and Taxation Code § 18622(a) states:

(a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. For any individual subject to tax under Part 10 (commencing with Section 17001), changes or corrections need not be reported unless they increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

The Ninth Circuit Court of Appeals has construed the language of “a return, or equivalent report or notice” in 11 U.S.C. § 523(a) to include a change in a tax assessment by the IRS that must be reported to the FTB. *See, Berkovich v. Cal. Franchise Tax Bd. (In re Berkovich)*, 15 F.4th 997 (9th Cir. 2021), which affirms and adopts the Bankruptcy Appellate Panel Decision, *Berkovich v. Cal. Franchise Tax Bd. (In re Berkovich)*, 619 B.R. 397 (9th Cir. B.A.P. 2020), which the court discusses in detail *infra*.

Additionally, the Collier on Bankruptcy Treatise addresses this issue, succinctly stating:

The reference to the failure to provide “notice” means that if a debtor is obligated under nonbankruptcy law to file an amended return or give notice to a governmental unit of an amendment or correction to a prior filed federal tax return,⁴⁷ the failure to do so will render nondischargeable any corresponding tax liability to the governmental unit.⁴⁸

4 COLLIER ON BANKRUPTCY ¶ 523.07[3][a].

As to Count One, based on establish Ninth Circuit Authority, summary judgment for Defendant, and against Plaintiff-Debtor on Count One from the Complaint because there is no genuine issue of material fact. The court finds *Berkovich v. Cal. Franchise Tax Bd. (In re Berkovich)*, 15 F.4th 997 (9th Cir. 2021), to which the adopted Bankruptcy Appellate Panel Decision in *Berkovich v. Cal. Franchise Tax Bd. (In re Berkovich)*, 619 B.R. 397 (9th Cir. B.A.P. 2020) is attached as an appendix, to be on point. ^{FN.1.}

FN. 1. The court’s citation to *Berkovich* Decision, and page number references, is to the Ninth Circuit Decision, including the citations to the Bankruptcy Appellate Panel Decision that is adopted and attached as an addendum.

In *Berkovich*, the debtor, Mr. Berkovich, filed tax returns for the years 2003, 2004, and 2005. *Berkovich v. Cal. Franchise Tax Board*, 15 F.4th at 999. However, the IRS subsequently assessed approximately \$145,000 of additional federal income taxes against Mr. Berkovich for those years in 2008. *Id.* FTB subsequently learned of the IRS' assessment from the IRS, and then the FTB assessed Mr. Berkovich additional state income taxes totaling approximately \$45,000 plus penalties and interest for the relevant tax years. *Id.*

After completing his Chapter 13 Plan with his wife, Mr. Berkovich received a discharge, to which the FTB filed a complaint excepting its claim from the discharge pursuant to 11 U.S.C. § 523(a)(1)(B)(i). The Bankruptcy Appellate Panel's Decision adopted by the Ninth Circuit Court of Appeals includes the following:

A. Mr. Berkovich's failure to report changes to his federal taxes to the FTB under RTC section 18622(a) rendered his state tax debts nondischargeable.

Mr. Berkovich primarily argues on appeal that the reports required under RTC section 18622(a) are not "returns," so his failure to file them did not render his tax debts nondischargeable. He is wrong.

1. Section 523(a)(1)(B) precludes the discharge of a tax debt if the debtor fails to file a required return or an equivalent report or notice.

We begin with the statutory language. "The preeminent canon of statutory interpretation requires us to presume that [the] legislature says in a statute what it means and means in a statute what it says there. Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 (9th Cir. 2009) (citation omitted).

Mr. Berkovich received his discharge under § 1328(a) upon completion of the plan payments. A discharge under § 1328(a) explicitly excludes the discharge of any debt "of the kind specified in ... paragraph (1)(B) ... of section 523(a)[.]" § 1328(a). Section 523(a)(1)(B) pertains, in relevant part, to a debt. . .

Section 523(a) also provides, in the "hanging paragraph" at the end of the subsection: For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law. . .

In other words, a tax debt is nondischargeable if the debtor failed to file a required return or "equivalent report or notice[.]" where "return" is defined by "applicable nonbankruptcy law."

2. RTC section 18622(a) requires taxpayers to report to the FTB any changes to their federal income tax.

The only question on appeal is whether the report required by RTC section 18622(a) that Mr. Berkovich failed to file is a “a return, or equivalent report or notice” within the meaning of § 523(a)(1)(B). RTC section 18622(a) provides:

(a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous.

Cal. Rev. & Tax. Code § 18622(a) (emphases added). The FTB prescribes the manner in which the taxpayer must report the changes or corrections:

(c) **Notification of a change or correction** by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or renegotiation of a contract or subcontract with the United States that results in a change in any item or the filing of an amended return must be sufficiently detailed to allow computation of the **resulting California tax change and shall be reported in the form and manner as prescribed by the Franchise Tax Board.**

Cal. Rev. & Tax. Code § 18622(c) (emphases added). The regulation effectuating this requirement mand

(a) **Section 18622, of the Revenue and Taxation Code, requires that a taxpayer report certain specified federal changes.**

Such notification shall be made by mailing to the Franchise Tax Board, Audit Section, P.O. Box 1673, Sacramento, CA 95812-1673, Attn: RAR/VOL, the original or a copy of the final determination or renegotiation agreement as well as any other data upon which such final determination or renegotiation agreement is claimed. If requested to do so the Franchise Tax Board will make a copy of any final determination or renegotiation agreement furnished to it, and return the taxpayer's copy to him. **The notification must be given by the taxpayer** regardless of whether he believes any modification of his tax liability will be required.

Cal. Code Regs. tit. 18, § 19059 (emphases added).

