UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 18, 2024 at 10:30 a.m.

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1. **23-21899-E-12 WF-10**

1 thru 2

JAKOB/GLADYS WESTSTEYN

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF GEH FARMS, CLAIM NUMBER 13-2
9-27-23 [120]

Debtors' Atty: Daniel L. Egan; Jason Eldred

Notes:
Continued from 11/29/23; Discovery Deadline set for 3/29/24

The Status Conference is xxxxxxx

APRIL 18, 2024 POST-DISCOVERY STATUS CONFERENCE

In the court's prior order (Dckt. 156) the discovery deadline in this Contested Matter is March 29, 2024. As of the court's April 16, 2024 review, no further pleadings relating to this Matter have been filed.

The Second Amended Chapter 12 Plan in this Case was confirmed on February 4, 2024. Order; Dckt. 175.

At the Conference, xxxxxxx

REVIEW OF OBJECTION AND PROCEEDINGS

Jakob and Gladys Weststeyn, the Debtor in Possession ("Objector," "Debtor in Possession") requests that the court disallow the claim of Claim of GEH Farms, dba Hawes Ranch and Farm Supply, ("Creditor) Proof

of Claim 13-2. There is a parallel Objection to Proof of Claim 13-2 filed by Greg Hawes in this case. The Claim of Creditor is asserted to be entirely unsecured in the amount of $31,180.55. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:

    a. Debtors formed JG Weststeyn Dairy, LP ("Dairy LP") to conduct the dairy operations.

        i. Identity of General Partner

            (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.

            (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.

        ii. Identity of limited partner

            (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.

                (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.

2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.

    a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.

3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.

4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes ("Hawes") and GEH Farms, dba Hawes Ranch and Farm Supply.

    a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.

        i. The invoices issued by Hawes and GEH Farms were to "JG Weststeyn Dairy."

ii. No invoices were issued in the names of either of the two Debtors.

5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.

6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.

7. The basis for the Objection to the Claim

a. The obligation is owed by Dairy LP, and not either of the two Debtors.

b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.

c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.

d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms' Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.

8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 120.

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 122. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

> § 2201. Formal requirements; Statute of frauds
>
> (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.
>
> (2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.
>
> (3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:
>
> > (a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

> (b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
>
> (c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).
>
> (4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms "Merchant" and "Between Merchants" are statutorily defined in California Commercial Code § 2104(1) and (3) as:

> § 2104. Definitions: "Merchant"; "Between merchants"; "Financing agency"
>
> (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
> . . .
> (3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector argues that the Claim premised on the "person" named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

> Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A "merchant" is defined as a " person who deals in goods of the kind." California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman's Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the "person" is named on those invoices.

Review of Proof of Claim 13-2

Creditor states in ¶ 7 of Amended Proof of Claim 13-2 that the claim is in the amount of $31,180.55 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on "feed delivered."

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

A. Invoice 702343

1. Invoice date 09/28/2022

2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.

4. Total is stated to be $9,458.55

5. Invoice total due by 09/28/2022.

B. Invoice 702345

1. Invoice date 09/28/2022

2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.

4. Total is stated to be $9,615.65

5. Invoice total due by 09/28/2022.

C. Invoice 702349

1. Invoice Date 09/28/2022

2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.

4. Total is stated to be $4,783.85

5. Invoice total due by 09/28/2022.

D. Invoice 702351

1. Invoice Date 09/28/2022

2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.

4. Total is stated to be $4,804.20

5. Invoice total due by 09/28/2022.

E. Invoice 702948

1. Invoice Date 10/11/2022

2. Hawes Ranch & Farm listed at the top of the Invoice.

3. JG Weststeyn Dairy listed as to whom the product was sold to.

4. Total is stated to be $9,615.00

5. Invoice total due by 10/11/2022.

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession's Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 HEARING

At the hearing, opposition was stated. The court continues the hearing to allow for an opposition to be filed and discovery to commence immediately. A status and scheduling conference will be conducted at 2:00 p.m. on November 29, 2023.

NOVEMBER 29, 2023 STATUS CONFERENCE

Response Pleadings Filed by
GEH Farms

On November 13, 2023, GEH Farms filed it's Response (Dckt. 139) to the Objection to Amended Proof of Claim 13-2. In summary, GEH Farms asserts that it had no knowledge that the Debtors were operating a business in a separate business entity and believed that the dairy operation was the Debtor's sole proprietorship. Exhibits have been provided listing the orders for the period June 2022 through October 2022, the payments made, and that the claim of ($31,180.55) is for purchases made during the period September 28, 2022, through October 11, 2022.

The Declaration of Nikola Hawes, who is identified as the primary record keeper for Greg Hawes (who has also filed a proof off claim) and GEH Farms. Dckt. 140. Declarant states that orders were initially placed in June 2022, and that the Debtors didn't disclose that the dairy operation was a separate business entity and not a sole proprietorship. *Id.*, ¶ 4. Payments for the purchases were made either immediately by check or point of sale, or within two weeks of delivery. Copies of checks and invoices are attached to the Declaration.

The Declaration also states that the orders were placed mainly by phone by a person named ["BE"]. Further, testimony is made that BE is asserted to have makes references to a person named Blake who made additional orders, that he delivered the orders, he accepted the payment, and then he embezzled some the payment monies for such orders.

GEH Farms then requests that he court set a discovery schedule for this Contested Matter.

At the Status Conference, the Parties agreed to a March 29, 2023 Discovery Cutoff and continuing the Status Conference to 10:30 a.m. on April 18, 2024, at which time the court will set the date and filing deadlines for the Pre-Evidentiary Hearing Conference, if necessary.

2. 23-21899-E-12 WF-9 **JAKOB/GLADYS WESTSTEYN** **CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF GREG HAWES, CLAIM NUMBER 12-2 9-27-23 [115]**

Debtors' Atty: Daniel L. Egan; Jason Eldred

Notes:
Continued from 11/29/23; Discovery Deadline set for 3/29/24

The Status Conference is xxxxxxx

APRIL 18, 2024 POST-DISCOVERY STATUS CONFERENCE

In the court's prior order (Dckt. 157) the discovery deadline in this Contested Matter is March 29, 2024. As of the court's April 16, 2024 review, no further pleadings relating to this Matter have been filed.

The Second Amended Chapter 12 Plan in this Case was confirmed on February 4, 2024. Order; Dckt. 175.

At the Conference, xxxxxxx

REVIEW OF OBJECTION AND

PROCEEDINGS

Jakob and Gladys Weststeyn, the Debtor in Possession ("Objector," "Debtor in Possession") requests that the court disallow the claim of Greg Hawes ("Creditor"), Proof of Claim No. 12-2 ("Claim") in this case. There is a parallel Objection to Proof of Claim 13-2 filed by GEH Farms, dba Hawes Ranch and Farm Supply. The Claim is asserted to be unsecured in the amount of $30,417.65. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:

    a. Debtors formed JG Weststeyn Dairy, LP ("Dairy LP") to conduct the dairy operations.

        i. Identity of General Partner

            (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.

            (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.

        ii. Identity of limited partner

            (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.

                (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.

2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.

    a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.

3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.

4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes ("Hawes") and GEH Farms, dba Hawes Ranch and Farm Supply.

    a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.

i. The invoices issued by Hawes and GEH Farms were to "JG Weststeyn Dairy."

ii. No invoices were issued in the names of either of the two Debtors.

5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.

6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.

7. The basis for the Objection to the Claim

a. The obligation is owed by Dairy LP, and not either of the two Debtors.

b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.

c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.

d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms' Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.

8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 115

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 117. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no

contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

> § 2201. Formal requirements; Statute of frauds
>
> (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.
>
> (2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.
>
> (3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:
>
> > (a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances

> which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;
>
> (b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
>
> (c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).
>
> (4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms "Merchant" and "Between Merchants" are statutorily defined in California Commercial Code § 2104(1) and (3) as:

> § 2104. Definitions: "Merchant"; "Between merchants"; "Financing agency"
>
> (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
> . . .
> (3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector's argument that the Claim is premised on the "person" named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

> Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A "merchant" is defined as a " person who deals in goods of the kind." California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract

outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman's Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the "person" is named on those invoices.

Review of Proof of Claim 12-2

Creditor states in ¶ 7 of Amended Proof of Claim 12-2 that the claim is in the amount of $30,417.65 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on "feed delivered."

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

a. Invoice 523

   i. Invoice date 09/20/2022

   ii. Greg Hawes listed at the top of the Invoice.

   iii. JG Weststeyn Dairy listed as "Bill To."

   iv. Total is stated to be $11,863.36. (The invoice amounts are of questionable legibility.)

b. Invoice 525

   i. Invoice date 09/28/2022

   ii. Greg Hawes listed at the top of the Invoice.

   iii. JG Weststeyn Dairy listed as to "Bill To."

   iv. Total is stated to be $18,534.40. (The invoice amounts are of questionable legibility.)

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession's Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 HEARING

At the hearing, opposition was stated. The court continues the hearing to allow for an opposition to be filed and discovery to commence immediately. A status and scheduling conference will be conducted at 2:00 p.m. on November 29, 2023.

NOVEMBER 29, 2023 STATUS CONFERENCE

Response Pleadings Filed by
Greg Hawes Farms

On November 13, 2023, Greg Hawes filed his Response (Dckt. 137) to the Objection to Amended Proof of Claim 12-2. In summary, Greg Hawes asserts that he had no knowledge that the Debtors were operating a business in a separate business entity and believed that the dairy operation was the Debtor's sole proprietorship. Exhibits have been provided listing the orders for the period June 2022 through October 2022, the payments made, and that the claim of ($30,417.65) is for purchases made during the period September 20, 2022, through September 28, 2022.

The Declaration of Nikola Hawes, who is identified as the primary record keeper for Greg Hawes and GEH Farms (which has also filed a proof of claim in this Case). Dckt. 138. Declarant states that orders were initially placed in June 2022, and that the Debtors didn't disclose that the dairy operation was a separate business entity and not a sole proprietorship. *Id*., ¶ 4. Payments for the purchases were made either immediately by check or point of sale, or within two weeks of delivery. Copies of checks and invoices are attached to the Declaration.

The Declaration also states that the orders were placed mainly by phone by a person named ["BE"]. Further, testimony is made that BE is asserted to have makes references to a person named Blake who made additional orders, that he delivered the orders, he accepted the payment, and then he embezzled some the payment monies for such orders.

Greg Hawes then requests that he court set a discovery schedule for this Contested Matter.

At the Status Conference, the Parties agreed to a March 29, 2023 Discovery Cutoff and continuing the Status Conference to 10:30 a.m. on April 18, 2024, at which time the court will set the date and filing deadlines for the Pre-Evidentiary Hearing Conference, if necessary.

3. 21-23778-E-7 DNL-2

CAREN SPAULDING
Jeffrey Ogilvie

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CAREN RENEE SHINAR SPAULDING AND THOMAS L. SPAULDING
3-12-24 [31]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2024. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Geoffrey Richards, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Caren Renee Shinar Spaulding's ("Debtor") and her husband, Thomas L. Spaulding ("Spouse") (collectively, "Settlors"). The claims and disputes to be resolved by the proposed settlement are all claims being prosecuted in connection with

In the Amended Complaint in Adversary Proceeding 22-2006, the Movant seeks to avoid transfers of property by the Debtor and Spouse, as well as property owned by the non-debtor Spouse. The Debtor and Spouse have defended that Action.

As shown from the Docket in the Adversary Proceedings, the Parties have not only zealously advanced their positions, but have engaged in meaningful, rational settlement discussions. This included using the Bankruptcy Dispute Resolution Program.

Movant and Settlors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Docket 34):

1. Settlement Payment to Trustee. The Settlors shall pay the Trustee $140,000.00 within 14 calendar days upon entry of an order by the Bankruptcy Court granting a motion to approve the Agreement pursuant to Fed. R. Bankr. P. 9019.

2. Mutual Releases. The parties exchange broad releases and waivers, including but not limited to all claims that have been asserted or could be asserted in connection with the Adversary and unknown claims pursuant to Cal. Civ. Code § 1542.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Under the settlement, Movant shall recover $140,000 in satisfaction of the Estate's claim for recovery of the Settlors interest in real property commonly known as 531 Outsen Road, Yreka, California ("Outsen Property") and 309 Lawrence Lane, Apt. 2, Yreka, California ("Lawrence Property"), as well as certain other allegedly fraudulent transfers of cash (collectively, "Property"). Mot., Docket 31 ps. 2:15-3:9. Movant asserts that the Property can be recovered for the Estate for the claim it has against Settlors. This proposed settlement allows Movant to recover for the Estate $140,000 without further cost or expense.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlors and Movant have granted a corresponding release for Debtor, Spouse, and the Estate.

Probability of Success

Movant argues this factor supports approving the settlement agreement because the probability of success in any litigation is ultimately unknown. Further prosecution of the adversary proceeding would require fact-intensive analysis into damages, also requiring expert testimony. Mot., Docket 31 p. 4:19-27.

Difficulties in Collection

This factor also supports approving the settlement agreement because were the Chapter 7 Trustee to prevail in the adversary proceeding, it would likely be expensive and time-consuming to actually collect the judgment. *Id.* at p. 5:4-7.

Expense, Inconvenience, and Delay of Continued Litigation

This factor also supports approving the settlement agreement because any continued litigation concerning the adversary proceeding will require time and expense that is otherwise wholly avoidable by the agreement. *Id.* at p. 5:8-10.

Paramount Interest of Creditors

This factor also supports approving the settlement agreement because The Trustee anticipates that the net recovery will be beneficial in paying allowed unsecured claims at least in part, after payment of outstanding chapter 7 administrative expenses. The Agreement will also allow the Trustee to move forward with his efforts to close this case and make distributions. *Id.* at p. 5:11-20.

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 by allowing for a recovery of $140,000 for the Estate while ending potentially time-consuming and expensive litigation. 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 Geoffrey Richards, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Caren Renee Shinar Spaulding's ("Debtor") and her husband, Thomas L. Spaulding ("Spouse") (collectively, "Settlors") is granted, and the respective rights

and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket 34).

4. 23-24610-E-11 CAE-1 **LAFLEUR WAY, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-23-23 [1]**

Debtor's Atty: Peter G. Macaluso

Notes:
Continued from 4/4/24 to be heard in conjunction with the Motion to Approve Loan Modification.

[RHS-2] Order Requiring Appearances filed 4/11/24 [Dckt 76]

The Status Conference is xxxxxxx

APRIL 18, 2024 STATUS CONFERENCE

APRIL 4, 2024 STATUS CONFERENCE

In reviewing the file, the court notes that the Debtor/Debtor in Possession has now filed three monthly operating reports for this Bankruptcy Case filed in December 2023 (shortly after the Debtor was created and real property transferred into it). These Monthly Operating Reports for December 2023, and January and February 2024, are summarized as follows:

A. December 23 - 31, 2023 Monthly Operating Report; Dckt. 56.

1. The Debtor/Debtor in Possession states that the line of business in this Case is "Rental."

2. The total Opening Balances for all of the bank accounts when this case was filed was $0.00. *Id.*; ¶ 19.

3. The total Cash Balances on December 31, 2024, was $3,900.00.

4. It is stated that Professionals were paid $5,000 "this month."

5. The $3,900.00 in monies received were from "Cash Receipts." *Id.*; ¶¶ 32-34.

6. The Debtor/Debtor in Possession projects that for the full month of January 2024 the cash flow will again be $3,900, while the cash disbursements for

January 2024 will be $3,900, resulting in $0.00 of operating profits in January 2024. *Id.*; ¶ 35-36.

7. Though ¶ 20 of the Monthly Operating Reports requires that a listing of the cash received be attached as Exhibit C, no listing of such receipts or their source(s) is provided.

8. The Debtor/Debtor in Possession stated in response to the question that there are open bank accounts other than Debtor/Debtor in Possession account (*Id.*, ¶ 10), the Debtor/Debtor in Possession did not attach the required Exhibit B explaining why there were non Debtor/Debtor in Possession accounts.

9. Though the Debtor/Debtor in Possession checked the boxes in Section 8 that there are financial reports (such as profit and loss statement or balance sheet), Budget or projections, and Project, job costing, or work-in-progress reports, none are attached to the December 2023 Monthly Operating Report as required in Section 8.

B. January 2024 Monthly Operating Report; Dckt. 57.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.

2. Though stating under penalty of perjury on the December 2023 Monthly Operating Report that there was $3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of January 1, 2024, there was $0.00 of cash on hand. Dckt. 57; ¶ 19.

3. Debtor/Debtor in Possession then states that for January 2024 there were $3,900.00 in cash receipts, there were no disbursements, and that on January 31, 2024, there was $3,900.00 cash on hand. *Id.*; ¶ 20-23.

4. Debtor/Debtor in Possession then states that $5,000.00 in professional fees were paid in the month of January 2024. *Id.*; ¶ 28.

5. Debtor/Debtor in Possession projects that there will be $3,900.00 in cash receipts in February 2024, and also ($3,900.00) in disbursements, which will leave a February 29, 2024 net cash flow to start March 2024. *Id.* ¶¶ 32 - 37.

6. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was $3,950.00 in rental income and $0.00 in expenses. *Id.*; p. 4.

C. February 2024 Monthly Operating Report; Dckt. 58.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.

2. Though stating under penalty of perjury on the January 2024 Monthly Operating Report that there was $3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of March 1, 2024, there was $0.00 of cash on hand. Dckt. 57; ¶ 19.

3. Debtor/Debtor in Possession then states that $5,000.00 in professional fees were paid in the month of February 2024. *Id*.; ¶ 28.

4. For projections, in addition to projecting $3,900 in cash receipts in April 2024, the Debtor/Debtor in Possession also projects ($3,900) in disbursement in April 2024. *Id*.; ¶¶ 32-37.

5. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was $3,950.00 in rental income and $0.00 in expenses. *Id*.; p. 4.

Taken as stated by the Debtor/Debtor in Possession under penalty of perjury, as of February 29, 2024, there should have been $11,700.00 in cash being held by the fiduciary Debtor in Possession, not $0.00 as indicated by the fiduciary Debtor/Debtor in Possession.

