UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 26, 2022 at 1:30 p.m.

1.	22-20445-E-13 RHS-1	**ESTATE OF DELORIS MILES CHARITY** **Pro Se**	**CONTINUED ORDER TO SHOW CAUSE AND APPEAR AT HEARING** **3-1-22 [9]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on March 18, 2022. The court computes that 39 days' notice has been provided.

The Order to Show Cause is sustained, and the case is dismissed.

On March 1, 2022, the court issued an Order to Show Cause Re Dismissal why this Chapter 13 case filed for an estate of a decedent should not be dismissed. The Order also ordered Karen Rudulph to appear at the March 15, 2022 hearing:

> **IT IS ORDERED** that Karen Rudulph, who is identified as the Administrator for the Estate of Deloris Miles Charity, and who signed the Bankruptcy Petition shall appear in person (No Telephonic Appearances Permitted for the persons ordered to appear) on **March 15, 2022, at 1:30 p.m.** (Specially Set day and time) in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, to show cause as to why the court does not dismiss this bankruptcy case.
>
> **IT IS FURTHER ORDERED** that Karen Rudulph shall bring to court the day of the March 15, 2022 hearing endorsed filed copies of her Letters of Administration to serve as the Administrator for the Estate of Deloris Miles

Charity.

Order, Dckt. 9 (emphasis in original).

Karen Rudulph did not appear at the March 15, 2022 hearing as ordered by the court. The court ordered her appearance as such was determined necessary and beneficial to the proper adjudication of the issues presented at the Order to Show Cause re Dismissal..

Bankruptcy judges, as federal judges who are a unit of the United States District Court, are authorized to issue corrective sanctions as necessary and appropriate to address and deter violations of court orders and the law. Bankruptcy Courts have the jurisdiction to impose sanctions even after a case has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. §105(a).

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32,43 (1991); *see also Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. Id. The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys appearing before it. *Id.* at 1059. Nevertheless, suspending an attorney from appearing before the court is permissible. Id.

The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. *See* Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings... To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.')"); *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

Here, Karen Rudulph, who as the identified administrator for the Estate of Deloris Miles Charity, voluntarily filed the Chapter 13 bankruptcy petition and appeared in this Bankruptcy Case. This court has properly ordered Karen Rudulph, who voluntarily filed the Chapter 13 bankruptcy petition, to

appear on March 15, 2022, and address issues concerning the legal propriety of such a filing, issues relating thereto, and whether Ms. Rudulph is working to properly address the concerns that prompted the filing of the bankruptcy petition (which in this type of situation is a pending foreclosure sale on real property).[1]

FN.1. An online search discloses that there was a Notice of Default recorded on January 20, 2022, which document is identified as a Notice of Sheriff Sale. The judgment creditor is identified as "Secretary/HSNG & URB." The Sheriff Sale date is stated to have been set for March 1, 2022. This bankruptcy case was commenced by Karen Rudulph on February 28, 2022, one day prior to the stated Sheriff Sale date.

The court determines that the imposition of a corrective sanction in the amount of $5,000.00 is appropriate to address Karen Rudulph's failure to comply with the order of this court to appear, and to deter Ms. Rudulph and other persons in a similar situation from ignoring or treating as optional to comply with orders of a federal judge.

The court does not immediately impose such sanction, but issues this Order to Show Cause re Corrective Sanction to allow Karen Rudulph the opportunity to comply with the order to appear at the continued hearing on the Order to Show Case Why the Bankruptcy Case Should Not be Dismissed (DCN: RHS-1) and to comply with this Order to Show Cause re Corrective Sanction and Appear (DCN: RHS-2).

Ms. Rudulph's compliance with the order to appear at the continued hearing on the Order to Show Cause Why the Bankruptcy Case Should Not be Dismissed and this Order to Show Cause re Corrective Sanction should not be imposed will be a factor for the court to consider whether a monetary corrective sanction of $5,000.00 is necessary. Additionally, Ms. Rudulph can provide an explanation as to why she did not comply with this court's order to appear at the March 15, 2022 hearing.