Thus, the plain language of § 523(a)(1)(B) precludes a discharge of the debtor's tax debt if he fails to file a “return, or equivalent report or notice, if required” by state law. The plain language of the applicable state statute requires that a taxpayer

“report” to the FTB if the taxpayer receives notice of changes or corrections to his federal income tax. In this case, Mr. Berkovich did not file the “report” that state law required.

3. RTC section 18622(a) reports are “equivalent reports” under § 523(a)(1)(B).

We next consider whether the “report” required by RTC section 18622(a) is “equivalent” to a “return” within the meaning of § 523(a)(1)(B). We conclude that it is.

. . . [Citation to *Maryland v. Ciotti (In re Ciotti)*, 638 F.3d 276 (4th Cir. 2011), reaching same conclusions.]

The Ninth Circuit has not explicitly ruled on this issue, but courts within this circuit have cited *Ciotti* with approval. *See United States v. Martin (In re Martin)*, 542 B.R. 479, 485 (9th Cir. BAP 2015) (relying on *Ciotti*’s analysis of Congressional intent behind § 523(a)(1)(B)); *Stapley v. California ex rel. Franchise Tax Bd. (In re Stapley)*, 609 B.R. 209, 226 (Bankr. N.D. Cal. 2019) (holding that the debtor’s failure to file RTC section 18622(a) reports rendered the tax debt nondischargeable and stating that “*Ciotti* involved Maryland statutes which are substantially the same as California’s and the *Ciotti* court’s reasoning is persuasive and this court will follow it.”); *Cal. Franchise Tax Bd. v. Schabbing (In re Schabbing)*, Adv. No. 17-04079 at 3 (Bankr. N.D. Cal. Feb. 2, 2018) (unpublished disposition) (considering the plain language of § 523(a)(1)(B) on a motion for summary judgment and holding that “[t]his court agrees with the Fourth Circuit’s reasoning, and it finds that § 18622’s reporting requirements fall within § 523(a)(1)(B).”). . .

We also agree with the Fourth Circuit’s reasoning. The report required under RTC section 18622(a) furnishes the state tax authority with information needed to ascertain the taxpayer’s state tax liability. For purposes of § 523(a)(1)(B), the report is equivalent to a return, and the failure to file such a report excepts the tax debt from discharge.

Mr. Berkovich argues that the report is not a “return” under § 523(a)(1)(B). He apparently thinks that an “equivalent report” under § 523(a)(1)(B) is limited to a “return,” and anything not expressly a “return” is excluded.

This argument ignores the fact that § 523(a)(1)(B) was amended in 2005. Until 2005, § 523(a)(1)(B) covered only an unfiled “return,” and not an “equivalent report or notice.” Mr. Berkovich’s interpretation that the “report” must meet the definition of a “return” would render the phrase “equivalent report or notice” meaningless and superfluous. We must give full effect to each word in a statute. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” (quoting *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001))); *Satterfield*, 569 F.3d at 953 (“Another ‘fundamental canon of statutory construction [is] that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’”

” (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000))). Thus, “equivalent report or notice” must be something other than a “return.” We agree with the FTB and the Fourth Circuit that the required report concerning the increased federal income tax assessment is such an “equivalent report.” Mr. Berkovich “fails to satisfactorily explain what sort of reports or notices Congress targeted with its amendment if it was not the very sort that are the subject of this case.” *In re Ciotti*, 638 F.3d at 280.

Therefore, the bankruptcy court correctly held that the required report to the FTB was an “equivalent report or notice” under § 523(a)(1)(B).

Berkovich at 1000-02 (footnotes omitted).

The facts in our case are nearly identical to those in *Berkovich*. Here, it is uncontested Plaintiff failed to report to the IRS changed in its tax returns for the years 2012 and 2013. Plaintiff asserts she was never made aware of the requirement for her to report tax changes pursuant to Revenue and Taxation Code § 18622(a), and so her due process rights have been violated. That is not the case. Debtor received notices of the change in her tax assessments, and so it became her responsibility to report the changes to the IRS by operation of state law. Debtor’s due process argument is without merit.

Additionally, Debtor argues that because the FTB received notice from the IRS, her reporting requirement has been alleviated. The Ninth Circuit has directly ruled on this same issue in *Berkovich*, Debtor there likely asserting a similar argument. It is the Debtor who is required to report the tax changes, not the IRS. According to established caselaw in *Berkovich*, Debtor failing to make the reporting requirements pursuant to Revenue and Taxation Code § 18622(a) violates 11 U.S.C. § 523(a)(1)(B)(i). As 11 U.S.C. § 523(a) is written in the disjunctive, it makes no difference that FTB’s claim is outside the time limits prescribed in 11 U.S.C. § 523(a)(1)(B)(ii), contrary to Plaintiff’s assertion.

Therefore, the Motion is granted as to Count One, and summary judgment is granted for Defendant and against Plaintiff-Debtor that the tax obligation is nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(b).

Count Three: Third Claim for Relief (To Determine Nature, Extent, and Validity of Secured Claim)

Count three prays the court either determine FTB’s claim is not secured, or to determine that the IRS’ assessment as decided by the Tax Court, which the FTB used to assess its own taxes, is not valid, and so the FTB has no claim in the case. As an initial matter, the court cannot value FTB’s secured claim in the context of 11 U.S.C. § 506(a) in this Chapter 7 Case. *See* Supreme Court’s ruling in *Bank of America, N.A. v. Caulkett*, 575 U.S. 790, 797 (2015).

At its core, Count Three appears to rely on the premise that the FTB’s claim should be disallowed as it relied on the IRS’ assessment, and the IRS’ assessment was improperly conducted, improperly assessing Mr. Arredondo’s tax liability against Plaintiff. Moreover, Mr. Arredondo’s tax liability was improperly assessed even against him, failing to include deductions for the costs of operating the business and other related tax deductions.