On March 25, 2024, the counsel for the Debtor (in the upper left hand corner he is identified as "Attorney for Debtor Lafleur Way, LLC" and not the Debtor/Debtor in Possession) filed a Motion for Order Approving Trial Loan Modification. Dckt. 62. In the Motion, the Attorney for Debtor states that the Debtor is to make payments, and that the Debtor understands the modified loan terms, and that multiple "Debtors" (even though the sole debtor in this case is Lafleur Way, LLC) continue to meet all eligibility requirements of the modification program. Motion, ¶ 5, 8, 4; Dckt. 62.

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration "on behalf of" the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony "on behalf of" another entity). *Id*.; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

> 3. The subject real property is commonly known as 1078 La Fleur Way< [*sic*] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [*sic*] trial modification.
>
> [Second ¶ 3]
> 3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [*sic*] PHH, Mortgage.
>
> 4. That the first payment of $3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The exhibits are true and correct copies of the documents received from Plaza Home Mortgage. [Fn.1.]

FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.

In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

Looking at the exhibits provided by the Debtor/Debtor in Possession, the fiduciary to the Bankruptcy Estate, the court begins with the Letter from Plaza Home Mortgage which Mr. Dexter testifies that "I have been offered a trial loan modification from our lender Plaza Mortgage co / o PHH, Mortgage." [Fn.2.] The court summarizes or "quotes" the information provided in the Letter; Exhibit A, Dckt. 65 at 2-3; as follows:

A. The Letter, dated February 29, 2024, is addressed to "Carl Dexter" personally, and not to LaFleur Way, LLC via a managing member.

B. The Letter makes reference to a death and Mr. Dexter having acquired an ownership interest in the La Fleur Way Property.

C. A Death Certificate is required by the borrower's death.

D. If there is a deed transferring title to Carl Dexter, a copy of the deed so transferring title to Carl Dexter.

E. Spousal agreement documenting a non-probate transfer of community property.

F. Court order or decree documenting that no court proceedings are required for the transfer of title to Mr. Dexter.

G. Documentation if Carl Dexter acquired title through intestate succession.

H. Proof of Carl Dexter's identity.

There is nothing in this Letter indicating that anything is being done involving the Debtor Lafleur Way, LLC as the owner or with Lafleur Way, LLC, the fiduciary Debtor/Debtor in Possession.

FN. 2. From the plain language of Mr. Dexter's testimony under penalty of perjury, there appear to be multiple persons involved in this loan modification given that he states that Plaza Mortgage is "our lender."

Exhibit B (Dckt. 65 at 4-23) is identified as the Plaza Home Mortgage Trial Loan Modification. The provisions of the proposed Modification include (identified by page number on Dckt. 65):

A. The Loan Modification, dated February 22, 2024 (well after the transfer of the property to the Debtor), is addressed to "Frank Allen." Dckt. 65 at 4.

B. The Monthly Payment is to be $3,052.89. *Id*.

No reference is made to the Debtor, Lafleur Way, LLC in either of these two letters with respect to an offered loan modification.

Reference is made in the Letters to a Frank Allen, who appears to be stated by Carl Dexter to having been deceased. The court cannot identify any grant deed or other documents by which the La Fleur Way Property made its way from Frank Allen to Lafleur Way, LLC.

A Subchapter V plan has now been filed by the Debtor/Debtor in Possession, seeking to reorganize the Debtor's business operations. Dckt. 61. The court's initial observations regarding the Subchapter V Plan include:

A. Lafleur Way, LLC as the Debtor/Debtor in Possession advances this Plan.

B. Carl Dexter owns the Debtor, which is stated to be a "closely held corporation." Plan, p. 1:23-24; Dckt. 61.

In reality, as the court has pointed out previously, the Debtor and the Debtor/Debtor in Possession is a limited liability company, not a corporation.

C. It is stated that the 1078 LaFleur Way, Sacramento, California property is rented to "persons and 1 corporation." *Id.*; p. 1:27.

D. The Plan then states:

> Debtor filed the instant case, after the rights to the property just prior to foreclosure.

Id.; 2:1-2. While the court could guess what this sentence means to say, something like, "the Debtor was created on the eve of foreclosure, then had the Property transferred into it; and then filed this single real estate asset case to stop the foreclosure sale;" the court will not provide such editing services to the Debtor/Debtor in Possession, its managing member, and its counsel.

E. The Plan states that the "Debtor" has been approved for a trial loan modification. *Id.*; p. 3:15-16.

As shown by the evidence provided by the Debtor/Debtor in Possession, no trial loan modification has been offered to it, but apparently only personally to Carl Dexter, upon his documenting the death of Frank Allen and Carl Dexter acquiring title through the late Frank Allen.

F. Debtor has no creditors other than the creditor having a lien on the Real Property. *Id.*; p. 3:1-5.

G. Counsel for the Debtor/Debtor in Possession received no retainer and projects his fees to be $7,500.00 for this Subchapter V Case. *Id.*; p. 4:23-26.

H. Under the Plan, it is the Debtor/Debtor in Possession who must make the payments on the claim secured by the Real Property. *Id.*; p. 5:16-26.

I. Carl Dexter shall serve as the Chief Executive Office for the limited liability company Debtor/Debtor in Possession. *Id*.; p. 9:1-2.

It appears that the limited liability company Debtor/Debtor in Possession will have no managing member.

There is no financial information provided with the Subchapter V Plan, no projections of operations, or anything showing that the Debtor/Debtor in Possession can actually perform a Plan. As noted above, the Monthly Operating Reports are riddled with inconsistencies and Carl Dexter states under penalty of perjury on each that while the prior month ends with a cash balance of $3,900, that money has disappeared before the start of the next month.

It appears that mischief is afoot in this Bankruptcy Case. There are no loan modification documents relating to the fiduciary Debtor in Possession. The Monthly Operating Reports are grossly incorrect. One might begin to suspect that there is a fraud being committed on the court in violation of federal law.

From the February 28, 2024, Loan Modification Offer Letter to Carl Dexter (Exhibit B; Dckt. 65), it expressly states that Carl Debtor has stated to the Lender that Carl Dexter has obtained title to the 1078 La Fleur Way Property; and not the Debtor that was created to file this Bankruptcy Case.

Looking at Schedule A/B, Debtor/Debtor in Possession does not provide a description of the nature of the 1078 La Fleur Way Property. As shown on Schedule A/B, Debtor/Debtor in Possession is devoid of any personal property assets to care and maintain a property (which the court is being told is a rental property). The Debtor/Debtor in Possession appears to have no way to fund the mortgage payment, property taxes, property insurance, landlord insurance, repairs, maintenance, legal fees, and the like.

At the Status Conference, the Subchapter V Trustee and counsel for the Debtor reported that they are working together for the Debtor/Debtor in Possession to correct the issues in this case and move forward with prosecution of this Case. The Subchapter V Trustee stated that she believes a Plan (though not the one proposed by the Debtor/Debtor in Possession) is feasible in this Case.

The Status Conference is continued to 10:30 a.m. on April 18, 2024, to be heard in conjunction with the Motion for Authorization for Post-Petition Credit.

FEBRUARY 21, 2024 STATUS CONFERENCE

This Subchapter V case was filed by Lafleur Way, LLC on December 23, 2023. Dckt. 1. The Debtor is serving as the Debtor in Possession in this case. On February 13, 2024, the Debtor/Debtor in Possession filed a Status Conference Report. Dckt. 21. In the Report, the Debtor/Debtor in Possession states that it has conferred with the U.S. Trustee, and has contacted the Chapter 11 Trustee, and the Appointed Chapter 11 Trustee on January 4, 2024. *Id*., p. 1:25 - 2:2.

In reviewing the file, in this Subchapter V case, on January 4, 2024, U.S. Trustee filed the Notice of Appointment of Lisa Holder as the Subchapter V Trustee in this Case. Dckt. 9. No other "Chapter 11 Trustee" has been appointed in this case. The Debtor is serving as the Debtor/Debtor in Possession, exercising the powers of, and having the fiduciary duties of a Chapter 11 trustee. *See,* 11 U.S.C. § 1184.

On February 14, 2024, 53 days after this case was filed, the Debtor/Debtor in Possession filed a Motion to Use Cash Collateral. Dckt. 23. In the Motion the Debtor/Debtor in Possession states that in December 2023, Shareholder Carl Dexter bought the La Fleur Way Property. *Id*.; p. 1:36 - 2:6. Further, that Carl Dexter, who is said to be a "shareholder" of the Debtor collects the monthly rents, which total $3,775.00. It does not say that the Debtor purchased the Property or that he is collecting rents as a managing member or employee of the Debtor.

In the Motion, it is stated that the Debtor, not the Debtor/Debtor in Possession who is exercising the rights and has the fiduciary duties to the Bankruptcy Estate, seeks authority to spend the rent monies. The use is stated to be to maintain and preserve the ongoing value of the business (not making it clear whether it is the business of shareholder Carl Dexter, or a business that is property of the bankruptcy estate).

The Motion continues to seek authorization for the "Debtor," and not the fiduciary Debtor/Debtor in Possession to operate the business.

The Motion references Exhibit A, with is a 60 month budget.

Additionally, the "Debtor" seeks to grant replacement liens for the cash collateral that is used by the Debtor. No assets are identified in which the replacement liens are to be granted by the Debtor (not the fiduciary Debtor/Debtor in Possession).

A Declaration of Carl Dexter is provided in support of the Motion. Dckt. 26. In it, Mr. Dexter states that he is "the president and majority shareholder in La Fleur Way, LLC." *Id*., 1:19-20. It is not clear how a limited liability company has a "president" and shareholders.

In his Declaration, Mr. Dexter states testimony that conflicts what is alleged in the Motion. He states that the Debtor, and not Mr. Dexter, purchased the Property. *Id*. ps. 1:25 - 2:1.

In his Declaration, Mr. Dexter states that the "shareholders" of the Debtor collect the rents. *Id*. p. 2:11-14. He does not testify that it is the Debtor, or now the Debtor/Debtor in Possession collects the rents.

Mr. Dexter further testifies that he personally "manage[s] the property and I am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor's payment. *Id*. p. 2:18-20.

Mr. Dexter does not explain how he personally, and not the fiduciary Debtor/Debtor in Possession, is responsible for managing any property of the Bankruptcy Estate.

Review of the Filings and
Public Record of the California
Secretary of State

The California Secretary of State reports that Lafleur Way, LLC filed its initial documents with the Secretary of State on December 22, 2023, that its Status is Active, and that Carl Dexter is identified as Debtor's Agent. https://bizfileonline.sos.ca.gov/search/business.

On Schedule A/B Carl Dexter, as the "Manager" of the Debtor, states under penalty of perjury that as of the filing of this Case on December 23, 2023, the Debtor had no personal property and had only

one piece of real property it owned, 1078 La Fleur Way, Sacramento, California, which is valued at $950,000. Dckt. 1 at 9 - 12. On Amended Schedule D Carl Dexter states under penalty of perjury as the manger of the Debtor, that Debtor' only creditor with a secured claim is PHH Mortgage, with a ($550,449.95) claim secured by the La Fleur Way Property that is stated to have a $950,000 value.

On Schedule E/F Mr. Dexter, as Debtor's Manager, states under penalty of perjury that Debtor has no creditors with any unsecured claims.

This appears that this Chapter 11 Case was filed for a limited liability company created on December 22, 2023, into which the La Fleur Way Property was transferred into on December 22, 2024, and then the newly created limited liability company, the Debtor, was put into bankruptcy the next day, December 23, 2024. The sole asset of the Debtor that is in the Bankruptcy Estate is the La Fleur Way Property that was transferred to the Debtor the day before this Case was filed.

5. 23-24610-E-11 PGM-3 | **LAFLEUR WAY, LLC** | **MOTION TO APPROVE LOAN MODIFICATION**
Peter Macaluso | **3-25-24 [62]**

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 the Chapter 11 Subchapter V Trustee, creditors, and Office of the United States Trustee on March 25, 2024. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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 Approve Loan Modification is Denied.

The Motion to Approve Loan Modification filed by Lafleur Way, LLC ("Debtor/Debtor in Possession") seeks court approval for Debtor/Debtor in Possession to incur post-petition credit. Plaza Home Mortgage c/o PHH Mortgage ("Creditor") has agreed to a loan modification that will modify Debtor/Debtor in Possession's mortgage payment from the current $3,063.12 per month at 5.375% interest for 358 months to $3,052.89 per month at 5.375% interest for 480 months. Exhibit B, Docket 65 p. 7. The modification will defer principal in the amount of $170,518.67 and will mature on June 1, 2064. *Id.* at p. 8.

The Motion is supported by the Declaration of Carl dexter on behalf of Debtor/Debtor in Possession. Docket 64. The Declaration affirms Debtor's desire to obtain the post-petition financing.

Prior Discussion Re Loan Documents

At the April 4, 2024 Status Conference in this Case, the court reviewed this Motion and Supporting Documents, expressing some concern about the blurring of the lines between the pre-petition Debtor, the fiduciary Debtor/Debtor in Possession in this Subchapter V Case, and Carl Dexter, the

Responsible Representative for the Debtor/Debtor in Possession. The Civil Minutes from the April 4, 2024 Status Conference include the following on this point:

> On March 25, 2024, the counsel for the Debtor (in the upper left hand corner he is identified as "Attorney for Debtor Lafleur Way, LLC" and not the Debtor/Debtor in Possession) filed a Motion for Order Approving Trial Loan Modification. Dckt. 62. In the Motion, the Attorney for Debtor states that the Debtor is to make payments, and that the Debtor understands the modified loan terms, and that multiple "Debtors" (even though the sole debtor in this case is Lafleur Way, LLC) continue to meet all eligibility requirements of the modification program. Motion, ¶ 5, 8, 4; Dckt. 62.
>
> The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration "on behalf of" the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony "on behalf of" another entity). *Id*.; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:
>
> > 3. The subject real property is commonly known as 1078 La Fleur Way< [*sic*] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [*sic*] trial modification.
> >
> > [Second ¶ 3]
> > 3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [*sic*] PHH, Mortgage.
> >
> > 4. That the first payment of $3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The exhibits are true and correct copies of the documents received from Plaza Home Mortgage.
> > Fn.1.
>
> ---
> FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.
> ---
>
> In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.
>
> Looking at the exhibits provided by the Debtor/Debtor in Possession, the fiduciary to the Bankruptcy Estate, the court begins with the Letter from Plaza Home Mortgage which Mr. Dexter testifies that "I have been offered a trial loan modification from our lender Plaza Mortgage co / o PHH, Mortgage." Fn.2. The court summarizes or "quotes" the information provided in the Letter; Exhibit A, Dckt. 65 at 2-3; as follows:

A. The Letter, dated February 29, 2024, is addressed to "Carl Dexter" personally, and not to LaFleur Way, LLC via a managing member.

B. The Letter makes reference to a death and Mr. Dexter having acquired an ownership interest in the La Fleur Way Property.

C. A Death Certificate is required by the borrower's death.

D. If there is a deed transferring title to Carl Dexter, a copy of the deed so transferring title to Carl Dexter.

E. Spousal agreement documenting a non-probate transfer of community property.

F. Court order or decree documenting that no court proceedings are required for the transfer of title to Mr. Dexter.

G. Documentation if Carl Dexter acquired title through intestate succession.

H. Proof of Carl Dexter's identity.

There is nothing in this Letter indicating that anything is being done involving the Debtor Lafleur Way, LLC as the owner or with Lafleur Way, LLC, the fiduciary Debtor/Debtor in Possession.

FN. 2. From the plain language of Mr. Dexter's testimony under penalty of perjury, there appear to be multiple persons involved in this loan modification given that he states that Plaza Mortgage is "our lender."

Exhibit B (Dckt. 65 at 4-23) is identified as the Plaza Home Mortgage Trial Loan Modification. The provisions of the proposed Modification include (identified by page number on Dckt. 65):

A. The Loan Modification, dated February 22, 2024 (well after the transfer of the property to the Debtor), is addressed to "Frank Allen." Dckt. 65 at 4.

B. The Monthly Payment is to be $3,052.89. *Id*.

No reference is made to the Debtor, Lafleur Way, LLC in either of these two letters with respect to an offered loan modification.

Reference is made in the Letters to a Frank Allen, who appears to be stated by Carl Dexter to having been deceased. The court cannot identify any grant deed

or other documents by which the La Fleur Way Property made its way from Frank Allen to Lafleur Way, LLC.

The court appreciates that the April 4, 2024 Status Conference is only eleven (11) days prior to the court's review of the Docket on April 15, 2024 in preparing the ruling on this Motion. However, no updated documents or further supportive pleadings have been filed by the Debtor/Debtor in Possession.

RULING

The Debtor/Debtor in Possession has provided the court with documents from the lender for which "Mortgagor(s): Allen Frank,. . . " is to provide his contact information. Exhibit A, Plaza Home Mortgage Acknowledgment letter; Dckt. 65. As noted above, the letter to which the contact confirmation is attached is dated February 28, 2024. It states that "Carl Dexter" contacted the lender "indicating you acquired an ownership interest in the "La Fleur Way" property." *Id*., first paragraph of the letter. It then provides condolences to Mr. Dexter "for the loss of your loved ones." *Id*. It then states that Mr. Dexter has represented to the lender that Mr. Debtor is the successor interest to their borrower.

Recent Bankruptcy Filings
by a Frank Allen

A review of the court's files show that a Frank Allen has filed two recent Chapter 13 cases that were dismissed in the past six months. The court provides the following summary of these two cases.

A. Chapter 13 Case; 23-22632

1. Filed.....August 7, 2023
2. Dismissed.....August 25, 2023

3. Address of Debtor Frank Allen Listed on the Petition

1078 LaFleur Way
Sacramento, California 95831

23-22623; Petition, § 5, at 2.

4. The first Chapter 13 Case was dismissed on August 25, 2023, due to the failure of Frank Allen to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and related documents.