April 26 2022 Hearing

As discussed in the Ruling on the Order to Show Cause why this bankruptcy case should not be dismissed due to it being improper for someone to attempt to file a bankruptcy case for a probate estate, there are serious issues to be addressed in this Case. The court ordered Ms. Rudulph to appear to address those issues . The court has noted a rash of attempted bankruptcy filings for probate estates in the Sacramento Division.

The court has used those hearing on the Order to Show Cause re Dismissal as a "teachable moment," as former President Obama would say, so that the non-attorney attempting to file such a bankruptcy case to understand the why it is legally improper, as well as to determine who has been providing assistance or advice for such bankruptcy cases to be commenced.

Unfortunately, Ms. Rudulph did not appear at the Order to Show Cause re Dismissal, though for some reason desired to dismiss the Bankruptcy Case when ordered to appear in this court.

At the hearing, XXXXXXXXXX

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

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

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

IT IS ORDERED that the Order to Show Cause is **xxxxxxx**

2.	**22-20445-E-13** **RHS-2**	**ESTATE OF DELORIS MILES CHARITY** **Pro Se**	**ORDER TO SHOW CAUSE** **3-17-22 [16]**

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Interested Parties, Chapter 13 Trustee, and U.S. Trustee as stated on the Certificate of Service on March 3rd and 4th, 2022. The court computes that 11 and 12 days' notice has been provided.

The court issued an Order to Show Cause based on deficiencies in Debtor's petition.

The Order to Show Cause Re Dismissal of Case is xxxxx.

ORDER TO SHOW CAUSE

On February 28, 2022, Karen Rudulph, identified as the "Administrator" for the Estate of Deloris Miles Charity, filed a Voluntary Petition for Individuals Filing for Bankruptcy in which the Debtor is identified as "Estate of Deloris Miles Charity." Dckt. 1. The address where the Debtor "lives" is stated to be 10111 Crawford Way, Sacramento, California, 95837.

In looking at the initial pleadings, the Petition, the court notes some inconsistent information. The case is filed in the name of Estate of Deloris Miles Charity.

The Public Records searchable through LEXIS disclose that Deloris (aka Delores, Dolores, Delord) Charity residing at 10111 Crawford Way, Sacramento, California passed away on October 10, 2017 – four years and four months before the filing of this case.

Karen Rudulph is listed as a "Family Member" at the 10111 Crawford Way, Sacramento, California property.

There is no signature provided on page 6 of the Voluntary Petition for Debtor or an authorized representative of Debtor. Dckt. 1 at 7. The name Karen Rudulph, Administrator is printed in, which appears to be done in lieu of a cursive signature. The last page of the Petition stating that the person filing the Petition is not represented by an attorney is signed (printed) by Karen Rudulph. *Id.* at 8.

No Lenders of Administration are attached to document that Karen Rudulph is a court appointed administrator.

Who and What May File Bankruptcy

Congress provides in 11 U.S.C. § 109(b) that a "person" may be a Chapter 7 debtor, with railroads, and various domestic and foreign insurance and financial institutions excluded. The term person is defined in 11 U.S.C. § 101(41) as follows:

> (41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—
>
> (A) acquires an asset from a person—
>
> (I) as a result of the operation of a loan guarantee agreement; or
>
> (ii) as receiver or liquidating agent of a person;
>
> (B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or
>
> (C) is the legal or beneficial owner of an asset of—
>
> (I) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
>
> (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;
>
> shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

Though non-exclusive, a "Person" includes individuals and business entities. It has long been established that the administrator of a decedent's estate or a decedent's estate is not a "person" eligible to file bankruptcy. These cases include the following decisions:

> Based on these indicia, we conclude that the Code's definition of "person," and therefore its definition of "debtor," excludes insolvent decedents' estates. Other courts that have addressed this question have uniformly embraced this view. *See In re Estate of Whiteside*, 64 B.R. 99, 102 (Bankr.E.D.Cal.1986); *In re Estate of Patterson*, 64 B.R. 807, 808 (Bankr.W.D.Tex.1986); *In re Jarrett*, 19 B.R. 413,