The glaring issue with these theories is that the court has been presented with a final judgment from the Tax Court against Plaintiff, naming her in the judgment, and assessing her tax liabilities. Plaintiff filed a Tax Court Petition on May 10, 2016. Ex. 4, Docket 36. Plaintiff sets forward in that complaint some of the exact same allegations now set before the court in this Adversary Proceeding, stating:

I WAS ASSESSED A TAX THROUGH EXAMINATION BASED ON AMOUNTS FROM AUTO SALES. THE AUTO SALES DID NOT INCLUDE THE COST OF GOODS SOLD AND OR THE BASIS OF THE AUTO SALES. SINCE THE EXAMINER DID NOT INCLUDE THE COST OF GOODS SOLD OR BASIS, THE DEFICIENCY FOR THE AMOUNT OWED IS OVERSTATED. IF THE COST OF THE AUTO SALES IS APPLIED, THE TAX AMOUNT WOULD BE MORE ACCURATE AND THE TAX AMOUNT WOULD BE A FAIR AMOUNT OF TAX OWED.

Tax Court Petition, Ex. 4, Docket 36. That case ended in a Stipulated Decision from the United States Tax Court. *See* Ex. 6, Docket 36. The Stipulated Decision, which purports to be signed by Plaintiff, states:

That there are deficiencies in income tax due from the petitioner for the taxable years 2012 and 2013 in the amounts of \$474,131.00 and \$1,195,486.'00, respectively;

That there are additions to tax due from the petitioner for the taxable years 2012 and 2013 under the provisions of I.R.C. § 6651(a) (1) in amounts of \$105,427.13 and \$267,733.80, respectively; and

That there are additions to tax due from the petitioner for the taxable. years 2012 and 2013 under the provisions of I. R. C. §6651(a) (2) in amounts of \$79,656.05 and \$130,892.08, respectively.

Id.

Plaintiff asserts in her Declaration at Docket 48 that she has never seen nor signed these documents. Decl. ¶¶ 11, 13, Docket 48. Plaintiff also testifies that she believe her Due Process rights have been violated because she was not given a notice of having to provide the notice to the FTB. In *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 581-582 (2010), the Supreme Court repeats the long held principle concerning knowledge of the law, stating:

We have long recognized the “common maxim, familiar to all minds, that [6] ignorance of the law will not excuse any person, either civilly or criminally.” *Barlow v. United States*, 32 U.S. 404, 7 Pet. 404, 411, 8 L. Ed. 728 (1833) (opinion for the Court by Story, J.); *see also Cheek v. United States*, 498 U.S. 192, 199, 111 S. Ct. 604, 112 L. Ed. 2d 617 (1991) (“The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system”).

In essence, Plaintiff is asking this court to relitigate what has already been decided. It is true that the judgment presented is for the IRS’ claim; however, Defendant has provided testimony showing the process by which the FTB assesses its taxes relying directly on the IRS information. Plaintiff herself is contesting the validity of the IRS judgment, the IRS judgment being the basis for the FTB’s claim.

In this case, this court is not the proper forum for such an endeavor. If Plaintiff has issues with the Tax Court's ruling, perhaps arguing she never received notice of that suit and the documents were forged, Plaintiff is free to pursue the order in the Tax Court and seek a determination that the order is void pursuant to Fed. R. Civ. P. 60. Moore's Treatise states on proper venue for such a motion:

Motion Must Usually Be Filed in District Court That Rendered Judgment

Nothing in any portion of Rule 60 addresses the particular court in which a party should file a Rule 60(b) motion for relief from a judgment, order, or proceeding. Because a Rule 60(b) motion presupposes the existence of a prior federal court judgment, order, or proceeding, however, it is clear that the drafters of the rule contemplated that the motion (as opposed to an independent action in equity that may be brought anywhere, see § 60.84) would always be brought "in the court and in the action in which the judgment was rendered." The few courts that have considered the question agree that the court that rendered the judgment is the court in which the Rule 60(b) motion for relief from that judgment should be filed.

This rule makes perfect sense. The court that rendered the judgment is in the best position to judge the equities as to whether it should be set aside. Furthermore, the court that rendered the judgment has automatic jurisdiction over a motion to set it aside (see § 60.61).

12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE - CIVIL § 60.60[1].

By operation of law, Defendant's claim as it stands is secured. California law provides there is a 60-day window to contest a tax assessment. Cal. Rev. & Tax. Code § 19041. If the assessment is not challenged, it becomes final and then due and payable. Cal. Rev. & Tax. Code §§ 19042 & 19049. Pursuant to Cal. Rev. & Tax. Code § 19221, when a tax assessment has become due and payable, it automatically becomes a perfected state tax lien. The court is not presented with a genuine issue of material fact as to Count Three.

At the hearing, **XXXXXXX**

The court shall issue a minute 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 for Partial summary Judgment filed by California Franchise Tax Board ("Defendant," "FTB") having been presented to the court, Findings of Fact and Conclusions of Law stated in the Civil Minutes for the hearing; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Partial Summary Judgment, pursuant to Fed. R. Civ. P. 56(a) as incorporated by Fed. R. Bankr. P. 7056, is **XXXXXXX**.