B. Chapter13 Case; 23-23659

1. Filed.....October 16, 2024
2. Dismissed.....November 3, 2023

3. Address of Debtor Frank Allen Listed on the Petition

1078 LaFleur Way
Sacramento, California 95831

23-22659 Petition, § 5, at 2.

4. The second Chapter 13 Case was dismissed on November 3, 2023, due to the failure of Frank Allen to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and related documents.

Filing of Current Chapter 11 Case

The Chapter 11 Petition was filed in this case for the Debtor Lafleur Way, LLC on December 23, 2023.

On the Amended Statement of Financial Affairs, the Debtor states having $1,000 in income for the prior years operation. Stm Fin Affairs, Question 1; Dckt. 30 at 2.

Counsel for the Debtor, who has now been authorized to represent the Debtor/Debtor in Possession fiduciary in this case, states that Counsel received $5,000.00 on December 22, 2023 for legal service provided with respect to this case. *Id*.; Question 11. It states that the money was paid to Counsel from "Carl Dexter/Arbitrage, LLC."

As the court discusses in the Minutes from the April 4, 2024 Status Conference (Dckt. 69), the February 2024 Monthly Operating Reports shows that the Debtor/Debtor in Possession had $0.00 of cash as of March 1, 2024. In the Monthly Operating Reports filed for January and February 2024, the Debtor in Possession states it has $3,900 in monthly receipts, $0.00 in expenses, and has $0.00 cash. Dckts. 57, 58.

In the Monthly Operating Reports the Debtor/Debtor in Possession then provides conflicting information as to there being ($3,900) of cash disbursements each month that exhausts all receipts. But then on the last page of the January and February 2024 Monthly Operating Reports is a ledger statement for each month stating that the Debtor/Debtor in Possession had $3,950.00 in Rental Income and $0.00 in Expenses. *Id*.

Declaration of Carl Dexter

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration "on behalf of" the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony "on behalf of" another entity). *Id*.; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

> 3. The subject real property is commonly known as 1078 La Fleur Way< [*sic*] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [*sic*] trial modification.
>
> [Second ¶ 3]
> 3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [*sic*] PHH, Mortgage.
>
> 4. That the first payment of $3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The

exhibits are true and correct copies of the documents received from Plaza Home Mortgage. [Fn.1.]

FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.

In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

Review of Subchapter V Plan

The Subchapter V Plan provides the following information about this Debtor and the plan of how this Bankruptcy Case will be prosecuted. This information includes:

A. Lafleur Way, LLC as the Debtor/Debtor in Possession advances this Plan.

B. Carl Dexter owns the Debtor, which is stated to be a "closely held corporation." Plan, p. 1:23-24; Dckt. 61.

In reality, as the court has pointed out previously, the Debtor and the Debtor/Debtor in Possession is a limited liability company, not a corporation.

C. It is stated that the 1078 LaFleur Way, Sacramento, California property is rented to "persons and 1 corporation." *Id.*; p. 1:27.

D. The Plan then states:

> Debtor filed the instant case, after the rights to the property just prior to foreclosure.

Id.; 2:1-2. While the court could guess what this sentence means to say, something like, "the Debtor was created on the eve of foreclosure, then had the Property transferred into it; and then filed this single real estate asset case to stop the foreclosure sale;" the court will not provide such editing services to the Debtor/Debtor in Possession, its managing member, and its counsel.

E. The Plan states that the "Debtor" has been approved for a trial loan modification. *Id.*; p. 3:15-16.

As shown by the evidence provided by the Debtor/Debtor in Possession, no trial loan modification has been offered to the Debtor/Debtor in Possession, but apparently only personally to Carl Dexter, upon his documenting the death of Frank Allen and Carl Dexter acquiring title through the late Frank Allen.

F. Debtor has no creditors other than the creditor having a lien on the Real Property. *Id.*; p. 3:1-5.

G. Counsel for the Debtor/Debtor in Possession received no retainer and projects his fees to be $7,500.00 for this Subchapter V Case. *Id*.; p. 4:23-26.

H. Under the Plan, it is the Debtor/Debtor in Possession who must make the payments on the claim secured by the Real Property. *Id*.; p. 5:16-26.

I. Carl Dexter shall serve as the Chief Executive Office for the limited liability company Debtor/Debtor in Possession. *Id*.; p. 9:1-2.

There is no financial information provided with the Subchapter V Plan, no projections of operations, or anything showing that the Debtor/Debtor in Possession can actually perform a Plan. As noted above, the Monthly Operating Reports are riddled with inconsistencies and Carl Dexter states under penalty of perjury on each that while the prior month ends with a cash balance of $3,900, that money has disappeared before the start of the next month.

Looking at Schedule A/B, Debtor/Debtor in Possession does not provide a description of the nature of the 1078 La Fleur Way Property. As shown on Schedule A/B, Debtor/Debtor in Possession is devoid of any personal property assets to care and maintain a property (which the court is being told is a rental property). The Debtor/Debtor in Possession appears to have no way to fund the mortgage payment, property taxes, property insurance, landlord insurance, repairs, maintenance, legal fees, and the like.

Denial of the Motion

The Debtor/Debtor in Possession has not presented the court with any proposed loan modification agreement to which the Debtor/Debtor in Possession is a party. Even if it did, the Debtor/Debtor in Possession has documented that it has no revenues or cash monies to pay any such obligation.

The Motion states that the Debtor, not the Debtor/Debtor in Possession, is to make $3,052.89 monthly payments under the Trial Loan Modification. There is no evidence that the Debtor/Debtor in Possession can make such payments.

The Motion is denied. [Fn.1.]

FN. 1. In reviewing the court's files, several prior bankruptcy filings by a "Carl Dexter" have been identified. These are:

A. Chapter 13 Case; 09-23601

1. Debtor....."Carl Dexter"
2. Filed.....March 2, 2009
3. Dismissed.....April 7, 2009

a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 09-23601; Mtn., Dckt. 11.

b. That debtor "Carl Dexter" requested the dismissal of his Chapter 13 case. *Id*.; Dckt. 17.

4. On the Petition, debtor "Carl Dexter" listed his street address as:

1078 La Fleur Way
Sacramento, CA.

Id.; Dckt. 1.

B. Chapter 13 Case; 08-36063

1. Debtor....."Carl Dexter"
2. Filed.....November 3, 2008
3. Dismissed.....December 18, 2008

a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-36063; Mtn., Dckt. 11.

4. On the Petition, debtor "Carl Dexter" listed his street address as:

1078 La Fleur Way
Sacramento, CA.

Id.; Dckt. 1.

C. Chapter 13 Case; 08-31041

1. Debtor....."Carl Dexter"
2. Filed.....August 8, 2008
3. Dismissed.....August 21, 2008

a. Chapter 13 Trustee moved to dismiss the case for failure of "Carl Dexter" to fil Schedules, Statement of Financial Affairs, Chapter 13 Plan and other required documents. 08-31041; Mtn., Dckt. 9.

b. That debtor "Carl Dexter" requested the dismissal of his Chapter 13 case. *Id*.; Dckt. 14.

4. On the Petition, debtor "Carl Dexter" listed his street address as:

1076 La Fleur Way
Sacramento, CA.

Id.; Dckt. 1.

The "Carl Dexter" debtor in the three cases from 2008 and 2009 filed and prosecuted those cases in *pro se*.

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 Loan Modification filed by Lafleur Way, LLC ("Debtor/Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is Denied.

6.	**23-23523-E-7 DNL-3 6 thru 7**	**THE RETREAT AT ROYAL GREEN, LLC. Peter Macaluso**	**CONTINUED MOTION TO CONSOLIDATE LEAD CASE 23-23523 WITH 23-23834 3-7-24 [43]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Substantively Consolidate Case no. 23-23523 with Case no. 23-23834 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 Substantively Consolidate Case No. 23-23523 with Case No. 23-23834 is granted, with the Substantive Consolidation effective as of the October 5, 2023 filing of Case No. 23-23523.~~

Nikki Farris, the Chapter 7 Trustee ("Chapter 7 Trustee") in the Retreat at Royal Green, LLC Bankruptcy Case, 23-23523, ("RRG Bkcy," "Debtor RRG") and the Chapter 7 Trustee in the Antonette Tin Bankruptcy Case, 23-23834, ("Tin Bkcy," "Debtor Tin") it having recently been converted from Chapter 13 to Chapter 7, has filed Motions to Substantively Consolidate the two bankruptcy cases. The court issues this consolidated Ruling that will be filed in both the RRG Bkcy and Tin Bkcy Cases.

The Chapter 7 Trustee moves this court for an order substantively consolidating the related bankruptcy cases of the Retreat at Royal Green, LLC, case no. 23-23523 (with Antonette Tin's personal Chapter 7 case, case no. 23-23834. The Chapter 7 Trustee moves this court on the following grounds (the court consolidating the grounds stated in both the RRG Bkcy, Dckt. 43; and the Tin Bkcy Motion, Dckt. 107):

1. Debtor Tin is a 100% owner of Debtor Retreat at Royal Green, LLC. RRG Mtn., ¶ 4; Tin Bkcy Mtn., ¶ 4. (In citing to the Motions here, when using *"Id*.," the court is citing to both motions and identifying the paragraph

numbers in each. If it does not apply to both Motions, the court will specifically identify the motion by debtor.)

2. Debtor Tin, through four separate legal entities,(and now her Chapter 7 Bankruptcy Estate) is the 100% owner, operated four elder-care homes prepetition. These separate entities in which the four elder-care homes were operated are identified as:

   a. The Retreat at Royal Green, LLC (which has ceased operations);

   b. Precious Angels Care, Inc. (which has ceased operations);

   c. The Retreat at Sky Lake, LLC; and

   d. The Retreat at Greenhurst, LLC.

Id. at ¶¶ 6.

3. These four companies are all tax pass-through entities. *Id.*, ¶¶ 5, 6. All tax attributes, liabilities, and benefits flowed through the Debtor Tin.

4. For the tax years 2019 through 2022, Debtor RRG issues K-1's to Debtor Tin reflecting an annual profit on gross receipts of more than $300,000. In reviewing the records, Debtor Tin's "draws" during the 2019 through 2022 period aggregated $114,000. *Id*. ¶¶ 7.

5. During the period 2018 through 2023, Debtor Retreat at Royal Green, LLC transferred over $300,000 to Debtor Tin's mother, Erlinda Lynch. These transfers are identified as being pursuant to an acquisition agreement ("Start-Up Agreement") and long term lease for the property on which Debtor RRG operated one of its facilities. *Id*., ¶¶ 7.

6. Debtor Tin and her spouse, Exequiel Allan Fernando ("Fernando") have three adult children (collectively "children"). *Id*. ¶¶ 8.

7. Debtor Tin is the sole settlor and trustee of the 2018 Antonette Butlig Tin Trust ("Tin Trust"). The Trust declaration for the 2018 Tin Trust includes:

   a. It is irrevocable;

   b. It is planning for Debtor Tin's "estate with long term medical planning taken into consideration;" and

   c. The Tin Trust Res shall be distributed to the Children upon Debtor Tin's death.

Id. ¶¶ 9

8. Debtor Tin's 2018 Trust was settled on September 24, 2018, shortly after two former employees ("Judgement Creditors," POC 1-1) at the Retreat at Royal Green, LLC filed suit for money damages for labor law violations. *Id*.

9. Debtor RRG directly paid the attorney who prepared the Tin Trust for those legal services. *Id*.

10. Fernando is the first successor trustee of the Tin Trust. *Id*.

11. On September 24, 2018, Debtor Tin transferred her interest in 8983 Richborough Way, a single-family residence converted for Precious Angel Care's use as a care home, to the Tin Trust. On July 6, 2020, Tin transferred her interest in 779 Skylake Way, a single-family residence converted for the Retreat at Sky Lake's use as a care home, to the Tin Trust. *Id.*

12. Debtor Tin is also the sole trustee of the Ra Coronel Family Trust ("RAC Trust"), settled by Debtor Tin's stepfather. The RAC Trust was also devised as irrevocable, and debtor Tin was the beneficiary. The RAC Trust was funded by the real property known as 8865 Haflinger Way. When the settlor passed away on April 13, 2021, title in the Haflinger property was transferred to Debtor Tin. *Id.* at ¶¶ 10.

13. Debtor Tin's husband, Exequiel Fernando, settled his own trust in 2018, titled the 2018 Exequiel Allan Fernando Trust ("EAF Trust"). This trust, also irrevocable, was funded by Mr. Fernando's interest in the real property known as 986 Greenhurst Way. The Greenhurst Way Property was purchases by Fernando in 2016. *Id.* at ¶¶ 11.

14. Debtor Tin and her Mother, Lynch, are also co-trustees of the EBL Family Trust ("EBL Trust"). Lynch transferred her interest in the property known as 865 Royal Green avenue to the EBL Trust on April 26, 2017. Debtor RRG operates the care facility on this real property. Lynch also transferred her interest in 9076 Nature Trail Way to the EBL Trust in 2017. *Id*., ¶¶ 12.

15. Each of the properties on which Debtor Tin's companies operate the respective business are:

Business	**Care Home Property**	**Trust**
Debtor RRG	865 Royal Green Avenue	EBL Trust
PAC	8983 Richborough Way	Tin Trust
Skylake	779 Skylake Way	Tin Trust
Greenhurst	986 Greenhurst Way	EAF Trust

Id., ¶¶ 13.

16. The Debtor RRG commenced on October 5, 2023, its voluntary Chapter 7 business liquidation Case and Debtor Tin commenced on October 27, 2024 her Chapter 13 restructure case using the same bankruptcy counsel. Both Debtor RRG and Debtor Tin used the same counsel to file their respective bankruptcy cases. *Id*., ¶¶ 14.

17. In Debtor Tin's Case, a $525,000 homestead exemption has been claimed by Debtor Tin in the 8993 Richborough Property, which title she holds as trustee of the Tin Trust. The Chapter 7 Trustee disputes the claim of the homestead exemption on several grounds, including that the transfer of Debtor's interest is a voidable voluntary transfer. *Id*.

18. The Chapter 7 Trustee states that the RRG Case and the Tin Case were precipitated by the enforcement of a state court judgment, entered on December 2, 2022, in favor of the Judgment Creditors against both Debtor RRG and Debtor Tin, whose respective liability is joint and several as to the entire amount. Pursuant to identical proofs of claim filed as 1-1 in the RRG Bankruptcy Case and 3-3 in the Tin Bankruptcy Case, the Judgment Creditors asserted the amount of the obligation to be about $1.3 million. *Id*. at ¶¶ 15.

19. Lynch is the only other person who as filed a proof of claim in the RRG Bankruptcy Case, asserting a $359,000 claim based on the Start Up Contract and Lease. *Id*. ¶¶ 15. [POC 2-1 has been filed by Lynch in the RRG Bankruptcy Case.]

20. In the Tin Bankruptcy Case, besides the Proof of Claim filed by the Judgment Creditors, there are approximately ($81,000) in priority claims and ($111,000) in general unsecured claims. *Id*.

21. The Chapter 7 Trustee states that the Judgment Creditors asserts that Debtor RRG, and now the bankruptcy estate, have a malpractice claim of approximately $610,000 against its former defense attorneys that relates to post-judgment enhancements. *Id*., ¶¶ 16.

22. Commencing in September 2018, substantially all of Debtor Tin's real property was moved into the Tin Trust and all Retreat at Royal Green, LLC's spare cash, about $150,000 to Debtor Tin as profits and about $270,000 to Ms. Lynch. Retreat at Royal Green, LLC 's statement of financial affairs understated profits paid to Debtor Tin and omitted altogether rents paid to Ms. Lynch. The Chapter 7 Trustee contends that the portion of those transfers used by Debtor Tin and Ms. Lynch to hold and maintain real property held by the trusts is avoidable and recoverable against same, including each of the four Care Home Properties, 8865 Haflinger Way and 9706 Nature Trail Way (collectively "Trust Real Properties"). *Id.*, ¶¶ 18.

23. Judgment Creditors have provided the Chapter 7 Trustee with a copy of the judgment as recorded in Sacramento County on December 5, 2022, a J-1 judgment lien notice filed with the Secretary of State on December 7, 2022, a rent assignment and restraining orders served on June 30, 2023, and orders to appear for examination served on August 11, 2023. *Id*., ¶¶ 19. The Chapter 7 Trustee asserts that the judgment lien that arose upon service of the examination order is a voidable preference.

24. Judgment Creditors commenced on December 6, 2022, a second state court action to avoid real and personal property transfers by the judgment debtors, including transfers of real properties into the trusts. The Chapter 7 Trustee has removed that action to this Bankruptcy Court. *Id*., ¶¶ 20. The Chapter 7 Trustee asserts that the relief sought by the Judgment Creditors is relief that the Chapter 7 Trustee will now be prosecuting. *Id*.

25. The Chapter 7 Trustee states that the principal assets of the Debtor RRG bankruptcy estate are litigation rights based on the: (a)transfers to Ms. Lynch aggregating about $300,000; (b) transfers to Debtor Tin aggregating about $150,000; and (c) loss of goodwill against Ms. Lynch and Debtor Tin for the cash drain that caused Retreat at Royal Green, LLC to close its doors. The Retreat at Royal Green, LLC estate may also have: (d) an equitable interest in 865 Royal Green Avenue pursuant to a joint venture or similar theory; and (e) a potential malpractice claim based on the $670,000 post-judgment enhancements. *Id.*, ¶¶ 25.

26. The Chapter 7 Trustee states that the principal assets of the Debtor Tin bankruptcy estate are litigation rights based on the: (a) transfers to the Tin Trust of her interest in 8983 Richborough Way and 779 Skylake Way; (b) transfers to the EAF Trust of the community's interest in the funds used to purchase and hold 986 Greenhurst Way; and (c) transfers of about $1 million in funds received from the Holding Companies for which the Judgment Creditors contend Debtor Tin has failed to account. The Debtor Tin estate also has: (a) an interest in 8865 Haflinger Way; and (b) Greenhurst and Skylake, the two remaining Holding Companies that continue to operate care home businesses. *Id.* at ¶ 26.