> 414 (Bankr.M.D.N.C.1982); *In re 299 Jack-Hemp Assocs.*, 20 B.R. 412, 413 (Bankr.S.D.N.Y.1982); *In re Estate of Brown*, 16 B.R. 128, 128 (Bankr.D.D.C.1981). These courts generally have opined that Congress elected not to extend bankruptcy jurisdiction to insolvent decedents' estates because the individual states have developed, through their probate systems, a comprehensive and specialized machinery for the administration of such estates. *See Jarrett*, 19 B.R. at 414; 299 *Jack-Hemp Assocs.*, 20 B.R. at 413. Some of the courts have also noted that the policy of the Bankruptcy Code is to give individuals a "fresh start" through discharge of their debts, and that this policy is not furthered by bankruptcy administration of decedents' estates. *See Jarrett*, 19 B.R. at 414; cf. *In re Estate of Hiller*, 240 F. Supp. 504, 504 (N.D.Cal.1965) (interpreting 1898 Bankruptcy Act); *Adams v. Terrell*, 4 Wood. 337, 4 F. 796, 801 (W.D.Tex.1880) (in the case of an insolvent decedent's estate, "death has already discharged [the decedent] of all personal liability").

In re Goerg, 844 F.2d 1562, 1566 (11th Cir. 1988)

In 2006 the Supreme Court discussed this probate exception in less exclusive terms, making it clear that merely because the “p word” was involved the federal court could walk away from the matter.

> Reversing the Ninth Circuit, which had ordered the case dismissed for want of federal subject-matter jurisdiction, this Court held that federal jurisdiction was properly invoked. The Court first stated:
>
> > "**It is true that a federal court has no jurisdiction to probate a will or administer an estate** . . . . But it has been established by a long series of decisions of this Court that **federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court**." 326 U.S., at 494, 66 S. Ct. 193, 90 L. Ed. 165 (quoting Waterman, 215 U.S., at 43, 30 S. Ct. 10, 54 L. Ed. 80).
>
> Next, the Court described a probate exception of distinctly limited scope:
>
> > "[W]hile a **federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court**, . . . it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." , 66 S. Ct. 193, 90 L. Ed. 165.

> The first of the above-quoted passages from *Markham* is not a model of clear statement. The Court observed that federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants against a decedent's estate, **"so long as the federal court does not *interfere with the probate proceedings*."** *Ibid.* (emphasis added). Lower federal courts have puzzled over the meaning of the words "interfere with the probate proceedings," and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate. *See, e.g., Mangieri v. Mangieri*, 226 F.3d 1, 2-3 (CA1 2000) (breach of fiduciary duty by executor); *Golden ex rel. Golden v. Golden*, 382 F.3d 348, 360-362 (CA3 2004) (same); *Lepard v. NBD Bank, Div. of Bank One*, 384 F.3d 232, 234-237 (CA6 2004) (breach of fiduciary duty by trustee); Storm v. Storm, 328 F.3d 941, 943-945 (CA7 2003) (probate exception bars claim that plaintiff's father tortiously interfered with plaintiff's inheritance by persuading trust grantor to amend irrevocable inter vivos trust); *Rienhardt v. Kelly*, 164 F.3d 1296, 1300-1301 (CA10 1999) (probate exception bars claim that defendants exerted undue influence on testator and thereby tortiously interfered with plaintiff's expected inheritance).
>
> We read Markham's enigmatic words, in sync with the second above-quoted passage, to proscribe "disturb[ing] or affect[ing] the possession of property in the custody of a state court." 326 U.S., at 494, 66 S. Ct. 296, 90 L. Ed. 256. True, that reading renders the first-quoted passage in part redundant, but redundancy in this context, we do not doubt, is preferable to incoherence. In short, **we comprehend the "interference" language in *Markham* as essentially a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res***. *See, e.g., Penn General Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195-196, 55 S. Ct. 386, 79 L. Ed. 850 (1935); *Waterman*, 215 U.S., at 45-46, 30 S. Ct. 10, 54 L. Ed. 80. Thus, **the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate**; it also **precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court**. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.

Marshall v. Marshall 547 U.S. 293, 311-312 (2006).

Even with the admonition from the Supreme Court not to drop a proceeding merely because it would relate to a probate proceeding, including a probate estate as a “person” who may file bankruptcy would necessarily wrench from the state court the administration of the probate estate and property of the probate estate, sweeping it all into the bankruptcy estate 11 U.S.C. § 541, 28 U.S.C. § 1334 (e) (granting exclusive federal court jurisdiction over all property of the bankruptcy estate).