9. [23-90021-E-7](#) **MARTHA MENDOZA**
[24-9005](#) **DPL-2**
MENDOZA V. FRANCHISE TAX BOARD

**MOTION TO DISMISS CAUSE(S) OF
ACTION FROM COMPLAINT AND/OR
MOTION FOR ABSTENTION OF THE
SECOND AND FOURTH CLAIMS FOR
RELIEF**
3-4-25 [39]

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 and Debtor’s attorney on March 4, 2025. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss or Abstain 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 Dismiss or Abstain is XXXXXXX.
--

Defendant and creditor in this Adversary Proceeding, California Franchise Tax Board (“Defendant,” “FTB”) moves this court for an order dismissing counts two and four of the Complaint for lack of subject matter, or in the alternative, abstain from adjudicating those counts. FTB requests the counts be dismissed for lack of subject matter, arguing 11 U.S.C. § 505(a)(2)(A) deprives this court of subject matter jurisdiction. In the alternative, FTB asks this court to abstain from adjudicating counts two and four pursuant to 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 505(a)(1). Defendant states with particularity as to the relief sought:

1. This Court must dismiss the Second and Fourth Claims for Relief because 11 U.S.C. § 505(a)(2)(A) deprives it of subject matter jurisdiction. During undersigned counsel’s investigation into this matter, counsel discovered, and Mendoza never disclosed, that she had previously litigated the very same federal tax liabilities at issue in this Adversary Proceeding in the United States Tax Court. That pre-petition litigation concluded when the United States Tax Court entered a decision. Thus, Mendoza’s federal tax liabilities were contested and adjudicated by a tribunal of competent

jurisdiction before the commencement of her bankruptcy proceeding, and 11 U.S.C. § 505(a)(2)(A) deprives this Court of subject matter jurisdiction to redetermine those liabilities. Mot. 2:4-12, Docket 39.

2. Alternatively, abstention is appropriate as to the Second and Fourth Claims for Relief under 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 505(a)(1). The outcome of this Adversary Proceeding does not have any effect on the administration of Mendoza's Chapter 7 bankruptcy case. Notably, the Chapter 7 Trustee filed a Report of No-Distribution, and there was no distribution to any creditors in Mendoza's bankruptcy case. Regardless of the outcome of the tax dispute, there is nothing more to be done in this bankruptcy case other than to close it, again. Further, the state and federal tax issues predominate the dispute and requires application of difficult and unsettled law. These and other considerations weigh in favor of abstention as to the Complaint's Second and Fourth Claims for Relief. Mot. 2:13-21.

Count Two of the Complaint is titled "Second Claim for Relief (Disallowance of Claim)". Compl. 5:28-11, Docket 1. Count Two seeks to determine that Proof of Claim 5-1 of the FTB is dischargeable as the claim falls outside the parameters of 11 U.S.C. § 523(a)(1)(B)(ii). Count Two also seeks to establish that the claim is against the "ex spouse" and cannot be enforced against Debtor. So the claim should be disallowed. *Id.*

In Count Four titled "Fourth Claim for Relief (Declaratory Relief)," Plaintiff requests the court determine that the IRS' assessment was not accurate, and so the FTB's assessment that relied on the IRS assessment could not be accurate. Plaintiff requests in Count Four that the tax liability for the FTB be discharged, or that the FTB tax liability is not owed because the taxes were not properly assessed. Compl. 6:7:2-8:6.

Defendant's Pleadings in Support

Defendant filed in support of their Motion a Memorandum of Points and Authorities (Docket 43) ("Memo"), the Declaration Donny P. Le (Docket 42), and various Exhibits (Dockets 44-45). Mr. Le authenticates the Exhibits filed in support in his Declaration.

In its Memo, the FTB asserts that the analysis for the court here would be the same under 11 U.S.C. § 505(a) or 28 U.S.C. § 1334(c)(1). Mem. 10:27-11:7. Ultimately, FTB seeks dismissal of Count Two and Four because the court lacks subject matter jurisdiction pursuant to 11 U.S.C. § 505(a)(2)(A).

Plaintiff's Opposition

Plaintiff filed pleadings in opposition on March 28, 2025. Dockets 53-54. Plaintiff testifies in her Declaration in support of the Opposition:

1. The tax dispute for the years 2012 and 2013 were largely assessed against her for a ½ interest in community property with her ex-spouse, Roberto Arredondo, resulting from income taxes owed by Mr. Arredondo running a business. The property was solely Mr. Arredondo's and was improperly assessed against Plaintiff. Decl. ¶ 12, Docket 53.

2. Plaintiff and Mr. Arredondo were separated in 2010 so it the property in question could not have been community property. *Id.* at ¶ 6.
3. Plaintiff does not recognize the Tax court Decision and testifies she never signed any of the documents in that case. *Id.* at ¶ 13.
4. Debtor has never had a trial on the merits of her tax liability she allegedly owes. *Id.* at ¶ 16.
5. Debtor was never made aware of the reporting requirement of Revenue and Taxation Code § 18622(a) by the FTB or IRS. This is a violation of her due process. *Id.* at ¶¶ 19, 20.
6. The IRS reported to the FTB the change in assessment, so the requirements of Revenue and Taxation Code § 18622(a) have been met and the debt is not excepted form discharge. *Id.* at ¶ 23.

Mr. Arredondo submits a Declaration in support of the Opposition and testifies:

1. He and Plaintiff separated with the intent to terminate the marriage in September of 2010. Decl. ¶ 2, Docket 54.
2. The business income from 2012 and 2013 assessed against Plaintiff was solely Mr. Arredondo's separate property. *Id.* at ¶ 3.
3. The IRS assessment is overstated and Mr. Arredondo is working on filing amended returns for the years 2012 and 2013. *Id.* at ¶ 8.

Plaintiff's Reply

Plaintiff filed a Reply on April 9, 2025. Docket 59. Plaintiff discusses dismissing Counts Two and Four pursuant to Fed. R. Civ. P. 12(b)(1) for a lack of subject matter jurisdiction as the court cannot determine the Plaintiff's tax liability pursuant to 11 U.S.C. § 505(a).