27. The operations of debtor Tin and the operations of Debtor Retreat at Royal Green, LLC were excessively entangled to the extent that consolidation will benefit all creditors. *Id.* at p. 7:21-23.

28. Judgment Creditors assert their claim in both the Individual Case and the Business Case because both debtor Tin and Debtor Retreat at Royal Green, LLC were found jointly and severally liable. Another factor the court should consider is whether creditors deal with different debtors as a single economic unit, which is present here. *Id.* at ps. 7:24-8:2.

29. It would be most cost efficient to substantively consolidate the cases as well, avoiding duplicative administrative expenses in running two separate cases. *Id.* at p. 8:10-13.

In paragraphs 24 of the respective Motions the Chapter 7 Trustee states that a Stipulation for Substantive Consolidation has been executed by the Chapter 7 Trustee, Debtor RRG, Debtor Tin, and the Judgment Creditors. The Stipulation is attached as Exhibit D in support of each of the two Motions. RRG Bkcy, Dckt. 109; Tin Bkcy, Dckt. 45. After a brief recitation of facts relating to the filing of the bankruptcy cases, the Judgement Creditors obtaining their State Court Judgment, and the avoidance action that has been removed, the terms of the Stipulations; *Id*., p.2:2-5; are quite simple:

A. The [Tin Bankruptcy] Case and [RRG Bankruptcy] Case shall be substantively consolidated retroactive to October 4, 2024,with the [Chapter 7] Trustee retaining avoiding powers in order to allow the [Chapter 7] Trustee to attack voluntary and involuntary transfer of property of the Debtors pursuant to applicable bankruptcy and non-bankruptcy law.

In the Motions the Chapter 7 Trustee argues that it is proper for this court to exercise its general equitable powers; as set forth in *In re Bonham*, 229 F.3d. 750, 763 (9th Cir. 2000); to substantively consolidate the cases, provide that the Chapter 7 Trustee's avoiding powers date back to the filing of the RRG Bankruptcy Case on October 5, 2023 (the first case filed), to allow for the unified addressing of these debts and obligations arising out of what the Chapter 7 Trustee identifies as a "single economic unit" – the operations of the four care facilities. Motions, p. 7:16-8:2. The Chapter 7 Trustee provides the following summary of the application of the grounds to the law (as reorganized by the court):

1. Judgment Creditors assert 100% of non-insider claims in the RRG Bankruptcy Case and 90% of the non-insider claims in the Tin Bankruptcy Case.

2. Judgment Creditor's $1.3 Million judgment is one on which Debtor RRG and Debtor Tin are jointly and severally liable, and arise out of operation of the care facility.

3. Lynch's claim is asserted to be based on obligation for starting up and the operation of such care facility operated by Debtor RRG and Debtor Tin.

The Chapter 7 Trustee asserts that the competing enforcement of judgment liens against Debtor RRG's and Debtor Tin's assets by the Judgment Creditors weighs in favor of such substantive consolidation to allow both estates to effectively pursue recovery of fraudulent transfers, objecting to claims, and providing for recovery of assets for the consolidated bankruptcy estate.

The Chapter 7 Trustee submits her own Declaration in support of the Motion, authenticating the facts alleged. Declarations; RRG Bkcy, Dckt. 46, and Tin Bkcy, Dckt. 110. In her testimony the Chapter 7 Trustee disputes the validity of the Start Up Contract and the Lease. The Chapter 7 Trustee notes that Tin never listed Lynch, her mother, as having any claims against either Debtor Tin or Debtor RRG. *Id*., ¶¶ 8-9. (The Chapter 7 Trustee states that Lynch has now withdrawn Proof of Claim 24-1 in the Tin Bankruptcy Case.) The Chapter 7 Trustee's testimony includes repeating allegations made in the Motions.

The Chapter 7 Trustee has filed as exhibits Ms. Lynch's proof of claim in this case, Proof of Claim 2-1, and the proof of claim in the Individual case, Proof of Claim 24-1, as well as the 341 Transcript. Exhibits A-C; RRG Bkcy, Dckt. 45, and Tin Bkcy, Dckt. 109.

NO OPPOSITION TO MOTION TO CONSOLIDATE FILED BY ANY PARTY IN INTEREST

The Chapter 7 Trustee's Motion to Consolidate this Case with the related case of Antonette Tin was filed on March 7, 2024. Dckt. 43. This Motion was filed and Noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1), for which opposition, if any, was required to be filed by March 25, 2024. Ntc. of Hrg.; Dckt. 44.

No opposition has been filed as of the court's April 12, 2024 review of the Docket.

As stated above, Debtor RRG, Debtor Tin, and the Judgment Creditors have stipulated to the substantive consolidation.

APPLICABLE LAW

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be "dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . The power to consolidate substantively is derived from the court's general equitable powers as set forth in section 105. . ." *Id.* at ¶ 1015.02[3]. The court is also aware that "[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation." *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*, 229 F. 3d 750, 763 (9th Cir. 2000) ("The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898."). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, "[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that "in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause." *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

The first factor is satisfied when the record shows "lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *Id.* (internal quotations omitted). The second factor is met when "the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible." *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.
>
> (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.
>
> > (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.
> >
> > . . .
>
> (d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.
>
> (e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

DISCUSSION

As asserted by the Chapter 7 Trustee, the 800 Pound Creditor Gorilla in these two bankruptcy cases are the Judgment Creditors holding the joint and several liability judgment for $1,3000,000 that constitutes 100% of non-insider claims in the RRG Bankruptcy Case and 90% of the non-insider claims in the Tin Bankruptcy Case. The Judgment Creditors assert judgment liens on the property of both Debtor RRG and Debtor Tin.

Review of Tin Bankruptcy Case and Creditors

In the Tin Bankruptcy Case, Debtor Tin listed her creditors on Schedule E/F (Dckt. 1) as being:

1. Priority Unsecured Claims

a. Franchise Tax Board.....($5,000)

b. IRS.....($45,000)

(1) IRS Proof of Claim 23-1 is filed in the Tin Bankruptcy Case in the amount of ($82,235.25), of which ($78,035.38) is claimed as a priority.

2. General Unsecured Claims

a. Judgment Creditors

(1) ($191,121.48) - Disputed
(2) ($672,096.17)

b. Credit Cards (various creditors) in the following amounts (rounded by the court):

(1) ($15,289)
(2) ($ 1,364)
(3) ($ 5,673)
(4) ($ 1,808)
(5) ($ 952)
(6) ($ 4,306)
(7) ($ 9,945)
(8) ($10,964) - Home Depot/Citibank
(9) ($ 809)
(10) ($ 339) - Collection Attorney
(11) ($ 309)
(12) ($ 474) - Dental
(13) ($ 677)
(14) ($ 767)
(15) ($ 143)
(16) ($ 6,000)
(17) ($ 1,364) “West Elm”

For Debtor Tin, with respect to unsecured claims, she shows very modest unsecured debt.

On Schedule D, Debtor Tin lists creditors having secured claims for which there are liens encumbering the real properties at which the care facilities were operated and several other assets. Tin Bkcy, Dckt. 1 at 23- 25. These secured claims are listed as:

1. Care Facility Properties

a. Select Portfolio Servicing...($299,724)...Richborough Property
b. Wells Fargo Home Mtg.....($474,004)...Skylake Way Property

2. Other Real Property

    a. Fifth Third Bank.....($511,766).....Haflinger Way Property

    b. SM Development.....($122,736).....Philippines Property

3. Vehicles

    a. Wells Fargo Dealer Services....(76,536)....2021 Tesla

On Amended Schedule A/B filed on November 28, 2023; Tin Bkcy, Dckt. 21; Debtor Tin states having interests in the following real properties:

1. 8866 Haflinger Way

    a. Debtor only has an interest.
    b. It is community property.

2. 8993 Richborough Way

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee, Equitable Interest."

3. 779 Skylake Way

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee."
    d. "Transfer by Quitclaim 9/20/18[,] The 2018 Antonette Butlig Tin Trust 8/11/20."

On the Second Amended Schedule A/B filed on February 26, 2024; Tin Bkcy, Dckt. 84; Debtor Tin adjusted the statements of interests for these three properties, stating:

1. 8866 Haflinger Way Property

    a. Debtor only has an interest.
    b. Joint Tenant.

Debtor removed the statement that this is community property, but continues to state that only she has an interest in the property, notwithstanding now saying that she has a "Joint tenant" interest.

2. 8993 Richborough Way Property

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee, Equitable Interest."

While making this with a "C" (indicating a change), it appears to be the same on the earlier filed Amended Schedule A/B. It appears that this is a mere clerical error, with the "C" intended to be for the Haflinger Way Property.

3. 779 Skylake Way Property

   a. Debtor only has an interest.
   b. It is community Property.
   c. Debtor's interest is "Co-Trustee."
   d. "Transfer by Quitclaim 9/20/18[,] The 2018 Antonette Butlig Tin Trust 8/11/20."

No change with respect to the Skylake Way Property.

Proofs of Claims Filed in Tin Bankruptcy Case

A review of the Proofs of Claim filed in the Tin Bankruptcy Case provide a little more information about the nature of the claims in that case. The court summarizes the proofs of claim filed as follows:

1. Proof of Claim 1-1 - Unsecured

   a. Creditor.....Wells Fargo Bank Small Business Lending Division
   b. Acct 9845
   c. Money Loaned.....($14,711)
   d. Statement sent to Precious Angels Care
      Antonette B. Tin, Haflinger Way Property

2. Proof of Claim 4-1 - Unsecured

   a. Creditor.....Wells Fargo Bank Small Business Lending Division
   b. Acct 4534
   c. Money Loaned.....($13,168)
   d. Statement sent to Precious Angels Care
      Antonette B. Tin, Haflinger Way Property

3. Proof of Claim 23-1 - Priority Unsecured

   a. Creditor.....IRS
   b. Priority.....($78,035)
      (1) FICA (payroll) Tax.....($31,170)
      (2) Income Tax.....($46,300)

4. Proof of Claim 21-1 - Unsecured

   a. Creditor.....Bank of America
   b. Unsecured.....($14,289)
   c. Attachment to POC.....Business Credit Card Agreement

5. Proof of Claim 22-1 - Unsecured

   a. Creditor.....Bank of America
   b. Unsecured.....($7,747.63)
   c. Attachment to POC.....Business Advantage Credit Card, the Retreat Skylake, LLC

6. Proof of Claim 24-1, Withdrawn February 23, 2024

   a. Creditor.....Erlinda Lynch (Debtor's Mother)
   b. Signed and Filed by.....Counsel for Lynch
   c. Unsecured Claim .....($174,938)
   d. Rent and Operating Funds
   e. Face of Lease and Agreement identify Retreat at Royal Green, LLC as the obligor.

Above are ($81,085) of other unsecured claims that appear to relate to the operation of the care facility business, such as Debtor RRG. It appears that even Debtor's Mother, Erlinda Lynch, was "confused," and she and her attorney were asserting that Debtor Tin was personally liable for the Debtor RRG claims.

The general unsecured claims filed that do not make reference to business operation total approximately ($58,849). This is only 72% of the general unsecured claims filed that are clearly identified as being related to the business, without taking into account the $1,300,000 Judgment Creditors Claim and the secured claims for the business real property.

Review of RRG Schedules and Claims Filed

On Amended Schedule E/F filed by Debtor RRG, it lists Judgement Creditors as having an undisputed judgment for ($1.00), and for Michael Harrington, Esq., Judgment Creditors Attorney, as having an undisputed claim for ($183,246). Debtor RRG then also lists Michael J. Harrington, Esq., as having an unliquidated, disputed claims, subject to offset, for ($490,577). Finally, Bank of America is listed as having an undisputed unsecured claim in the amount of ($14,000). RRG Bkcy; Dckt. 19.

On Schedule A/B, Debtor RRG states that it has no personal property other than $500 of office furniture and equipment; $3,500 of furniture, refrigerator, washer, and dryer; and $103 in bank accounts. Debtor RRG states that it has no interests in any real property. RRG Bkcy; Dckt. 1.

On Schedule G, Debtor RRG states that it has a 30 year lease with "EBL Family Trust, 865 Royal Green Ave, Sacramento, California." *Id*. at 16.

On Schedule H Debtor RRG lists Debtor Tin as being a co-debtor on the obligations owed to the Judgment Creditors, Judgment Creditors attorney, and the EBL Family Trust. *Id*. at 17.

On the Statement of Financial Affairs Debtor RRG lists having made payments to Debtor Tin, as an insider, totaling $20,342. *Id*. at 19. Nothing is stated for any payments having been made to the EBL Family Trust or to Erlinda Lynch (Debtor Tin's Mother) for any rent or other obligations in the year preceding the filing of the bankruptcy case.

Erlinda Lynch has attached to her Proof of Claim 2-1 filed in the RRG Bankruptcy Case copies of checks written by Debtor RRG during the one year period from October 5, 2023 filing of the RRG Bankruptcy Case back to October 5, 2022:

Date of Check	For Line	Amount (court rounded)
November 9, 2022	"Nov. 2022 Rent pd."	$5,000
January 2, 2023	"Jan rent pd."	$4,000
February 1, 2023	"Feb rent pd."	$4,000
February 28, 2023	"March rent pd."	$4,000
March 11, 2023	"Apr rent pd."	$4,000
July 9, 2023	"July Rent pd."	$4,000
September 11, 2023	"Pd."	$2,900

The above checks are part of an attachment to Proof of Claim 2-1 dating from March 15, 2018 to September 11, 2023. The images of the backs of the checks are not provided with the attachment.

Substantive Consolidation of the Tin Bankruptcy Case and RRG Bankruptcy Case is Proper

In this case, the court does have enough evidence to find that substantive consolidation of the Business Case and the Individual Case is warranted. The court does not have to rely on just the Stipulation that substantive consolidation is proper.

In applying the first factor in the test set forth in *Bonham*, the court concludes that the vast majority of creditors have dealt with Debtor Tin and Debtor RRG as a single economic unit. As shown from a review of the Schedules and Claims filed, all but ($58,849) of the unsecured claims in the Tin Bankruptcy Case could relate only to Debtor Tin's non-business operations. While there is a secured claim for Debtor Tin's Tesla, it's ($75,375) amount; Tin Bkcy POC 2-1; is not in the same league as the ($1,300,000) asserted secured claim if Judgment Creditors; *Id*., POC 3-3; the ($471,304) secured claim (the 779 Skylake Way care facility as collateral); *Id*., POC 9-1; and the ($296,028) secured claim (the 8983 Richborough way property as collateral).

There is Proof of Claim 11-1 for a secured claim of Fifth Third Bank in the amount of ($504,326) that is secured by the 8865 Haflinger Way Property, which Debtor Tin states is her residence. The Note attached to Proof of Claim 11-1 is dated January 19, 2022, and is signed by Debtor Tin and her Spouse Fernando. While this may be a significant personal residential debt (the Chapter 7 Trustee stating that this is the property that Debtor Tin inherited from her father's trust), it does not tip the scales in number or dollar amount from the creditors who dealt with both Debtor Tin and Debtor RRG as being one "business debtor."

As noted above, until the February 23, 2024 withdrawal of her Proof of Claim 24-1 in the Tin Bankruptcy Case, Debtor Tin's own mother, Erlinda B. Lynch and Lynch's attorney, asserted that the debt of Debtor RRG was a debt of Debtor Tin.

Regarding the second factor as set forth in *Bonham*, the court must find that the affairs of the debtor are so entangled that consolidation will benefit all creditors. The Chapter 7 Trustee argues,

> Tin appears unable to timely and accurately disclose and justify financial dealings between herself, RRG, and Lynch. Ultimate resolution of the disputes will be further complicated by: (a) the competing enforcement of judgment liens asserted by the Judgment Creditors against substantially all the Debtors' property; and (b) navigating the different treatment of an estate that is a pass-through taxpayer (RRG) and the estate to which those attributes flow (Tin). In sum, given the tangled mess, separate pursuit of transfer avoidance remedies against the same insiders and properties held by their trusts could lead to inconsistent and inequitable results.

Mot., Docket 43 p. 8:3-9. As with the prior factor, the court does not have to rely on the Stipulation of Judgment Creditors, Debtor Tin, and Debtor RRG that this case should be substantively consolidated.

Here, there are creditors with claims secured by real properties that have been transferred between entities, Debtor Tin, and trusts. Judgment Creditors were pursuing a State Court Action to avoid such transfers and have the monies recovered for themselves. The Judgment Creditors are asserting judgment liens, some of which the Chapter 7 Trustee asserts are avoidable and can be preserved for the benefit of the bankruptcy estate. 11 U.S.C. § 551.

From the record set forth by the Chapter 7 Trustee, there have been properties moving about, titles changing, and Debtor Tin and her Spouse purporting to create irrevocable trusts when faced with the litigation being prosecuted, the filing of the Complaint, by the Judgment Creditors.

In substance, according to Debtor Tin and Debtor RRG, the RRG estate is devoid of any assets to pay it's two or three creditors. *See* Schedules in RRG Bankruptcy Case. For the RRG Bankruptcy Estate, it appears that the focus of recovering assets will be on the transfers made to Debtor Tin's Mother, Erlinda Lynch. For the Tin Bankruptcy Estate, the focus will be on avoiding transfers of properties (on which Debtor Tin ran her care home business) made to entities and trusts controlled by Debtor Tin (and possibly her Spouse).

While the Chapter 7 Trustee makes a point of stating that the limited liability company and other entities are pass through entities for profits, losses, and taxes, such alone would not be a basis for finding that there should be substantive consolidation. Such entities exist for valid, legal reasons.

However, as shown here, the Debtor RRG business, along with other businesses that Debtor Tin was operating on other entities, was not being operated as a separate, standalone entity.

For these two cases, the substantive consolidation will not "burden" the creditors in the Tin Bankruptcy Case with an overwhelming claim of the Judgment Creditors to water down any creditor distributions. The Judgment Creditors have their claims in both the RRG Bankruptcy Case and the Tin Bankruptcy Case by virtue of their joint and several judgment. The Chapter 7 Trustee reports that

Judgement Creditors' State Court Judgment was entered on December 2, 2022. No reference is made to any appeal having been taken thereof.