April 26, 2022 Hearing

At the hearing xxxxxxxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the Petition, it relating to a decedent's estate, there being an ongoing proceeding in the California Superior Court for the administration of that estate, on behalf of the decedent, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is xxxxx.

3. 22-20445-E-13 ESTATE OF DELORIS MILES CHARITY
Pro Se
MOTION TO DISMISS CASE
3-16-22 [14]

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

Debtor failed to notice the Motion pursuant to Federal Rules of Bankruptcy Procedure 1017(a); 2002; 9014. However, the Order Setting Hearing filed by the court was served by the Clerk of the Court on Debtor (*pro se*), Interested Parties, Chapter 13 Trustee, and United States Trustee as stated on the Certificate of Service on March 18, 2022. Dckt. 20. The court computes that 39 days' notice has been provided.

Federal Rule of Bankruptcy Procedure 1017(a) provides that a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on the notice as provided in Federal Rule of Bankruptcy Procedure 2002. Debtor failed to provide notice pursuant to Federal Rule of Bankruptcy Procedure 2002; however, the Order Setting Hearing on an expedited schedule filed by the court was served by the Clerk of the Court on March 16, 2022. Thus, the notice requirement is satisfied.

The Motion to Dismiss is xxxxx

Debtor, Estate of Deloris Miles Charity ("Debtor"), seeks dismissal of the case. No basis for the dismissal is provided.

DISCUSSION

11 U.S.C. § 1307(b) provides:

> On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

In keeping with the Congressional intent that a Chapter 13 case is completely voluntary, 1307(b) gives an absolute right for a petitioner to dismiss a Chapter 13 petition. 8 Collier on Bankruptcy P 1307.03 (16th 2021); *In re Nash*, 765 F.2d 1410, 1413 (9th Cir. 1985).

April 26, 2022 Hearing

> At the hearing XXXXXXX.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Debtor, Estate of Deloris Miles Charity ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is XXXXXXX,

4. 19-26957-E-13 MARK HAYNES
CONNIE HAYNES VS. Mark Shmorgon

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-22 [77]

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. A review of the Docket shows Connie Haynes, Creditor, attached the Proof of Service to the Notice of Motion. Dckt. 82. Movant is reminded "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).

The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 14, 2022. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

Connie Haynes ("Movant") seeks relief from the automatic stay with respect to Mark Hayne's ("Debtor") real property commonly known as 6931 Lincoln Avenue, Carmichael, California 95608, Sacramento County, and more particularly described as "Lot 14, as shown on the 'Plat of Stollwood Estates Unit No. 2,' a portion of Lot 6, Carmichael Colony Sacramento County, recorded in Book 88 of Maps, Map No. 15, records of said County" ("Property"). Movant has provided the Declaration of Connie S. Haynes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant is the ex-spouse of Debtor and states they have a community property interest in the Property. Movant states Debtor has defaulted on the mortgage payments for the Property and the loan now has arrears exceeding $35,000.00. Movant's Declaration, Dckt. 79. Movant states this is effecting her creditworthiness. Movant claims she is entitled to one-half the value of the Real Property plus $20,000 cash, per the terms of the Marital Settlement Agreement. Movant states the debt arose before

the filing of this bankruptcy case. Movant states this makes her a "creditor." Movant also states she was not served proper notice.

Movant wishes to sell the community property real estate pursuant to the Marital Settlement Agreement.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Exhibits in this matter as one document. That is not consistent with the Local Bankruptcy Rules in this District. "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). Counsel 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 the 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 attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Movant argues Debtor has not sold the Property pursuant a Marital Settlement Agreement ("MSA") and the loan on the Property is now in arrears exceeding $35,000.00. Declaration, Dckt. 79. Movant also provides evidence that she is to receive one-half of the value of the Property plus $20,000.00 cash, per the terms of the MSA. *Id.*

DEBTOR'S OPPOSITION

On April 12, 2022, Mark Haynes, Debtor, filed an Opposition to Movant's Motion for Relief from Automatic Stay. Dckt. 92. The Opposition states Movant should not be bringing forth this Motion, it should only be brought by the mortgage company, Loancare, LLC. Debtor believes Movant is nothing more than a Class 7 unsecured creditor, whose demand of equalization payments is dischargeable under Chapter 13. Debtor makes the argument that Section 523(a)(15) does not apply in Chapter 13 cases.