APPLICABLE LAW DISCUSSION

Before the court is the primary issue of a settled Tax Court decision adjudicating and determining the IRS' claim against Plaintiff for the taxable years 2012 and 2013, the FTB deriving their information from the Tax Court's decision pertaining to the IRS' assessment, and whether that Tax Court's decision would prevent this bankruptcy court from determining validity of FTB's assessment pursuant to 11 U.S.C. § 505(a). 11 U.S.C. § 505(a) states:

(a)

(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a

tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2)The court may not so determine—

(A)the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title;

(B)any right of the estate to a tax refund, before the earlier of—

(i)120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii)a determination by such governmental unit of such request; or

(C)the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

Case law in the Ninth Circuit has determined that “Section 505(a)(1) authorizes a bankruptcy court to determine a debtor’s tax liability. But if the debtor's tax liability was contested and adjudicated by a tribunal of competent jurisdiction before the commencement of bankruptcy proceedings, then the bankruptcy court loses jurisdiction and cannot “re-try” that matter:

Section 505(a)(1) authorizes a bankruptcy court to determine a debtor's tax liability. But if the debtor's **tax liability** was contested and **adjudicated** by a tribunal of competent jurisdiction **before the commencement of bankruptcy** proceedings, **§ 505(a)(2)(A) strips the bankruptcy court of the subject matter jurisdiction it otherwise would have had under § 505(a)(1).** *See Baker v. IRS (In re Baker)*, 74 F.3d 906, 910 (9th Cir. 1996) (“Section 505(a)(2)(A) is a jurisdictional statute that deprives bankruptcy courts of authority to decide a category of claims.”).

Mantz v. Cal. State Bd. of Equalization (In re Mantz), 343 F.3d 1207, 1211, (9th Cir. 2003). This provision is neither earth shattering or revolutionary, but as the Ninth Circuit states in *Mantz*:

Therefore, it is clear that the court does not have subject matter jurisdiction to determine Debtor’s tax liability owed to the IRS. Count Four of the Complaint, at least in part, asks the court to do just that. Count Four of the Complaint states:

47. The debtor respectfully requests that this Court declare the tax liability for the FTB should be discharged for the same reasons the IRS's tax liability was discharged:

48. The debtor respectfully requests that this Court declare the purported FTB tax liabilities is not owed because the debtor does not rightly owe the taxes claimed and is not responsible for the tax liabilities therefor.
49. The debtor respectfully requests that this Court declare the claimed FTB tax liabilities should be vacated because the debtor had no involvement in her husband's business; the debtor was and is not responsible for the tax liabilities incurred therefor; the taxes owed to the FTB are dischargeable since the debts arose before the petition was filed and do not fall within any of the provisions of 11 U.S.C. § 523(a)(1); and that the FTB's taxes should be discharged under 11 U.S.C. §727.

Compl. 7:24-8:6. The court is clearly unable to make a determination that would undermine the Tax Court's determination of the IRS liability, the court being without subject matter jurisdiction to do so pursuant to 11 U.S.C. § 505(a). Therefore, Count Four of the Complaint must be dismissed for lack of subject matter jurisdiction where this count seeks declaratory relief finding that the IRS' assessment is not accurate.

Count Two of the Complaint, albeit slightly more subtly, again predicates its request for relief from the premise that the IRS tax assessment was improperly done. Count Two states:

31. The claim of Franchise Tax Board consisted of audit assessments pertaining to the tax liability of the debtor's ex spouse for personal tax obligations for the years 2012 and 2013. Under 11 U.S.C. §523(a)(1)(ii), the liability of these tax claims are dischargeable. The debtor does not owe the claimed tax liability and is not responsible for her ex-spouse's taxes.
32. Inasmuch as the tax claims for 2012 and 2013 are dischargeable and are not entitled to priority. The ex spouse's taxes are unenforceable as to the debtor.
33. The Proof of Claim providing for the tax periods for 2012 and 2013 should be disallowed.

Compl. 6:1-11.

Paragraph 31 in Count Two of the complaint is squarely addressed in this court's tentative ruling on the related Motion for Summary Judgment. The court stated, regarding 11 U.S.C. § 523(a)(1):

Subsections (A), (B), and (C) are linked with the disjunctive conjunction, "or." Therefore, any of those subsections would except a debt from discharge. Importantly, Plaintiff appeals to 11 U.S.C. § 523(a)(1)(B)(ii) in support of Count One in finding the debt was discharged, and Defendant appeals to 11 U.S.C. § 523(a)(1)(B)(i) in support of excepting the debt from discharge. 11 U.S.C. § 523(a)(1)(B)(i) interplays with the reporting requirements of state law, specifically, Revenue and Taxation Code § 18622(a). Revenue and Taxation Code § 18622(a) states:

- (a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for

any year of any taxpayer is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. For any individual subject to tax under Part 10 (commencing with Section 17001), changes or corrections need not be reported unless they increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

The Ninth Circuit has construed the language of “a return, or equivalent report or notice” in 11 U.S.C. § 523(a) to include a change in a tax assessment by the IRS that must be reported to the FTB. *See In re Berkovich*, 15 F.4th 997 (9th Cir. 2021). Collier’s treatise states on the subject:

The reference to the failure to provide “notice” means that if a debtor is obligated under nonbankruptcy law to file an amended return or give notice to a governmental unit of an amendment or correction to a prior filed federal tax return,⁴⁷ the failure to do so will render nondischargeable any corresponding tax liability to the governmental unit.

4 COLLIER ON BANKRUPTCY ¶ 523.07[3][a].

Therefore, paragraph 31 in Count Two of the Complaint is not a meritorious cause of action that would support disallowing the FTB’s claim, there being the avenue of 11 U.S.C. § 523(a)(1)(B)(i) that would except the FTB’s claim from discharge.

Paragraph 32 in Count Two of the Complaint states: “Inasmuch as the tax claims for 2012 and 2013 are dischargeable and are not entitled to priority. The ex spouse’s taxes are unenforceable as to the debtor.” This statement is offered in support of disallowing the FTB’s claim in Count Two. However, this statement again relies on the court finding that the IRS’ assessment was improper, Debtor asking the court to adopt the premise that the Tax Court improperly found Debtor liable for her ex-spouse’s tax liabilities. The court is unable to make such a determination. The matter has already been adjudicated and decided in the Tax Court. 11 U.S.C. § 505(a) deprives the court of subject matter jurisdiction to revisit the Tax Court’s decision. Therefore, Count Two of the Complaint must also be dismissed for lack of subject matter jurisdiction.