On the Amended Statement of Financial Affairs (Question 7) filed by Debtor RRG, it is stated that the action is pending. RRG Bkcy; Dckt. 42 at 3-4. The same is stated on the Amended Statement of Financial Affairs (Question 9) filed in the Tin Bankruptcy Case. Tin Bkcy; Dckt. 85 at 4.

Additionally, while the court does not take silence as "consent," it does note that no creditor has come forward asserting that substantive consolidation is not proper or that it would result in economic detriment to creditors.

Thus, it does not appear that the creditors in the Tin Bankruptcy Case would be expecting a Chapter 7 trustee to be defending, separate and apart from the RRG Estate trustee, that Debtor Tin has no liability under the joint and several judgment. Here, the creditors in the Tin Bankruptcy Case include sophisticated financial institutions and business such as: Bank of America, N.A., Well Fargo Bank, N.A., Capital One, N.A., California Franchise Tax Board, the United States Internal Revenue Service, American Express National Bank, Fifth Third Bank, Nordstrom, Inc., Citibank, N.A., and several debt buyers and collection agencies.

If Substantive Consolidation was improper and would cause an economic detriment to creditors holding claims in the Tin Bankruptcy Case, some of these creditors would have come forward in light of their substantial claims. In the RRG Bankruptcy Case, the only creditors are the Judgment Creditors and Erlinda Lynch (Debtor's mother who is represented by counsel, and has now withdrawn her Proof of Claim 24-1 in the Tin Bankruptcy Case).

Possible Creditor Detriment in
the Tin Bankruptcy Case

As outlined above, there are only two creditors identified in the RRG Bankruptcy Case – the Judgment Creditors and Erlinda B. Lynch, Debtor Tin's Mother. The Judgment Creditors are also creditors in the Tin Bankruptcy Case; however, Erlinda Lynch is not a creditor in the Tin Bankruptcy Case.

It appears that for the RRG Bankruptcy Case, the assets are limited quite possibly limited to transfers made to either Erlinda Lynch or Debtor Tin that may be avoided or recovered. Possibly the assets in the RRG Bankruptcy Case may be those sought to be recovered from Erlinda Lynch for avoidable or otherwise recoverable transfers.

By substantively consolidating the cases, there would be one additional creditor, Erlinda Lynch added to those getting a distribution from the assets in the Tin Bankruptcy Estate. This may result in the dividend to creditors with unsecured claims being reduced.

The Chapter 7 Trustee may have already factored this into the calculation, concluding that it would be a de minimis reduction, or may have concluded that litigation relating to Erlinda Lynch may be most administratively efficiently (and less administratively expensive) handled in a substantively consolidated case.

At the hearing, counsel for the Chapter 7 Trustee addressed this point, stating **xxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

~~The court grants the Motion and Bankruptcy Case 2023-23523 filed by The Retreat at Royal Green, LLC on October 5, 2023, and Bankruptcy Case 2023-23834 filed by Antonette Tin on October 28, 2023, are substantively consolidated, effective as of the October 5, 2023 filing of the Retreat at Royal Green, LLC Case. This effective date for consolidation is without prejudice to any person who did not receive notice of or had actual knowledge of the filing of the Motion to Substantively Consolidate these two cases.~~

The consolidated case shall proceed going forward under Case No. 2023-23523, and be titled:

In Re The Retreat at Royal Green, LLC,
Debtor

and

In re Antonette Tin,
Debtor

Substantively Consolidated Bankruptcy Cases

All rights and powers of the respective bankruptcy estates and the Chapter 7 Trustee, including avoiding transfers and recovery of assets, are preserved in full force and effect for the Consolidated Bankruptcy Estate.

All pleadings in the Substantively Consolidated Bankruptcy Cases shall be filed in Case 2023-23523 and for the Antonette Tin bankruptcy filed, 23-23835, a Notice of Substantively Consolidated Cases shall be placed on the Docket and the Clerk of the Court shall file all further pleadings, absent a subsequent order of the court, for the Antonette Tin case into the Substantively Consolidated Bankruptcy Cases being administered with Case No. 2023-23523.

~~**Counsel for the Chapter 7 Trustee shall prepare two proposed orders of substantive consolidation, one for each case, have them approved as to form by xxxxxxx , and lodge them with the court.**~~

7. 23-23834-E-7 DNL-3 | **ANTONETTE TIN** **Peter Macaluso** | **MOTION TO CONSOLIDATE LEAD CASE 23-23523 WITH 23-23834 3-7-24 [107]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 7, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Substantively Consolidate Case no. 23-23523 with Case no. 23-23834 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 Substantively Consolidate Case No. 23-23523 with Case No. 23-23834 is granted, with the Substantive Consolidation effective as of the October 5, 2023 filing of Case No. 23-23523.~~

Nikki Farris, the Chapter 7 Trustee ("Chapter 7 Trustee") in the Retreat at Royal Green, LLC Bankruptcy Case, 23-23523, ("RRG Bkcy," "Debtor RRG") and the Chapter 7 Trustee in the Antonette Tin Bankruptcy Case, 23-23834, ("Tin Bkcy," "Debtor Tin") it having recently been converted from Chapter 13 to Chapter 7, has filed Motions to Substantively Consolidate the two bankruptcy cases. The court issues this consolidated Ruling that will be filed in both the RRG Bkcy and Tin Bkcy Cases.

The Chapter 7 Trustee moves this court for an order substantively consolidating the related bankruptcy cases of the Retreat at Royal Green, LLC, case no. 23-23523 (with Antonette Tin's personal Chapter 7 case, case no. 23-23834. The Chapter 7 Trustee moves this court on the following grounds (the court consolidating the grounds stated in both the RRG Bkcy, Dckt. 43; and the Tin Bkcy Motion, Dckt. 107):

1. Debtor Tin is a 100% owner of Debtor Retreat at Royal Green, LLC. RRG Mtn., ¶ 4; Tin Bkcy Mtn., ¶ 4. (In citing to the Motions here, when using *"Id*.," the court is citing to both motions and identifying the paragraph

numbers in each. If it does not apply to both Motions, the court will specifically identify the motion by debtor.)

2. Debtor Tin, through four separate legal entities,(and now her Chapter 7 Bankruptcy Estate) is the 100% owner, operated four elder-care homes prepetition. These separate entities in which the four elder-care homes were operated are identified as:

   a. The Retreat at Royal Green, LLC (which has ceased operations);

   b. Precious Angels Care, Inc. (which has ceased operations);

   c. The Retreat at Sky Lake, LLC; and

   d. The Retreat at Greenhurst, LLC.

Id. at ¶¶ 6.

3. These four companies are all tax pass-through entities. *Id.*, ¶¶ 5, 6. All tax attributes, liabilities, and benefits flowed through the Debtor Tin.

4. For the tax years 2019 through 2022, Debtor RRG issues K-1's to Debtor Tin reflecting an annual profit on gross receipts of more than $300,000. In reviewing the records, Debtor Tin's "draws" during the 2019 through 2022 period aggregated $114,000. *Id*. ¶¶ 7.

5. During the period 2018 through 2023, Debtor Retreat at Royal Green, LLC transferred over $300,000 to Debtor Tin's mother, Erlinda Lynch. These transfers are identified as being pursuant to an acquisition agreement ("Start-Up Agreement") and long term lease for the property on which Debtor RRG operated one of its facilities. *Id*., ¶¶ 7.

6. Debtor Tin and her spouse, Exequiel Allan Fernando ("Fernando") have three adult children (collectively "children"). *Id*. ¶¶ 8.

7. Debtor Tin is the sole settlor and trustee of the 2018 Antonette Butlig Tin Trust ("Tin Trust"). The Trust declaration for the 2018 Tin Trust includes:

   a. It is irrevocable;

   b. It is planning for Debtor Tin's "estate with long term medical planning taken into consideration;" and

   c. The Tin Trust Res shall be distributed to the Children upon Debtor Tin's death.

Id. ¶¶ 9

8. Debtor Tin's 2018 Trust was settled on September 24, 2018, shortly after two former employees ("Judgement Creditors," POC 1-1) at the Retreat at Royal Green, LLC filed suit for money damages for labor law violations. *Id*.

9. Debtor RRG directly paid the attorney who prepared the Tin Trust for those legal services. *Id*.

10. Fernando is the first successor trustee of the Tin Trust. *Id*.

11. On September 24, 2018, Debtor Tin transferred her interest in 8983 Richborough Way, a single-family residence converted for Precious Angel Care's use as a care home, to the Tin Trust. On July 6, 2020, Tin transferred her interest in 779 Skylake Way, a single-family residence converted for the Retreat at Sky Lake's use as a care home, to the Tin Trust. *Id.*

12. Debtor Tin is also the sole trustee of the Ra Coronel Family Trust ("RAC Trust"), settled by Debtor Tin's stepfather. The RAC Trust was also devised as irrevocable, and debtor Tin was the beneficiary. The RAC Trust was funded by the real property known as 8865 Haflinger Way. When the settlor passed away on April 13, 2021, title in the Haflinger property was transferred to Debtor Tin. *Id.* at ¶¶ 10.

13. Debtor Tin's husband, Exequiel Fernando, settled his own trust in 2018, titled the 2018 Exequiel Allan Fernando Trust ("EAF Trust"). This trust, also irrevocable, was funded by Mr. Fernando's interest in the real property known as 986 Greenhurst Way. The Greenhurst Way Property was purchases by Fernando in 2016. *Id.* at ¶¶ 11.

14. Debtor Tin and her Mother, Lynch, are also co-trustees of the EBL Family Trust ("EBL Trust"). Lynch transferred her interest in the property known as 865 Royal Green avenue to the EBL Trust on April 26, 2017. Debtor RRG operates the care facility on this real property. Lynch also transferred her interest in 9076 Nature Trail Way to the EBL Trust in 2017. *Id*., ¶¶ 12.

15. Each of the properties on which Debtor Tin's companies operate the respective business are:

Business	**Care Home Property**	**Trust**
Debtor RRG	865 Royal Green Avenue	EBL Trust
PAC	8983 Richborough Way	Tin Trust
Skylake	779 Skylake Way	Tin Trust
Greenhurst	986 Greenhurst Way	EAF Trust

Id., ¶¶ 13.

16. The Debtor RRG commenced on October 5, 2023, its voluntary Chapter 7 business liquidation Case and Debtor Tin commenced on October 27, 2024 her Chapter 13 restructure case using the same bankruptcy counsel. Both Debtor RRG and Debtor Tin used the same counsel to file their respective bankruptcy cases. *Id*., ¶¶ 14.

17. In Debtor Tin's Case, a $525,000 homestead exemption has been claimed by Debtor Tin in the 8993 Richborough Property, which title she holds as trustee of the Tin Trust. The Chapter 7 Trustee disputes the claim of the homestead exemption on several grounds, including that the transfer of Debtor's interest is a voidable voluntary transfer. *Id*.

18. The Chapter 7 Trustee states that the RRG Case and the Tin Case were precipitated by the enforcement of a state court judgment, entered on December 2, 2022, in favor of the Judgment Creditors against both Debtor RRG and Debtor Tin, whose respective liability is joint and several as to the entire amount. Pursuant to identical proofs of claim filed as 1-1 in the RRG Bankruptcy Case and 3-3 in the Tin Bankruptcy Case, the Judgment Creditors asserted the amount of the obligation to be about $1.3 million. *Id*. at ¶¶ 15.

19. Lynch is the only other person who as filed a proof of claim in the RRG Bankruptcy Case, asserting a $359,000 claim based on the Start Up Contract and Lease. *Id*. ¶¶ 15. [POC 2-1 has been filed by Lynch in the RRG Bankruptcy Case.]

20. In the Tin Bankruptcy Case, besides the Proof of Claim filed by the Judgment Creditors, there are approximately ($81,000) in priority claims and ($111,000) in general unsecured claims. *Id*.

21. The Chapter 7 Trustee states that the Judgment Creditors asserts that Debtor RRG, and now the bankruptcy estate, have a malpractice claim of approximately $610,000 against its former defense attorneys that relates to post-judgment enhancements. *Id*., ¶¶ 16.

22. Commencing in September 2018, substantially all of Debtor Tin's real property was moved into the Tin Trust and all Retreat at Royal Green, LLC's spare cash, about $150,000 to Debtor Tin as profits and about $270,000 to Ms. Lynch. Retreat at Royal Green, LLC 's statement of financial affairs understated profits paid to Debtor Tin and omitted altogether rents paid to Ms. Lynch. The Chapter 7 Trustee contends that the portion of those transfers used by Debtor Tin and Ms. Lynch to hold and maintain real property held by the trusts is avoidable and recoverable against same, including each of the four Care Home Properties, 8865 Haflinger Way and 9706 Nature Trail Way (collectively "Trust Real Properties"). *Id.*, ¶¶ 18.

23. Judgment Creditors have provided the Chapter 7 Trustee with a copy of the judgment as recorded in Sacramento County on December 5, 2022, a J-1 judgment lien notice filed with the Secretary of State on December 7, 2022, a rent assignment and restraining orders served on June 30, 2023, and orders to appear for examination served on August 11, 2023. *Id*., ¶¶ 19. The Chapter 7 Trustee asserts that the judgment lien that arose upon service of the examination order is a voidable preference.

24. Judgment Creditors commenced on December 6, 2022, a second state court action to avoid real and personal property transfers by the judgment debtors, including transfers of real properties into the trusts. The Chapter 7 Trustee has removed that action to this Bankruptcy Court. *Id*., ¶¶ 20. The Chapter 7 Trustee asserts that the relief sought by the Judgment Creditors is relief that the Chapter 7 Trustee will now be prosecuting. *Id*.

25. The Chapter 7 Trustee states that the principal assets of the Debtor RRG bankruptcy estate are litigation rights based on the: (a)transfers to Ms. Lynch aggregating about $300,000; (b) transfers to Debtor Tin aggregating about $150,000; and (c) loss of goodwill against Ms. Lynch and Debtor Tin for the cash drain that caused Retreat at Royal Green, LLC to close its doors. The Retreat at Royal Green, LLC estate may also have: (d) an equitable interest in 865 Royal Green Avenue pursuant to a joint venture or similar theory; and (e) a potential malpractice claim based on the $670,000 post-judgment enhancements. *Id.*, ¶¶ 25.

26. The Chapter 7 Trustee states that the principal assets of the Debtor Tin bankruptcy estate are litigation rights based on the: (a) transfers to the Tin Trust of her interest in 8983 Richborough Way and 779 Skylake Way; (b) transfers to the EAF Trust of the community's interest in the funds used to purchase and hold 986 Greenhurst Way; and (c) transfers of about $1 million in funds received from the Holding Companies for which the Judgment Creditors contend Debtor Tin has failed to account. The Debtor Tin estate also has: (a) an interest in 8865 Haflinger Way; and (b) Greenhurst and Skylake, the two remaining Holding Companies that continue to operate care home businesses. *Id.* at ¶ 26.

27. The operations of debtor Tin and the operations of Debtor Retreat at Royal Green, LLC were excessively entangled to the extent that consolidation will benefit all creditors. *Id.* at p. 7:21-23.

28. Judgment Creditors assert their claim in both the Individual Case and the Business Case because both debtor Tin and Debtor Retreat at Royal Green, LLC were found jointly and severally liable. Another factor the court should consider is whether creditors deal with different debtors as a single economic unit, which is present here. *Id.* at ps. 7:24-8:2.

29. It would be most cost efficient to substantively consolidate the cases as well, avoiding duplicative administrative expenses in running two separate cases. *Id.* at p. 8:10-13.

In paragraphs 24 of the respective Motions the Chapter 7 Trustee states that a Stipulation for Substantive Consolidation has been executed by the Chapter 7 Trustee, Debtor RRG, Debtor Tin, and the Judgment Creditors. The Stipulation is attached as Exhibit D in support of each of the two Motions. RRG Bkcy, Dckt. 109; Tin Bkcy, Dckt. 45. After a brief recitation of facts relating to the filing of the bankruptcy cases, the Judgement Creditors obtaining their State Court Judgment, and the avoidance action that has been removed, the terms of the Stipulations; *Id*., p.2:2-5; are quite simple:

A. The [Tin Bankruptcy] Case and [RRG Bankruptcy] Case shall be substantively consolidated retroactive to October 4, 2024,with the [Chapter 7] Trustee retaining avoiding powers in order to allow the [Chapter 7] Trustee to attack voluntary and involuntary transfer of property of the Debtors pursuant to applicable bankruptcy and non-bankruptcy law.

In the Motions the Chapter 7 Trustee argues that it is proper for this court to exercise its general equitable powers; as set forth in *In re Bonham*, 229 F.3d. 750, 763 (9th Cir. 2000); to substantively consolidate the cases, provide that the Chapter 7 Trustee's avoiding powers date back to the filing of the RRG Bankruptcy Case on October 5, 2023 (the first case filed), to allow for the unified addressing of these debts and obligations arising out of what the Chapter 7 Trustee identifies as a "single economic unit" – the operations of the four care facilities. Motions, p. 7:16-8:2. The Chapter 7 Trustee provides the following summary of the application of the grounds to the law (as reorganized by the court):

1. Judgment Creditors assert 100% of non-insider claims in the RRG Bankruptcy Case and 90% of the non-insider claims in the Tin Bankruptcy Case.

2. Judgment Creditor's $1.3 Million judgment is one on which Debtor RRG and Debtor Tin are jointly and severally liable, and arise out of operation of the care facility.

3. Lynch's claim is asserted to be based on obligation for starting up and the operation of such care facility operated by Debtor RRG and Debtor Tin.

The Chapter 7 Trustee asserts that the competing enforcement of judgment liens against Debtor RRG's and Debtor Tin's assets by the Judgment Creditors weighs in favor of such substantive consolidation to allow both estates to effectively pursue recovery of fraudulent transfers, objecting to claims, and providing for recovery of assets for the consolidated bankruptcy estate.