Again, Plaintiff may have theories as to why the Tax Court’s judgment is void. Plaintiff is free to pursue the order in the Tax Court and seek a determination that the order is void pursuant to Fed. R. Civ. P. 60. Moore’s Treatise states on proper venue for such a motion:

Motion Must Usually Be Filed in District Court That Rendered Judgment

Nothing in any portion of Rule 60 addresses the particular court in which a party should file a Rule 60(b) motion for relief from a judgment, order, or proceeding. Because a Rule 60(b) motion presupposes the existence of a prior federal court judgment, order, or proceeding, however, it is clear that the drafters of the rule contemplated that the motion (as opposed to an independent action in equity that may be brought anywhere, see § 60.84) would always be brought “in the court and in the action in which the judgment was rendered.” The few courts that have considered the question agree that the court that rendered the judgment is the court in which the Rule 60(b) motion for relief from that judgment should be filed.

This rule makes perfect sense. The court that rendered the judgment is in the best position to judge the equities as to whether it should be set aside. Furthermore, the court that rendered the judgment has automatic jurisdiction over a motion to set it aside (see § 60.61).

12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE - CIVIL § 60.60[1].

At this stage of the pleadings, the court urges parties to focus in on this narrow issue: would the Tax Court decision that decided the IRS tax debt deprive this court of subject matter jurisdiction pursuant to 11 U.S.C. § 505(a) when the FTB relied on the IRS’ assessment as adjudicated by the Tax Court, but the FTB’s very own assessment has itself not been adjudicated and decided by a judicial or administrative tribunal of competent jurisdiction?

The court notes that Defendant has provided the court with some state tax law to the effect that the FTB properly relies on IRS numbers in assessing its own tax debts. *See* Cal. Rev. & Tax. Code § 17024.5; Cal. Rev. & Tax. Code § 17071. From reading these statutes, it is not readily clear to the court how these statutes provide an answer to the narrow issue. However, the court also notes that the complaint itself asks in many places to assume the Tax Court’s decision was incorrect, and so FTB’s assessment is incorrect. This fact alone may be enough to dismiss Counts Two and Four.

At the hearing, **XXXXXXX**

The court shall issue a minute 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 or Abstain filed by California Franchise Tax Board (“Defendant,” “FTB”) having been presented to the court, Findings of Fact and Conclusions of Law stated in the Civil Minutes for the hearing; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss or Abstain is **XXXXXXX**.

10. [25-90033](#)-E-7
[NF-1](#)

APRIL CERVANTEZ
Pro Se

CONTINUED TRUSTEE'S MOTION TO
DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF
CREDITORS
2-26-25 [\[15\]](#)

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 (*pro se*) and Office of the United States Trustee on February 28, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is XXXXXXX.

April 17, 2025 Hearing

The court continued the hearing on this Motion as Debtor, although filing opposition, did not appear at the prior hearing. The 341 Meeting was continued to April 8, 2025. Debtor did not appear. At the hearing, XXXXXXX

REVIEW OF MOTION

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that April Alberta Cervantez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on March 25, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 10, 2025. Dckt. 17. Debtor does not state any reasons in support of her opposition.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor opposes the Motion, but does not state the grounds.

At the hearing, no appearances were made by the Debtor or the Trustee.

The Trustee reports that the Debtor did appear at the March 25, 2025 341 Meeting, and it has been continued to April 8, 2025. Trustee's March 25, 2025 Docket Entry Report.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on April 17, 2025. This will afford the Debtor the opportunity to continue with the prosecution of the case. Additionally, the court can, if the Trustee is satisfied that this Case should not be dismissed, then extend the time for filing nondischargeability actions and objections to discharge, even though denying the request to dismiss (this additional relief requested in the Motion).

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 the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("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 Dismiss is **XXXXXXX**.

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 11, 2025. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Peter L. Fear ("Trustee"), seeks dismissal of the case on the grounds that David Dewayne Lampkins ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:00 p.m. on May 8, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 24, 2025. Dckt. 16. Debtor states opposes the Motion on the basis that he had every intention to appear at the initial 341 Meeting but mistakenly miscalendared the date. Debtor assures the court he will appear at the continued Meeting.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

However, Debtor has informed the court he will be appearing at the continued Meeting. Therefore, the Motion is denied without prejudice.

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 the Chapter 7 case filed by The Chapter 7 Trustee, Peter L. Fear (“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 Dismiss is denied without prejudice.

IT IS FURTHER ORDERED that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including July 7, 2025.

12. [25-90193-E-7](#)
[SLH-1](#)

SHERRY FENN
Seth Hanson

MOTION TO COMPEL ABANDONMENT
3-20-25 [8]

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, all creditors and parties in interest, and Office of the United States Trustee on March 20, 2025 By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).

Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Sherry Renee Fenn (“Debtor”) requests the court to order Loris L Bakken (“the Chapter 7 Trustee”) to abandon property commonly known as 3843 Finnigan Court, Riverbank, CA 95367 (“Property”). The Property is encumbered by voluntary consensual liens in the amount of \$77,164.00. Schedule D at 19, Docket 1. Debtor has claimed a homestead exemption in the Property in the amount of \$375,000.00. *Id.* at 17. The Declaration of Debtor has been filed in support of the Motion and values the Property at \$427,700. Decl. ¶ 3, Docket 10.

The Chapter 7 Trustee filed a Non-Opposition on April 1, 2025.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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 Compel Abandonment filed by Sherry Renee Fenn (“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 Compel Abandonment is granted, and the Property identified as 3843 Finnigan Court, Riverbank, CA 95367 and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Loris L Bakken (“Trustee”) to Sherry Renee Fenn by this order, with no further act of the Trustee required.

FINAL RULINGS

13. [24-90821-E-7](#)
[SSA-1](#)

CHARLES FULLER
Steve Altman

MOTION TO AVOID LIEN OF CREDIT
CORP. SOLUTIONS, INC.
3-13-25 [\[44\]](#)

Item 13 thru 17

Final Ruling: No appearance at the April 17, 2025 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 Creditor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on March 13, 2025. By the court's calculation, 35 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 granted.

This Motion requests an order avoiding the judicial lien of Credit Corp. Solutions, Inc., Assignee of Compass Bank ("Creditor") against property of the debtor, Charles Eugene Fuller ("Debtor") commonly known as 4443 Kentucky Avenue, Oakdale, California 95361 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,205.93. Exhibit 2, Dckt. 24. An abstract of judgment was recorded with Stanislaus County on July 10, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$400,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$130,330.40 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 26, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$461,250.00 on Schedule C. Schedule C at 18, Docket 1.

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 Charles Eugene Fuller ("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 Credit Corp. Solutions, Inc., Assignee of Compass Bank, California Superior Court for Stanislaus County Case No. CV-22-002751, recorded on July 10, 2024, Document No. 2024-0031621, with the Stanislaus County Recorder, against the real property commonly known as 4443 Kentucky Avenue, Oakdale, California 95361, 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.

Final Ruling: No appearance at the April 17, 2025 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 Creditor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on March 13, 2025. By the court’s calculation, 35 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.

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

This Motion requests an order avoiding the judicial lien of Persolve Legal Group, LLP (“Creditor”) against property of the debtor, Charles Eugene Fuller (“Debtor”) commonly known as 4443 Kentucky Avenue, Oakdale, California 95361 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,239.13. Exhibit 8, Dckt. 24. An abstract of judgment was recorded with Stanislaus County on November 24, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$400,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$130,330.40 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 26, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$461,250.00 on Schedule C. Schedule C at 18, Docket 1.

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 Charles Eugene Fuller (“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 Persolve Legal Group, LLP, California Superior Court for Stanislaus County Case No. CV20902484, recorded on November 24, 2021, Document No. 2021-0109426, with the Stanislaus County Recorder, against the real property commonly known as 4443 Kentucky Avenue, Oakdale, California 95361, 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.

15. [24-90821-E-7](#)
[SSA-3](#)

CHARLES FULLER
Steve Altman

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK N.A.
3-13-25 [\[26\]](#)

Final Ruling: No appearance at the April 17, 2025 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 Creditor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on March 13, 2025. By the court’s calculation, 35 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 granted.
--

This Motion requests an order avoiding the judicial lien of Capital One Bank (“Creditor”) against property of the debtor, Charles Eugene Fuller (“Debtor”) commonly known as 4443 Kentucky Avenue, Oakdale, California 95361 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,875.02. Exhibit 7, Dckt. 24. The court notes the Exhibit list included with this Motion, Docket 29, has omitted Creditor’s Abstract of Judgment; however, creditor’s Abstract is included in the Exhibit list at Docket 24. An abstract of judgment was recorded with Stanislaus County on August 23, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$400,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$130,330.40 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 26, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$461,250.00 on Schedule C. Schedule C at 18, Docket 1.

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 Charles Eugene Fuller (“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 Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. CV-19-006671, recorded on August 23, 2021, Document No. 2021-0080109, with the Stanislaus County Recorder, against the real property commonly known as 4443 Kentucky Avenue, Oakdale, California 95361, 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.

Final Ruling: No appearance at the April 17, 2025 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 Creditor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on March 13, 2025. By the court’s calculation, 35 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 granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. (“Creditor”) against property of the debtor, Charles Eugene Fuller (“Debtor”) commonly known as 4443 Kentucky Avenue, Oakdale, California 95361 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,376.14. Exhibit 6, Dckt. 35. An abstract of judgment was recorded with Stanislaus County on September 11, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$400,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$130,330.40 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 26, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$461,250.00 on Schedule C. Schedule C at 18, Docket 1.

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 Charles Eugene Fuller (“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 Citibank, N.A., California Superior Court for Stanislaus County Case No. CV-19-002779, recorded on September 11, 2020, Document No. 2020-0068811-00, with the Stanislaus County Recorder, against the real property commonly known as 4443 Kentucky Avenue, Oakdale, California 95361, 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.

17. [24-90821-E-7](#)
[SSA-5](#)

CHARLES FULLER
Steve Altman

**MOTION TO AVOID LIEN OF
DISCOVER BANK**
3-13-25 [\[38\]](#)

Final Ruling: No appearance at the April 17, 2025 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 Creditor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on March 13, 2025. By the court’s calculation, 35 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 granted.
--

This Motion requests an order avoiding the judicial lien of Discover Bank (“Creditor”) against property of the debtor, Charles Eugene Fuller (“Debtor”) commonly known as 4443 Kentucky Avenue, Oakdale, California 95361 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,840.08. Exhibit 5, Dckt. 40. An abstract of judgment was recorded with Stanislaus County on January 30, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$400,000.00 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$130,330.40 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 26, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$461,250.00 on Schedule C. Schedule C at 18, Docket 1.

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 Charles Eugene Fuller (“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 Discover Bank, California Superior Court for Stanislaus County Case No. CV-19-003027, recorded on January 30, 2020, Document No. 2020-0006429-00, with the Stanislaus County Recorder, against the real property commonly known as 4443 Kentucky Avenue, Oakdale, California 95361, 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.

DEBTORS DISMISSED: 05/10/24

Final Ruling: No appearance at the April 17, 2025 hearing is required.

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 all creditors and parties in interest on January 14, 2025. By the court’s calculation, 72 days’ notice was provided. 28 days’ notice is required.