The Chapter 7 Trustee submits her own Declaration in support of the Motion, authenticating the facts alleged. Declarations; RRG Bkcy, Dckt. 46, and Tin Bkcy, Dckt. 110. In her testimony the Chapter 7 Trustee disputes the validity of the Start Up Contract and the Lease. The Chapter 7 Trustee notes that Tin never listed Lynch, her mother, as having any claims against either Debtor Tin or Debtor RRG. *Id*., ¶¶ 8-9. (The Chapter 7 Trustee states that Lynch has now withdrawn Proof of Claim 24-1 in the Tin Bankruptcy Case.) The Chapter 7 Trustee's testimony includes repeating allegations made in the Motions.

The Chapter 7 Trustee has filed as exhibits Ms. Lynch's proof of claim in this case, Proof of Claim 2-1, and the proof of claim in the Individual case, Proof of Claim 24-1, as well as the 341 Transcript. Exhibits A-C; RRG Bkcy, Dckt. 45, and Tin Bkcy, Dckt. 109.

NO OPPOSITION TO MOTION TO CONSOLIDATE FILED BY ANY PARTY IN INTEREST

The Chapter 7 Trustee's Motion to Consolidate this Case with the related case of Antonette Tin was filed on March 7, 2024. Dckt. 43. This Motion was filed and Noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1), for which opposition, if any, was required to be filed by March 25, 2024. Ntc. of Hrg.; Dckt. 44.

No opposition has been filed as of the court's April 12, 2024 review of the Docket.

As stated above, Debtor RRG, Debtor Tin, and the Judgment Creditors have stipulated to the substantive consolidation.

APPLICABLE LAW

In considering whether a bankruptcy court should consolidate or jointly administer two bankruptcy cases, Fed. R. Bankr. P. 1015 provides:

> (a) CASES INVOLVING SAME DEBTOR. If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.
>
> (b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under §522(b)(2) of the Code and the other has elected the exemptions under §522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by §522(b)(2).
>
> (c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

The advisory notes to this Rule states:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates.

Notably, "neither part of (Rule 1015) determines when consolidation or joint administration is appropriate, which is a matter of substantive law." 9 COLLIER ON BANKRUPTCY ¶ 1015.01.

Substantive consolidation of assets and liabilities between different entities may be "dealt with as if the assets were held, and the liabilities incurred, by a single entity. This type of consolidation generally is referred to as substantive consolidation. . . The power to consolidate substantively is derived from the court's general equitable powers as set forth in section 105. . ." *Id.* at ¶ 1015.02[3]. The court is also aware that "[t]he power to consolidate should be used sparingly because of the potential harm to creditors of substantive consolidation." *Id.* at ¶ 105.09[1][d] (internal quotations omitted).

The Ninth Circuit has recognized the power of the bankruptcy courts to substantively consolidate cases of two separate debtors as an equitable remedy available to the bankruptcy courts. *See In re Bonham*, 229 F. 3d 750, 763 (9th Cir. 2000) ("The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898."). When the bankruptcy court finds substantive consolidation is proper and issues an order accordingly, "[t]he consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Id.* at 764.

The primary purpose of substantive consolidation is to ensure the equitable treatment of all creditors. *Id.* The Ninth Circuit has instructed that "in ordering substantive consolidation, courts must consider whether there is a disregard of corporate formalities and commingling of assets by various entities; and balance the benefits that substantive consolidation would bring against the harms that it would cause." *Id.* at 765. In making a determination of whether to order substantive consolidation, the Ninth Circuit has adopted the test used by the Second Circuit. Bankruptcy courts are to consider "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. . . The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

The first factor is satisfied when the record shows "lenders structure their loans according to their expectations regarding th[e] borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets." *Id.* (internal quotations omitted). The second factor is met when "the time and expense necessary even to attempt to unscramble [the debtors] [is] so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible." *Id.* (internal quotations omitted).

Joint administration is the alternative to consolidation. *See* Fed. R. Bankr. P. 1015(b). A court may appoint a single trustee to jointly administer a case when "the affairs of the related debtors may be sufficiently intertwined to make joint administration more efficient and economical than separate administration. . . Obviously, this can lead to substantial efficiencies and savings of estate funds." 9 COLLIER ON BANKRUPTCY ¶ 1015.03. Fed. R. Bankr. P. 2009 provides for how a trustee should proceed if the court orders joint administration, providing:

> (a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.
>
> (b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in §702 of the Code, unless the case is under subchapter V of chapter 7 r subchapter V of chapter 11 of the Code.
>
> (c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.
>
> > (1) *Chapter 7 Liquidation Cases.* Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.
> >
> > . . .
>
> (d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.
>
> (e) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

DISCUSSION

As asserted by the Chapter 7 Trustee, the 800 Pound Creditor Gorilla in these two bankruptcy cases are the Judgment Creditors holding the joint and several liability judgment for $1,3000,000 that constitutes 100% of non-insider claims in the RRG Bankruptcy Case and 90% of the non-insider claims in the Tin Bankruptcy Case. The Judgment Creditors assert judgment liens on the property of both Debtor RRG and Debtor Tin.

Review of Tin Bankruptcy Case and Creditors

In the Tin Bankruptcy Case, Debtor Tin listed her creditors on Schedule E/F (Dckt. 1) as being:

1. Priority Unsecured Claims

a. Franchise Tax Board.....($5,000)

b. IRS.....($45,000)

(1) IRS Proof of Claim 23-1 is filed in the Tin Bankruptcy Case in the amount of ($82,235.25), of which ($78,035.38) is claimed as a priority.

2. General Unsecured Claims

a. Judgment Creditors

(1) ($191,121.48) - Disputed
(2) ($672,096.17)

b. Credit Cards (various creditors) in the following amounts (rounded by the court):

(1) ($15,289)
(2) ($ 1,364)
(3) ($ 5,673)
(4) ($ 1,808)
(5) ($ 952)
(6) ($ 4,306)
(7) ($ 9,945)
(8) ($10,964) - Home Depot/Citibank
(9) ($ 809)
(10) ($ 339) - Collection Attorney
(11) ($ 309)
(12) ($ 474) - Dental
(13) ($ 677)
(14) ($ 767)
(15) ($ 143)
(16) ($ 6,000)
(17) ($ 1,364) “West Elm”

For Debtor Tin, with respect to unsecured claims, she shows very modest unsecured debt.

On Schedule D, Debtor Tin lists creditors having secured claims for which there are liens encumbering the real properties at which the care facilities were operated and several other assets. Tin Bkcy, Dckt. 1 at 23- 25. These secured claims are listed as:

1. Care Facility Properties

a. Select Portfolio Servicing...($299,724)...Richborough Property
b. Wells Fargo Home Mtg.....($474,004)...Skylake Way Property

2. Other Real Property

    a. Fifth Third Bank.....($511,766).....Haflinger Way Property

    b. SM Development.....($122,736).....Philippines Property

3. Vehicles

    a. Wells Fargo Dealer Services....(76,536)....2021 Tesla

On Amended Schedule A/B filed on November 28, 2023; Tin Bkcy, Dckt. 21; Debtor Tin states having interests in the following real properties:

1. 8866 Haflinger Way

    a. Debtor only has an interest.
    b. It is community property.

2. 8993 Richborough Way

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee, Equitable Interest."

3. 779 Skylake Way

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee."
    d. "Transfer by Quitclaim 9/20/18[,] The 2018 Antonette Butlig Tin Trust 8/11/20."

On the Second Amended Schedule A/B filed on February 26, 2024; Tin Bkcy, Dckt. 84; Debtor Tin adjusted the statements of interests for these three properties, stating:

1. 8866 Haflinger Way Property

    a. Debtor only has an interest.
    b. Joint Tenant.

Debtor removed the statement that this is community property, but continues to state that only she has an interest in the property, notwithstanding now saying that she has a "Joint tenant" interest.

2. 8993 Richborough Way Property

    a. Debtor only has an interest.
    b. It is community Property.
    c. Debtor's interest is "Co-Trustee, Equitable Interest."

While making this with a "C" (indicating a change), it appears to be the same on the earlier filed Amended Schedule A/B. It appears that this is a mere clerical error, with the "C" intended to be for the Haflinger Way Property.

3. 779 Skylake Way Property

   a. Debtor only has an interest.
   b. It is community Property.
   c. Debtor's interest is "Co-Trustee."
   d. "Transfer by Quitclaim 9/20/18[,] The 2018 Antonette Butlig Tin Trust 8/11/20."

No change with respect to the Skylake Way Property.

Proofs of Claims Filed in Tin Bankruptcy Case

A review of the Proofs of Claim filed in the Tin Bankruptcy Case provide a little more information about the nature of the claims in that case. The court summarizes the proofs of claim filed as follows:

1. Proof of Claim 1-1 - Unsecured

   a. Creditor.....Wells Fargo Bank Small Business Lending Division
   b. Acct 9845
   c. Money Loaned.....($14,711)
   d. Statement sent to Precious Angels Care
      Antonette B. Tin, Haflinger Way Property

2. Proof of Claim 4-1 - Unsecured

   a. Creditor.....Wells Fargo Bank Small Business Lending Division
   b. Acct 4534
   c. Money Loaned.....($13,168)
   d. Statement sent to Precious Angels Care
      Antonette B. Tin, Haflinger Way Property

3. Proof of Claim 23-1 - Priority Unsecured

   a. Creditor.....IRS
   b. Priority.....($78,035)
      (1) FICA (payroll) Tax.....($31,170)
      (2) Income Tax.....($46,300)

4. Proof of Claim 21-1 - Unsecured

   a. Creditor.....Bank of America
   b. Unsecured.....($14,289)
   c. Attachment to POC.....Business Credit Card Agreement

5. Proof of Claim 22-1 - Unsecured

   a. Creditor.....Bank of America
   b. Unsecured.....($7,747.63)
   c. Attachment to POC.....Business Advantage Credit Card, the Retreat Skylake, LLC

6. Proof of Claim 24-1, Withdrawn February 23, 2024

   a. Creditor.....Erlinda Lynch (Debtor's Mother)
   b. Signed and Filed by.....Counsel for Lynch
   c. Unsecured Claim .....($174,938)
   d. Rent and Operating Funds
   e. Face of Lease and Agreement identify Retreat at Royal Green, LLC as the obligor.

Above are ($81,085) of other unsecured claims that appear to relate to the operation of the care facility business, such as Debtor RRG. It appears that even Debtor's Mother, Erlinda Lynch, was "confused," and she and her attorney were asserting that Debtor Tin was personally liable for the Debtor RRG claims.

The general unsecured claims filed that do not make reference to business operation total approximately ($58,849). This is only 72% of the general unsecured claims filed that are clearly identified as being related to the business, without taking into account the $1,300,000 Judgment Creditors Claim and the secured claims for the business real property.

Review of RRG Schedules and Claims Filed

On Amended Schedule E/F filed by Debtor RRG, it lists Judgement Creditors as having an undisputed judgment for ($1.00), and for Michael Harrington, Esq., Judgment Creditors Attorney, as having an undisputed claim for ($183,246). Debtor RRG then also lists Michael J. Harrington, Esq., as having an unliquidated, disputed claims, subject to offset, for ($490,577). Finally, Bank of America is listed as having an undisputed unsecured claim in the amount of ($14,000). RRG Bkcy; Dckt. 19.

On Schedule A/B, Debtor RRG states that it has no personal property other than $500 of office furniture and equipment; $3,500 of furniture, refrigerator, washer, and dryer; and $103 in bank accounts. Debtor RRG states that it has no interests in any real property. RRG Bkcy; Dckt. 1.

On Schedule G, Debtor RRG states that it has a 30 year lease with "EBL Family Trust, 865 Royal Green Ave, Sacramento, California." *Id*. at 16.

On Schedule H Debtor RRG lists Debtor Tin as being a co-debtor on the obligations owed to the Judgment Creditors, Judgment Creditors attorney, and the EBL Family Trust. *Id*. at 17.

On the Statement of Financial Affairs Debtor RRG lists having made payments to Debtor Tin, as an insider, totaling $20,342. *Id*. at 19. Nothing is stated for any payments having been made to the EBL Family Trust or to Erlinda Lynch (Debtor Tin's Mother) for any rent or other obligations in the year preceding the filing of the bankruptcy case.

Erlinda Lynch has attached to her Proof of Claim 2-1 filed in the RRG Bankruptcy Case copies of checks written by Debtor RRG during the one year period from October 5, 2023 filing of the RRG Bankruptcy Case back to October 5, 2022:

Date of Check	For Line	Amount (court rounded)
November 9, 2022	"Nov. 2022 Rent pd."	$5,000
January 2, 2023	"Jan rent pd."	$4,000
February 1, 2023	"Feb rent pd."	$4,000
February 28, 2023	"March rent pd."	$4,000
March 11, 2023	"Apr rent pd."	$4,000
July 9, 2023	"July Rent pd."	$4,000
September 11, 2023	"Pd."	$2,900

The above checks are part of an attachment to Proof of Claim 2-1 dating from March 15, 2018 to September 11, 2023. The images of the backs of the checks are not provided with the attachment.

Substantive Consolidation of the Tin Bankruptcy Case and RRG Bankruptcy Case is Proper

In this case, the court does have enough evidence to find that substantive consolidation of the Business Case and the Individual Case is warranted. The court does not have to rely on just the Stipulation that substantive consolidation is proper.

In applying the first factor in the test set forth in *Bonham*, the court concludes that the vast majority of creditors have dealt with Debtor Tin and Debtor RRG as a single economic unit. As shown from a review of the Schedules and Claims filed, all but ($58,849) of the unsecured claims in the Tin Bankruptcy Case could relate only to Debtor Tin's non-business operations. While there is a secured claim for Debtor Tin's Tesla, it's ($75,375) amount; Tin Bkcy POC 2-1; is not in the same league as the ($1,300,000) asserted secured claim if Judgment Creditors; *Id*., POC 3-3; the ($471,304) secured claim (the 779 Skylake Way care facility as collateral); *Id*., POC 9-1; and the ($296,028) secured claim (the 8983 Richborough way property as collateral).

There is Proof of Claim 11-1 for a secured claim of Fifth Third Bank in the amount of ($504,326) that is secured by the 8865 Haflinger Way Property, which Debtor Tin states is her residence. The Note attached to Proof of Claim 11-1 is dated January 19, 2022, and is signed by Debtor Tin and her Spouse Fernando. While this may be a significant personal residential debt (the Chapter 7 Trustee stating that this is the property that Debtor Tin inherited from her father's trust), it does not tip the scales in number or dollar amount from the creditors who dealt with both Debtor Tin and Debtor RRG as being one "business debtor."

As noted above, until the February 23, 2024 withdrawal of her Proof of Claim 24-1 in the Tin Bankruptcy Case, Debtor Tin's own mother, Erlinda B. Lynch and Lynch's attorney, asserted that the debt of Debtor RRG was a debt of Debtor Tin.

Regarding the second factor as set forth in *Bonham*, the court must find that the affairs of the debtor are so entangled that consolidation will benefit all creditors. The Chapter 7 Trustee argues,

> Tin appears unable to timely and accurately disclose and justify financial dealings between herself, RRG, and Lynch. Ultimate resolution of the disputes will be further complicated by: (a) the competing enforcement of judgment liens asserted by the Judgment Creditors against substantially all the Debtors' property; and (b) navigating the different treatment of an estate that is a pass-through taxpayer (RRG) and the estate to which those attributes flow (Tin). In sum, given the tangled mess, separate pursuit of transfer avoidance remedies against the same insiders and properties held by their trusts could lead to inconsistent and inequitable results.

Mot., Docket 43 p. 8:3-9. As with the prior factor, the court does not have to rely on the Stipulation of Judgment Creditors, Debtor Tin, and Debtor RRG that this case should be substantively consolidated.

Here, there are creditors with claims secured by real properties that have been transferred between entities, Debtor Tin, and trusts. Judgment Creditors were pursuing a State Court Action to avoid such transfers and have the monies recovered for themselves. The Judgment Creditors are asserting judgment liens, some of which the Chapter 7 Trustee asserts are avoidable and can be preserved for the benefit of the bankruptcy estate. 11 U.S.C. § 551.

From the record set forth by the Chapter 7 Trustee, there have been properties moving about, titles changing, and Debtor Tin and her Spouse purporting to create irrevocable trusts when faced with the litigation being prosecuted, the filing of the Complaint, by the Judgment Creditors.

In substance, according to Debtor Tin and Debtor RRG, the RRG estate is devoid of any assets to pay it's two or three creditors. *See* Schedules in RRG Bankruptcy Case. For the RRG Bankruptcy Estate, it appears that the focus of recovering assets will be on the transfers made to Debtor Tin's Mother, Erlinda Lynch. For the Tin Bankruptcy Estate, the focus will be on avoiding transfers of properties (on which Debtor Tin ran her care home business) made to entities and trusts controlled by Debtor Tin (and possibly her Spouse).

While the Chapter 7 Trustee makes a point of stating that the limited liability company and other entities are pass through entities for profits, losses, and taxes, such alone would not be a basis for finding that there should be substantive consolidation. Such entities exist for valid, legal reasons.

However, as shown here, the Debtor RRG business, along with other businesses that Debtor Tin was operating on other entities, was not being operated as a separate, standalone entity.

For these two cases, the substantive consolidation will not "burden" the creditors in the Tin Bankruptcy Case with an overwhelming claim of the Judgment Creditors to water down any creditor distributions. The Judgment Creditors have their claims in both the RRG Bankruptcy Case and the Tin Bankruptcy Case by virtue of their joint and several judgment. The Chapter 7 Trustee reports that

Judgement Creditors' State Court Judgment was entered on December 2, 2022. No reference is made to any appeal having been taken thereof.

On the Amended Statement of Financial Affairs (Question 7) filed by Debtor RRG, it is stated that the action is pending. RRG Bkcy; Dckt. 42 at 3-4. The same is stated on the Amended Statement of Financial Affairs (Question 9) filed in the Tin Bankruptcy Case. Tin Bkcy; Dckt. 85 at 4.

Additionally, while the court does not take silence as "consent," it does note that no creditor has come forward asserting that substantive consolidation is not proper or that it would result in economic detriment to creditors.