The Motion to Vacate 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 Vacate Order Imposing Sanctions is continued to 10:30 a.m. on May 1, 2025 (Specially set to be heard at the Modesto Division Courthouse).

Alonzo Gradford, Esq., the attorney for Debtors in this Bankruptcy Case, is ordered to appear in person at the hearing,

NO TELEPHONIC APPEARANCE PERMITTED for Mr. Gradford.

April 17, 2025 Hearing

The court continued the hearing on this Motion to provide Mr. Gradford one last opportunity to appear and dispute the sanctions. Mr. Gradford filed a Motion to Continue the hearing on this matter on April 11, 2025, citing a scheduling conflict. Docket 61. The court reschedules the hearing to the court’s next Modesto date, May 1, 2025, at 10:30 a.m.

REVIEW OF MOTION

Debtor’s attorney, Alonzo J. Gradford (“Movant”) filed this Motion seeking relief from the Order compelling Movant to pay sanctions in the amount of \$1,000. On April 30, 2024, the court issued an Order to Show Cause why debtor Abel Dominguez and Veronica Munoz had not filed the document Disclosure of Compensation of Attorney for Debtor in the case. Order, Docket 19. The hearing on that Order was held on June 5, 2024. Movant did not appear, and as such, the court issued sanctions in the amount of \$1,000. Order, Docket 26.

Movant seeks to have the Order vacated, per Federal Rule of Civil Procedure 60(b), for excusable neglect. Movant states as facts in support of the requested relief:

1. After the petition was filed on April 24, 2024, my office experienced unforeseen staffing issues. We lost two staff members, and a third went on leave to study for the California Bar Exam. During this transition, the court's order to show cause was inadvertently overlooked, leading to the failure to file necessary documents.
2. The delay was due to a significant, unexpected reduction in staffing, which directly impacted on our ability to manage the case properly. This was an extraordinary circumstance that qualifies as excusable neglect. In addition, my 14-year-old son broke both of his legs in a freak accident on June 3, 2024, that required him to be rushed to the children's hospital in Oakland, California for emergency surgery. He was then bed ridden for 8 weeks following his surgeries and required around the clock attention and care. My son's medical issues were an additional factor in consuming my time, resources, and ability to give this case the attention it rightly deserved.

Movant does not file a Declaration in support. At the hearing, no appearance was made by Movant.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand

reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Movant has presented facts that could justify vacating the dismissal. Movant experienced an office shortage as well as the medical emergency of his son that led him to overlook the initial Order to Show Cause. Moreover, Movant explains in the Motion that Debtor was not prejudiced by this case being dismissed and Debtor was able to resolve their issues outside of bankruptcy.

However, upon the review of the files in this Case and Movant failing to appear at the March 27, 2025 hearing on his Motion, the court was prepared to deny the Motion. After some thought, the court concluded at the hearing to continue the matter one final time.

Review of Proceedings

The present Motion to Vacate relates to an Order issued by Chief Bankruptcy Judge Fredrick Clement which imposed a \$1,000.00 sanction to be paid by Movant for failing to file the Required Statement of Compensation in this Case. The Order imposing sanctions, Dckt. 26, includes express findings by Judge Clement, stating that Movant failed to appear at the June 3, 2025 hearing, filed no opposition to the Motion and failed to file the Disclosure of Compensation notwithstanding Judge Clement having ordered to Movant to appear at the hearing. See Order to Show Cause, Dckt. 19, stating:

THEREFORE, IT IS ORDERED that the debtor’s(s’) attorney [Movant] in this bankruptcy case shall appear before this court on the following date and time

Judge Clement’s Order to Show case expressly permitted telephonic appearance by Movant.

After Judge Clement denied without prejudice Movant's first Motion to Vacate (Order; Dckt. 44), Movant filed the second Motion to Vacate which is now before the court. That Motion (Dckt. 45), as with prior pleadings, fails to comply with the Local Bankruptcy Rules, including Local Bankruptcy Rule 9014-1(d)(4), which require the motion, points and authorities (which can be included with the motion if the total document is not more than 6 pages in length), each declaration, the exhibits (which can be combined into one exhibit document), and the notice of hearing to be filed as separate documents.

While presenting the court with "real world" events, including some involving family members, that interfered with his getting the documents filed and the Order to Show Cause hearing, this court was surprised that Movant did not appear telephonically at the hearing on the second Motion to Vacate. While the court's tentative ruling indicated that it was likely to grant the Motion, the text in the tentative stating so and stating that the \$1,000.00 would be vacated were in ~~strikeout text~~.

While Movant, Alonzo Gradford, Esq., has provided information about why the failure to file the required documents occurred and now why he failed to appear at the hearing on the Order to Show Cause, it does not appear that Movant is appreciating the nature and scope of the failed conduct and the proceedings in this court.

Rather than denying the Motion, the court continues it one final time. In light of Movant's office being located in Modesto, California, the court specially sets the hearing to a Modesto date to minimize the disruption in travel when Movant attends the continued hearing.

The court continues the hearing to 10:30 a.m. on April 17, 2025, Specially Set to be heard in the Modesto Division Courthouse, 1200 I Street, Second Floor, Modesto, California. Alonzo Gradford, Esq., shall appear in person at the April 17, 2025 hearing - NO TELEPHONIC APPEARANCE permitted for the forgoing person ordered to appear.

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 Vacate filed by Debtor's attorney, Alonzo J. Gradford ("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 hearing on the Motion is continued to **10:30 a.m. on May 1, 2025, Specially Set** to be heard in the **Modesto Division Courthouse**, 1200 I Street, Second Floor, Modesto, California.

IT IS FURTHER ORDERED that **Alonzo Gradford, Esq., shall appear in person** at the May 1, 2025 hearing - NO TELEPHONIC APPEARANCE permitted for the forgoing person ordered to appear.