Thus, it does not appear that the creditors in the Tin Bankruptcy Case would be expecting a Chapter 7 trustee to be defending, separate and apart from the RRG Estate trustee, that Debtor Tin has no liability under the joint and several judgment. Here, the creditors in the Tin Bankruptcy Case include sophisticated financial institutions and business such as: Bank of America, N.A., Well Fargo Bank, N.A., Capital One, N.A., California Franchise Tax Board, the United States Internal Revenue Service, American Express National Bank, Fifth Third Bank, Nordstrom, Inc., Citibank, N.A., and several debt buyers and collection agencies.

If Substantive Consolidation was improper and would cause an economic detriment to creditors holding claims in the Tin Bankruptcy Case, some of these creditors would have come forward in light of their substantial claims. In the RRG Bankruptcy Case, the only creditors are the Judgment Creditors and Erlinda Lynch (Debtor's mother who is represented by counsel, and has now withdrawn her Proof of Claim 24-1 in the Tin Bankruptcy Case).

Possible Creditor Detriment in
the Tin Bankruptcy Case

As outlined above, there are only two creditors identified in the RRG Bankruptcy Case – the Judgment Creditors and Erlinda B. Lynch, Debtor Tin's Mother. The Judgment Creditors are also creditors in the Tin Bankruptcy Case; however, Erlinda Lynch is not a creditor in the Tin Bankruptcy Case.

It appears that for the RRG Bankruptcy Case, the assets are limited quite possibly limited to transfers made to either Erlinda Lynch or Debtor Tin that may be avoided or recovered. Possibly the assets in the RRG Bankruptcy Case may be those sought to be recovered from Erlinda Lynch for avoidable or otherwise recoverable transfers.

By substantively consolidating the cases, there would be one additional creditor, Erlinda Lynch added to those getting a distribution from the assets in the Tin Bankruptcy Estate. This may result in the dividend to creditors with unsecured claims being reduced.

The Chapter 7 Trustee may have already factored this into the calculation, concluding that it would be a de minimis reduction, or may have concluded that litigation relating to Erlinda Lynch may be most administratively efficiently (and less administratively expensive) handled in a substantively consolidated case.

At the hearing, counsel for the Chapter 7 Trustee addressed this point, stating **xxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

~~The court grants the Motion and Bankruptcy Case 2023-23523 filed by The Retreat at Royal Green, LLC on October 5, 2023, and Bankruptcy Case 2023-23834 filed by Antonette Tin on October 28, 2023, are substantively consolidated, effective as of the October 5, 2023 filing of the Retreat at Royal Green, LLC Case. This effective date for consolidation is without prejudice to any person who did not receive notice of or had actual knowledge of the filing of the Motion to Substantively Consolidate these two cases.~~

The consolidated case shall proceed going forward under Case No. 2023-23523, and be titled:

In Re The Retreat at Royal Green, LLC,
Debtor

and

In re Antonette Tin,
Debtor

Substantively Consolidated Bankruptcy Cases

All rights and powers of the respective bankruptcy estates and the Chapter 7 Trustee, including avoiding transfers and recovery of assets, are preserved in full force and effect for the Consolidated Bankruptcy Estate.

All pleadings in the Substantively Consolidated Bankruptcy Cases shall be filed in Case 2023-23523 and for the Antonette Tin bankruptcy filed, 23-23835, a Notice of Substantively Consolidated Cases shall be placed on the Docket and the Clerk of the Court shall file all further pleadings, absent a subsequent order of the court, for the Antonette Tin case into the Substantively Consolidated Bankruptcy Cases being administered with Case No. 2023-23523.

~~**Counsel for the Chapter 7 Trustee shall prepare two proposed orders of substantive consolidation, one for each case, have them approved as to form by xxxxxxx , and lodge them with the court.**~~

8. **23-24324-E-7** **MOHAMMAD IQBAL** **MOTION TO DISMISS CASE**
UST-1 **Pro Se** **3-8-24 [58]**

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*), persons having filed a Request for Notice, creditors, and the Chapter 7 Trustee on March 8, 2024. By the court's calculation, 32 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. At the hearing, **xxxxxxx**

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

Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. Trustee") seeks dismissal of the case on the basis that:

1. The debtor, Mohammad Iqbal ("Debtor"), failed to appear both times at the Meeting of Creditors. Motion, Docket 58, p. 1:22-26. Debtor failed to appear at the initial scheduled Meeting of Creditors which was held on January 8, 2024. Memorandum, Docket 60, ¶ 13. The continued Meeting of Creditors was held on January 23, 2024, and Debtor again failed to appear. *Id.* at ¶ 16.

   Additionally, Debtor's prior bankruptcy case was dismissed on August 2, 2021 for his failure to appear at the required Meeting of Creditors. *Id.* at ¶ 7. Debtor's failure to appear at both Meeting of Creditors in this bankruptcy case and his prior bankruptcy case support a finding that the Debtor is not prosecuting the instant case in good faith and reflects a pattern of failing to appear to submit for questioning under oath as required under 11 U.S.C. § 343. *Id.* at ¶ 27.

2. Debtor has not provided a credit counseling certificate, and Debtor provided conflicting and misleading information on his bankruptcy petition regarding whether he has taken the required credit counseling class. Motion, Docket 58, p. 1:26-27. When Debtor filed his Petition on December 1, 2023, he improperly checked all the boxes on Official Form 101 regarding his efforts

to obtain credit counseling. Petition, Docket 1, p. 5. By doing so, Debtor simultaneously indicated that he had already obtained a credit counseling certificate and also that he was unable to obtain credit counseling certificate. Memorandum, Docket 60, ¶ 9. Debtor never provided any credit counseling certificate to the Trustee and did not appear at the Meeting of Creditors to testify that exigent circumstances existed warranting a waiver, or that he was unable to receive a briefing about credit counseling. *Id.* at ¶ 22. Debtor's conflicting statements, and his failure to provide a credit counseling certificate support a finding that Debtor failed to comply with 11 U.S.C. § 109 (h). *Id.*

3. Debtor's failure to comply with his duties in two successive bankruptcy cases, his failure to correctly identify his social security number in two successive bankruptcy cases, and ongoing failure to correct these errors, all purportedly for the purpose of frustrating a creditor's state court unlawful detainer proceeding, constitutes bad faith and abuse of the bankruptcy system. Motion, Docket 58, p. 2:1-8. The factors in this case are sufficient to warrant an imposition of a minimum 180-day refiling bar under 11 U.S.C. § 109 (g). Memorandum, Docket 60, ¶ 33.

Trustee submits the Declaration of Shane Bharat to authenticate the facts alleged in the Motion. Decl., Docket 61.

CREDITOR'S RESPONSE

Nazia Jabeen Iqbal and Muhammad Younas Malik ("Creditor"), filed a Response on March 26, 2024. Response, Docket 63. Creditor agrees with the Trustee's reasons for bringing a Motion to Dismiss this case. *Id.* at ¶ 2. However, Creditor filed a Response requesting that the court impose more stringent relief than what the Trustee is requesting. *Id.* at ¶1. Specifically, the Creditor is requesting that the court impose a bar on the Debtor from refiling another bankruptcy case until there has been a final judgement in the unlawful retainer proceeding that Creditor has brought against the Debtor. *Id.* at ¶ 5. The Creditor also requests that the court refer the Debtor for criminal prosecution for fraudulent filings pursuant to 18 U.S.C. § 157. *Id.* at ¶ 6.

Additionally, the Creditor is requesting that the court refer three of the Debtor's siblings for criminal prosecution under 18 U.S.C. § 157 for conspiring with the Debtor in the alleged fraudulent filings. *Id.* at ¶ 17.

Creditor's Response provides additional information and Exhibits regarding what they believe show that Debtor and his three siblings committed additional fraudulent acts which warrant more stringent relief. However, the facts alleged in both the Response and Exhibits cannot be admitted as evidence due to the fact that there is no Declaration authenticating the facts submitted by the Creditor. Additionally, the Creditor filed the Response, Exhibits, and Certificate of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Creditor is reminded of the court's expectation that documents filed with this court comply

as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny a motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to parties and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DEBTOR'S RESPONSE

Debtor did not file a Response to the Trustee's Motion.

APPLICABLE LAW
Bad Faith

Under 11 U.S.C. § 707(b)(3)(A), a chapter 7 case may be dismissed as abusive under 11 U.S.C. § 707(b)(1) if the debtor filed the case in bad faith. *In re Miller*, No. 2:13-BK-35116-RK, 2016 WL 5957270, at *6 (Bankr. App. 9th Cir. Oct. 13, 2016), aff'd, 708 Fed. Appx. 395 (9th Cir. 2017)(unpublished).

11 U.S.C. § 707 (b)(1) states:

> After notice and a hearing, the court, on its own motion or on a motion by ... any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts ... if it finds that the granting of relief would be an abuse of the provisions of this chapter.

11 U.S.C. § 707(b)(3)(A) provides, in relevant part:

> In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(I) does not arise or is rebutted – the court shall consider – (A) whether the debtor filed the petition in bad faith.

In *Miller*, the United States Bankruptcy Appellate Panel of the Ninth Circuit stated that:

> [T]he Ninth Circuit Court of Appeals has not established a standard for determining a finding of "bad faith" in chapter 7 cases under § 707(b)(3)(A). However, some bankruptcy courts have established such a standard in cases including *In re Mitchell*, 357 B.R. 142 (Bankr. C.D. Cal. 2006). In *Mitchell*, the bankruptcy court utilized a nine-part test borrowing both from the Ninth Circuit's pre-BAPCPA "substantial abuse" test and from chapter 11 and 13 bad faith cases. *Id.* at 153-56 (citing *Price v. United States Trustee* (In re Price), 353 F.3d 1135, 1139-40 (9th Cir. 2003) (using a six factor test to determine "substantial abuse" under pre-BAPCPA § 707(b)); *In re Leavitt*, 171 F.3d at 1224 (employing a four factor test to dismiss bad faith chapter 13 case with prejudice). The *Mitchell* court set forth the following nonexclusive factors to be considered in determining whether to dismiss a chapter 7 case for bad faith under § 707(b)(3)(A):

1. Whether debtor has a likelihood of sufficient future income to fund a chapter 11, 12 or 13 plan which would pay a substantial portion of the unsecured claims;

2. Whether debtor's petition was filed as a consequence of illness, disability, unemployment, or other calamity;

3. Whether debtor obtained cash advances and consumer goods on credit exceeding his or her ability to repay;

4. Whether debtor's proposed family budget is excessive or extravagant;

5. Whether debtor's statement of income and expenses misrepresents debtor's financial condition;

6. Whether debtor made eve of bankruptcy purchases;

7. Whether debtor has a history of bankruptcy petition filings and dismissals;

8. Whether debtor has invoked the automatic stay for improper purposes, such as to delay or defeat state court litigation;

9. Whether egregious behavior is present.

In re Miller, No. 2:13-BK-35116-RK, 2016 WL 5957270, at *7 (Bankr. App. 9th Cir. Oct. 13, 2016), aff'd, 708 Fed. Appx. 395 (9th Cir. 2017). Adopting this standard, this court will apply the *Mitchell* factors to determine whether a debtor's chapter 7 case should be dismissed for "bad faith" under 11 U.S.C. § 707(b)(3)(A).

"Once the court has determined that cause to dismiss exists, it still must decide what remedial action—what form of dismissal—should be taken". *In re Ellsworth*, 455 B.R. 904, 922 (Bankr. App. 9th Cir. 2011). 11 U.S.C. § 349(a) establishes a general rule that dismissal of a case is without prejudice but expressly grants a bankruptcy court the authority to dismiss the case with prejudice which "bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues". *In re Leavitt*, 171 F.3d 1219, 1223-24 (9th Cir. 1999). Although *Leavitt* involved a chapter 13 case, the United States Bankruptcy Appellate Panel of the Ninth Circuit believed that "the same standards for dismissing a chapter 7 case with prejudice would also apply." *See In re Johnson*, 2014 WL 2808977, at *7 (applying *Leavitt* factors to chapter 7 dismissal with prejudice under § 349(a)); *In re Mitchell*, 357 B.R. at 154; *In re Miller*, No. 2:13-BK-35116-RK, 2016 WL 5957270, at *13 (Bankr. App. 9th Cir. Oct. 13, 2016), aff'd, 708 Fed. Appx. 395 (9th Cir. 2017).

Aside from dismissing the chapter 7 case with prejudice, the court may also consider whether some sanction less than dismissal with prejudice would be sufficient. In *Ellsworth*, the United States Bankruptcy Appellate Panel of the Ninth Circuit stated that "aside from dismissing with prejudice, a court might consider barring the debtor from refiling for 180 days pursuant to § 109(g), or for some other length of time". *In re Ellsworth,* 455 B.R. at 922.

11 U.S.C. § 109(g) provides:

> (g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—
>
> (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
>
> (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

Therefore, under 11 U.S.C. § 349(a) the court has the authority to dismiss a chapter 7 case with prejudice if it determines that the debtor was acting in "bad faith". *In re Leavitt*, 171 F.3d at 1223-24. Alternatively, if the court chooses to dismiss the case without prejudice, the court is also authorized under 11 U.S.C. § 109(g) to bar a debtor from refiling for 180 days or more. *In re Ellsworth,* 455 B.R. at 922.

Referral to the U.S. Attorneys Office for Criminal Prosecution

18 U.S.C. § 152 states:

> A person who–
>
> (1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;
>
> (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
>
> (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;
>
> (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;
>
> (5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;
>
> (6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;
>
> (7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and

fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S.C. § 157 states:

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so–

(1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;

(2) files a document in a proceeding under title 11; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S.C. § 3057 states:

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

The Ninth Circuit Court of Appeal stated in *Milwitt* that "[a]s opposed to the historic bankruptcy crimes, as exemplified in § 152, which concerns acts committed in the bankruptcy context, the focus of § 157 is a fraudulent scheme outside the bankruptcy which uses the bankruptcy as a means of executing or concealing the artifice." *U.S. v. Milwitt*, 475 F.3d 1150, 1155 (9th Cir. 2007). "In enacting § 157, Congress made it quite clear that the new crime was a specific intent crime". *Id.* The court concluded in *Milwitt* "that the crime of bankruptcy fraud under 18 U.S.C. § 157 requires a specific intent to defraud an identifiable victim or class of victims of the identified fraudulent scheme." *U.S. v. Milwitt*, 475 F.3d 1150, 1156 (9th Cir. 2007).

DISCUSSION

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. 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. *See* 11 U.S.C. § 707(a).

No Credit Counseling

Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

A. an attached certificate and debt repayment plan;

B. a certification under § 109(h)(3); or

C. a request for a determination by the court under § 109(h)(4).

Dismissal of the Bankruptcy Case

The court grants the Motion and dismisses this Bankruptcy Case pursuant to 11 U.S.C. § 707(a) for cause.

Request for Dismissal With Prejudice (§ 349)(a) and Imposing 180-Day Bar on Refiling (§ 109(g)

The Movant and Creditor request that the court do two additional things besides dismissing this case. First, bar Debtor from filing another bankruptcy case for 180-days as provided in 11 U.S.C. § 109(g). Here, the U.S. Trustee argues that Debtor, both in this case and in the prior bankruptcy case Debtor has failed to "appear before the court in proper prosecution of the case." The failure to "appear before the court" is stated to be failing to attend the Meeting of Creditors. 11 U.S.C. § 341.

2 Collier on Bankruptcy ¶ 109.08 (16th Edition) provides a general review of the type of conduct for which 11 U.S.C. § 109(g) relief is proper:

> Thus, section 109(g) prevents certain tactics on the debtor's part that could be deemed abusive, and was enacted to prevent debtors from using repetitive filings as a method of frustrating creditor's efforts to recover what is owed to them. The debtor who willfully fails to appear as required or disobeys the court's orders and suffers dismissal of the case as a result is explicitly prevented from immediately filing another petition; under such circumstances, immediate refiling would thwart the court's effort to preserve its authority. This prong of section 109(g) is applicable only when the earlier case was dismissed because of the debtor's willful conduct.

As further discussed by the Ninth Circuit Court of Appeal in *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013):

> The question of a debtor's good faith "depends on an amalgam of factors and not upon a specific fact." Id. (quoting *Idaho Dep't of Lands v. Arnold (In re Arnold)*, 806 F.2d 937, 939 (9th Cir. 1986)). "[T]he courts may consider any factors which evidence 'an intent to abuse the judicial process and the purposes of the reorganization provisions.'" *Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (In re Phoenix Piccadilly, Ltd.)*, 849 F.2d 1393, 1394 (11th Cir. 1988) (quoting *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.),* 749 F.2d 670, 674 (11th Cir. 1984)). A "[d]ebtor bears the burden of proving that the petition was filed in good faith." *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 940 (B.A.P. 9th Cir. 1997) (citing *In re Powers,* 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991)).

While making reference to Debtor having filed this Bankruptcy Case in an effort to "defeat state court litigation" (though the U.S. Trustee does not state how the filing of a bankruptcy case that is not prosecuted will "defeat" the judicial proceedings a court of the Sovereign State of California), the court notes that Debtor has himself provided the court with additional evidence relating to his "good faith" in proceeding in this case.

Debtor filed this Bankruptcy Case on December 2, 2023. On December 22, 2023, Debtor filed an Ex Parte Motion to Enforce the Automatic Stay and address orders of the State Court that may have been entered in violation of the automatic stay. Dckt. 30. On December 29, 2023, the Motion was refiled and a hearing set for January 11, 2024. This was in response to Creditor filing a Motion for Relief From the Stay to proceed in State Court. Dckt. 17.

The court actually granted the Debtor's Motion, determining that a minute order in the State Court Action re a Motion in *Limine* was void. The court also denied without prejudice Debtor's request for sanctions against Creditor. The hearing in State Court occurred on December 4, 2023. It was at that state court proceeding that the State Court judge determine that the automatic stay did not apply to the Motion. As stated by this court in the Civil Minutes from the hearing on the Motion to Enforce the Stay:

> Debtor requests sanctions for the December 4, 2023 proceedings in the Counterclaim Action. It was at that hearing that the State Court Judge concluded that the automatic stay did not apply to motions in limine with respect to the proceedings against the Debtor. As noted above, such conclusion is in error and the orders entered that day are void.

> There is no evidence of Nazia Iqbal or Muhammad Malik having taken any other or further action following the December 4, 2023 hearing. Additionally, Nazia Iqbal has filed a motion for relief from the stay for an Unlawful Detainer Action she is pursuant in State Court against the Debtor. No actual damages have been pleaded to arise from the violation. Furthermore, Nazia Iqbal or Muhammad Malik did not violate the stay willfully and without regard for federal law. They were likely unaware that there was any violation occurring as they had an explicit ruling from the State Court judge informing them that ruling on a Motion in Limine was not a violation. Therefore, although a violation of the stay did occur, such violation was not willful as that term is defined for purposes of awarding sanctions as provided for in 11 U.S.C. § 362(k) or the inherent power of this court.

Minutes; Dckt. 43 at 5-6. As discussed below, the court granted Creditor relief from the stay to prosecute the State Court Action to obtain possession of the Property at issue. Order; Dckt. 46.

The court discussed in the Civil Minutes how the Debtor's assertions were long on allegations and short on evidence.

Creditor Motion for Relief From the Stay

In reviewing the pleadings filed by Creditor, this appears to be a situation where there has been a long brewing family dispute concerning property dating back to 2017. In filing their pleadings in support of the U.S. Trustee's Motion, Creditor is doing it in *pro se*.

Creditor has also successfully prosecuted a Motion for Relief from the Stay in this Case. Order; Dckt. 46. The court has modified the stay to allow for Creditor to prosecute the Yolo County Case and obtain possession of the real property. While prosecuting in pro se and having what appears to be a good motion template, Creditor only sought relief pursuant to 11 U.S.C. § 362(d)(1) and (2).

Creditor did not seek relief from the Stay pursuant to 11 U.S.C. § 362(d)(4), in which Congress has created the ability to get a two year period in which the automatic stay will not go into effect in any subsequently filed bankruptcy case – unless the judge in the subsequently filed case affirmatively orders the Stay, in whole or in part, to go into effect.

With the present joinder, Creditor, and the U.S. Trustee, could be viewed as seeking backdoor 11 U.S.C. § 362(d)(4) relief, and trying to circumvent the provisions of 11 U.S.C. § 362(d)(4) enacted by Congress.

Asserted Bad Faith of Debtor
and Imposition of 180-Day Bar
on Filing Another Bankruptcy Case

Trustee argues that this case may be filed in bad faith because Debtor has misrepresented facts, refused to correct his mistakes in all of his filings, and it seems as though Debtor has likely filed this instant case merely in an effort to defeat state court litigation.

Debtor has demonstrated a cavalier attitude toward the bankruptcy process and fulfilling his duties as a debtor. Although, it is undeniable that bankruptcy filings are often used as a device to bring a

non-bankruptcy proceeding to a screeching halt or to slam the brakes on a foreclosure sale. Often this can happen on the eve of trial or foreclosure. Such "eve of" filing is not *per se* bad faith.

However, the burden is then on the debtor to diligently prosecute the bankruptcy case. That includes moving forward on the issues in the state court action (whether by claims objection, removal, or the court modifying the stay for adjudication of the issues in the state court action). If there is a foreclosure sale pending, the Debtor (or trustee in a Chapter 7 case) moves forward to address the secured claim, cure the default, or liquidate the asset and salvage the debtor's exemption.

The U.S. Trustee also argues that bad faith is shown by Debtor misstating Social Security Numbers and not filling out the petition documents correctly. As to the latter, such "sins" can be made by many *pro se* debtors.

Debtor has transposed digits in his Social Security Number in two cases. The inference by the U.S. Trustee is that this would be part of a scheme to hide the filing of bankruptcy by Debtor. Or, it could be that the Debtor cannot type numbers correctly.

The court also notes that while the U.S. Trustee has identified this error in the records maintained by the court, the U.S. Trustee has not requested an order from the court or the issuance of an order to show cause why Debtor should not be ordered to amend the pleadings in the two Bankruptcy Cases so that the Social Security Numbers are correct.

In considering the amalgam of factors in this and the prior Bankruptcy Case filed by Debtor, the court concludes that imposition of a 180-bar on filing another case is proper. Debtor has clearly demonstrated in this Bankruptcy Case and his Prior Bankruptcy Case that he has and had no intention of prosecuting such cases to obtain the relief granted by Congress therein.

Rather, Debtor sought just the selective relief of the automatic stay to temporarily derail the State Court Action and the State Court judge. Creditor, upon learning of this Bankruptcy Case, immediately filed a Motion for Relief From the Stay and took no action in violation of the Stay.

Debtor did not file an opposition to that Motion for Relief, but did appear telephonically at the hearing. Civ. Min. Dckt. 42. Debtor could offer no credible opposition to the Motion for Relief from the Automatic Stay.

Debtor has not filed any Schedules, Statement of Financial Affairs, and other required Documents to move forward with the prosecution of his Bankruptcy Case. Debtor has done nothing in the prosecution of this case, other than to enforce the stay as to act taken by the State Court Judge.

Debtor has demonstrated that he is using the Bankruptcy Code to get "strategic injunctions" to derail State Court litigation, not to obtain relief (and perform his obligations) under the Bankruptcy Code,

The court grants relief and expressly imposes the 180-bar on refiling in the order dismissing the case.

Additionally, in light of the redemptive nature of bankruptcy, the court also grants leave for the Debtor to request leave from the 180-bar on refiling by seeking relief from this court. The court retains exclusive jurisdiction after the dismissal of this case and grants leave for the Debtor to request relief from

the 180-bar on refiling from this court. If the Debtor believes he intends to proceed in good faith with the filing and prosecution of another bankruptcy case to be filed within 180-days of the dismissal fo this Case, then the Debtor may request such relief as follows:

A. File a Motion to Reopen this Bankruptcy Case;

B. File and serve a noticed motion to amend this court's order of dismissal and give relief from the 180-day bar on refiling;

C. Such motion for relief from the 180-day bar shall be supported by Debtor's declaration providing testimony of how such good faith filing and prosecution will occur;

D. Such motion for relief from the 180-day bar shall be supported by properly authenticated exhibits which shall include the following fulling completed documents ready to sign and file:

1. Bankruptcy Petition;

2. Certificate of Credit Counseling (fulling completed and executed);

3. Summary of Assets and Liabilities;

4. Schedules;

5. Statement of Financial Affairs;

6. Statement of Intention;

7. Statement of Current Monthly Income;

8. Disclosure of Compensation of Attorney (if Debtor is represented); and

9. Verification and Master Address List;

10. Provide at least 21 days notice of the hearing on the motion to amend this court's order dismissing the case; and

11. Attend the notice motion in person, no telephonic appearances permitted for the Debtor;

then the court will consider whether such relief should be granted and the Debtor be allowed to file another bankruptcy case within 180-days of the dismissal of this case. Opposition may be presented orally at the hearing on the motion to amend.

As provided under the Bankruptcy Code, the reopening of this bankruptcy case is an administrative matter and that the reopening of the bankruptcy case, consideration of the motion to amend, and conducting the hearing on the motion to amend does not reinstate this Bankruptcy Case, recreate a bankruptcy estate or reimpose the automatic stay. The only relief to be granted by the court would be to allow the Debtor to file another bankruptcy case within 180-days of the dismissal of this Bankruptcy Case.

Request for Criminal Referral

Creditor also requests that the court step in and refer this case to the U.S. Attorney for criminal prosecution. While Debtor's conduct has not been productive, it is not such that this court will bring federal prosecution threats in to color the dysfunctional State Court Litigation.

This was part of the requested for relief from the automatic stay by Creditors.

Additionally, if the U.S. Trustee believes that criminal activity by Debtor that the court does not see is afoot, the U.S. Trustee, which is part of the U.S. Department of Justice, can refer such matter to the U.S. Attorney.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. 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 granted, and the case is dismissed.
>
> **IT IS FURTHER ORDERED** that the court for cause imposes the 180-Day Bar on Debtor Mohammad Iqbal (the debtor in this case, notwithstanding any changes in the spelling of his name or transposing digits of his Social Security Number) from filing another bankruptcy after the dismissal of this Bankruptcy Case. The Debtor can easily confirm the date of the dismissal of this Bankruptcy Case (to the extent any questions exist in Debtor's mind) by checking the records for the Case maintained by the Clerk of the Court.
>
> **IT IS FURTHER ORDERED** that this court retains exclusive jurisdiction after the dismissal of this case and grants leave for the Debtor to request relief from the 180-bar on refiling from this court. If the Debtor believes he is intends to proceed in in good faith with the filing and prosecution of another bankruptcy case to be filed

within 180-days of the dismissal of this Case, then the Debtor may request such relief as follows:

A. File a Motion to Reopen this Bankruptcy Case;

B. File and serve a noticed motion to amend this court's order of dismissal and give relief from the 180-day bar on refiling;

C. Such motion for relief from the 180-day bar shall be supported by Debtor's declaration providing testimony of how such good faith filing and prosecution will occur;

D. Such motion for relief from the 180-day bar shall be supported by properly authenticated exhibits which shall include the following fulling completed documents ready to sign and file:

1. Bankruptcy Petition;

2. Certificate of Credit Counseling (fulling completed and executed);

3. Summary of Assets and Liabilities;

4. Schedules;

5. Statement of Financial Affairs;

6. Statement of Intention;

7. Statement of Current Monthly Income;

8. Disclosure of Compensation of Attorney (if Debtor is represented); and

9. Verification and Master Address List;

10. Provide at least 21 days notice of the hearing on the motion to amend this court's order dismissing the case; and

11. Attend the notice motion in person, no telephonic appearances permitted for the Debtor;

then the court will consider whether such relief should be granted and the Debtor be allowed to file another bankruptcy case within 180-days of the dismissal of this case. Opposition may be presented orally at the hearing on the motion to amend.

As provided under the Bankruptcy Code, the reopening of this bankruptcy case is an administrative matter and that the reopening of the bankruptcy case, consider of the motion to amend, and conducting the hearing on the motion to amend does not reinstate this Bankruptcy Case, recreate a bankruptcy estate or reimpose the automatic stay. The only relief to be granted by the court would be to allow the Debtor to file another bankruptcy case within 180-days of the dismissal of this Bankruptcy Case.

FINAL RULINGS

9.	**23-23836-E-7** **RLC-1**	**ROBERT/THERESA OBREGON** **Stephen Reynolds**	**CONTINUED MOTION TO COMPEL ABANDONMENT** **1-29-24 [36]**

Final Ruling: No Appearance at the April 18, 2024 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 Debtor, Chapter 7 Trustee, attorneys of record who have appeared in the bankruptcy case, creditors and parties in interest, and Office of the United States Trustee on January 30, 2024. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 having been granted, the hearing is removed from the Calendar.

April 18, 2024 Hearing

The court continued this matter for calendaring purposes, the parties reporting that they were working out an order to propose with the court. The Order granting relief pursuant to this Motion having been filed, the matter is removed from the Calendar.

REVIEW OF THE MOTION

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 Robert Obregon and Theresa Obregon ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property commonly known as 164 Costello Court, Folsom, Ca 95630 ("Real Property"), and "all scheduled assets of the Debtors" ("Other Property"), apart

from the 2019 GMC Sierra which Debtor planned to purchase back from the estate. Motion, Docket 36 p. 1:19-24.

The Property has an asserted value of $801,500. Amended Schedule D, Docket 57 p. 12 line 2.6. Debtor's Amended Schedule D lists two creditors with claims that are secured by the Property: Nstar/Cooper with a secured claim in the amount of $157,070 (*Id.* at p. 11 line 2.4) and Wells Fargo Bank, N.A. in the amount of $475,572 (*Id.* at p. 11 line 2.4). Debtor claims an exemption in the Property in the amount of $527,090 pursuant to Cal. Code Civ. Pro. § 704.730(a)(2). Amended Schedule C, Docket 57 p. 8 line 2.

Debtor's Other Property includes a 2022 Mercedes GLE 350 valued at $75,175; a 2019 Forest River R Pod valued at $16,600; a 2019 GMC Sierra valued at $26,050 (which is not subject to this Motion to Abandon); furniture valued at $2,755; electronics valued at $5,000; camping gear valued at $500; clothing valued at $500; jewelry valued at $10,000; pets valued at $1; $2,500 cash; checking account valued at $5,000; ownership in Debtor's business, Robert P. Obregon DDS, Inc., valued at $1; 401(k) plan valued at $53,826.80; and a life insurance policy valued at $1,000,000. Amended Schedule A, Docket 57 ps. 3-7.

On February 15, 2024, the Chapter 7 Trustee initially filed a limited opposition, concluding that indeed the Property was of inconsequential value to the estate and should be abandoned. Docket 47, ps. 1:25-2:3. The Chapter 7 Trustee also stated most of the Other Property should also be abandoned, except for the $2,500 cash and checking account valued at $5,000. *Id.* at p. 2:4-9.

However, on February 20, 2024, the parties filed a Stipulation with the court asserting that the situation has changed. Docket 51. The Chapter 7 Trustee stated that Wells Fargo's lien in the Property is likely to be paid through Debtor's business' Chapter 11 Subchapter V case (case no. 23-23620), meaning there would be nonexempt equity in the Property for the Chapter 7 Trustee to pursue. *Id.* at p. 2:18-23. At the parties' request, the court continued the hearing to April 4, 2024, to allow the Chapter 7 Trustee time to investigate if there would be any nonexempt equity in the Property available for the benefit of the estate. Order, Docket 55.

Since the Stipulation was filed and continuation granted, a review of the Docket on March 28, 2024 reveals that the Chapter 7 Trustee has not filed anything new in the case.

The Amended Schedules at Docket 57 assert a much larger homestead exemption in the Property compared to the originally filed Schedules at Docket 1. The Amended Schedule claims an exemption in the amount of $527,090 (Amended Schedule C, Docket 57 p. 8 line 2), whereas the original Schedule C lists the exemption as $187,358 (Original Schedule C, Docket 1 p. 17 line 2).

If the liens of Wells Fargo and Nstar/Cooper are accurately Scheduled and not to be paid through Debtor's business' Chapter 11 case, those liens would total $632,642. The Debtor is claiming $527,090 as exempt, meaning that there would not be any nonexempt equity in the Property, the Property having an asserted value of $801,500.

Some items of the Other Property appears to be of inconsequential value to the estate as well. The Amended Schedule C indicates that the furniture, electronics, camping gear, clothing, and pets are fully exempted. Amended Schedule C, Docket 57 ps. 8-9. However, the 401(k) retirement plan is only exempted in the amount of $1 (valued at $53,826.80), and the life insurance policy is only exempted in the amount of $15,000 (valued at $1,000,000), leaving nonexempt equity in those assets of the estate. *Id.*

At the hearing, counsel for the Trustee reported that in light of the Proofs of Claims filed, the Wells Fargo Bank claim is much larger and exhausts, in conjunction with the second position lien, the value of the collateral.

The cash in the amount of $2,500 and the checking account funds in the amount of $5,000 are not exempted, meaning those assets are not abandoned back to debtor.

The Trustee's counsel reported that the parties can prepare the order granting the Motion, excluding the smaller items which are not exempt, and can then lodge the order with the court.

The court finds that the debt secured by the Property and the exemptions claimed in the furniture, electronics, camping gear, clothing, and pets exceeds the value of the property and that there are negative financial consequences to the Estate caused by retaining the property, with the exception for cash and accounts as addressed on the record. 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, excluding the cash and accounts item.

The court continues the hearing on the Motion to 10:30 a.m. on April 18, 2024, for monitoring of this Motion and the proposed order to be lodged with the court..

Counsel for the Debtor and Counsel for the Trustee shall prepare an order granting the motion and excluding the items not to be abandoned, and lodge the proposed order with 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 to Compel Abandonment filed by Robert Obregon and Theresa Obregon ("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, having been granted, is removed from the calendar.

10. 22-23379-E-7 GMR-3 | **ABDUL MUNIF** / **Gabriel Liberman** | **MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **3-14-24 [122]**

Final Ruling: No appearance at the April 18, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. By the court's calculation, 36 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).

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). 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 for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for the Chapter 7 Bankruptcy Estate of debtor Abdul Munif ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Applicant submits the declaration of Michael Gabrielson to authenticate the facts in the motion. Declaration, Docket 125.

Fees are requested for the period January 15, 2024, through March 13, 2024. Exhibit 1, Docket 124.

The order of the court approving employment of Applicant was entered on November 30, 2023. Dckt. 104. Applicant requests fees in the amount of $2,403.00 and costs in the amount of $86.11. Application, Docket 122, p. 3.

Trustee filed a Non-Opposition on March 14, 2024. Docket 126.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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 a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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 preparing 2023 federal and California state income tax returns and associated documents, and preparing the fee application. 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.

General Case Administration: Applicant spent 1.0 hours in this category. Applicant prepared the first and final fee application, including a detailed description of tax services. Docket 122, p. 2:20-26.

Prepared 2023 Federal and California Estate Income Tax Returns: Applicant spent 4.4 hours in this category. Applicant Prepared first and final December 31, 2023 federal and California estate income tax returns, including review and evaluation of projected income tax liabilities, and related preparation of the required Cloobeck motion, notice and declaration for authority to pay federal income taxes. *Id.* at p. 2:8-18.

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	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	5.4	$445.00	$2,403.00
Total Fees for Period of Application			$2,403.00

Costs & Expenses

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.10	$30.40
Postage		$55.71
Total Costs Requested in Application		$86.11

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. First and Final Fees in the amount of $2,403.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $86.11 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$2,403.00
Costs and Expenses	$86.11

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 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 Gabrielson & Company ("Applicant"), Accountant for the Chapter 7 Bankruptcy Estate of debtor Abdul Munif ("Client"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee, Geoffrey Richard on behalf of the Chapter 7 Bankruptcy Estate of debtor Abdul Munif,

Fees in the amount of $2,403.00
Expenses in the amount of $86.11,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant for the Chapter 7 Bankruptcy Estate of debtor Abdul Munif.