Debtor states Movant was named in the original petition and listed on Schedule H as Co-Debtor to the mortgage. Movant has now been added to Schedule F to list her equalization claim. Debtor contends the language of the MSA was unclear and not specific in the exact amount owed to Movant, other than she will receive proceeds of an eventual sale. Debtor argues Movant was aware of

the bankruptcy filing and received notice.

Debtor argues Movant has ample opportunity to object to the plan and the modification but failed to do so. Further, Movant never filed a claim in this case, which leads Debtor to call into question whether she felt she was owed anything at all.

Debtor argues Movant is erroneously trying to use a motion for relief from the automatic stay when in fact she is trying to get property of the bankruptcy estate sold pursuant to 11 U.S.C. § 363. Further, Movant is subject to the automatic stay and that the bankruptcy court has jurisdiction over the sale of this property and not the family court. Thus, it would not be proper for the family court to issue orders to sell this property which is needed for Debtor's effective reorganization.

Debtor contends relief should not be granted because Debtor is unaware of any real property values declining in their region. In fact real property values have increased substantially since the filing of this bankruptcy. Additionally, Debtor reminds Movant that mortgage payments are due to the mortgage creditor and not her.

Lastly, Debtor states he was in a COVID-19 forbearance agreement with the lender between May 29, 2020 through February 22, 2022. Dckt. 93, Exhibits A &B. Real estate commissions have been at record highs but the actual amount of sales have been low. Debtor has been able to secure a loan modification to bring the loan current. Dckt. 93, Exhibit C.

MOVANT'S RESPONSE

Movant filed a response (Dckt. 96) stating:

1. Movant is not asking to be named as a Class 4 Creditor but rather the Class 4 Asset be removed from the Bankruptcy proceeding to fulfill a pre-existing judgment.

2. Movant has not resided at the subject property for over three (3) years and has no access to mailing at the address.

3. Movant disagrees that the MSA as written is unclear.

4. Movant has not received adequate proof that there were missed payments.

5. Movant renews the request for relief from the stay under 11 U.S.C. § 362(d)(1) and no stay affects the Real Property.

REVIEW OF THE MARITAL SETTLEMENT AGREEMENT

Movant attached as Exhibit A a copy of the Marital Settlement Agreement ("MSA"). See Exhibit A, Motion Dckt. 77.

The MSA is written as a pleading and signed by the State Court judge. It lists Connie Sue Hayes, "In Pro Per," in the upper, and there is no attorney approving it as to form for Debtor. The

terms, conditions, and provisions of the MSA include, as pertinent to the Motion before this court, the following:

A. "The parties intend this Agreement to be a final and complete settlement of all their martial rights and obligation [sic] between them, including a complete and final division of their property rights and property claims and obligations and the right of either Petitioner or Respondent to spousal support from the other, with the exceptions provided herein." MSA, ¶ 1(f); 77.

B. " The residence located at 6931 Lincoln Avenue Carmichael, CA 95608 described as Lot 14, as shown on the "Plat of Stollwood Estates Unit No. 2", a portion of Lot 6, Carmichael Colony Sacramento County, recorded in Book 88 of Maps, Map No. 15, records of said County APN#247-0200-070-0000 is currently listed for sale. After all mortgage obligations, and escrow related fees are paid in full the remaining balance shall be used to pay off the following community obligations:

1. The IRS Obligation in the approximate sum of $91,000.00

2. Pay off the Southwest Airlines 401(k) obligation in the approximate sum of $20,449.00.

3. [provision providing for additional debts to be paid if additional sales proceeds exist]

If there are not enough funds left to pay the above, Petitioner and Respondent shall share in the obligations equally." *Id*., p. 5:8-24.

C. "In the event either party decides to claim any rights under bankruptcy laws, that party must notify the other of this intention in writing at least 10 days prior to the filing of the petition. Such notice must include, but not necessarily limited to, the name, address, and telephone number of the attorney, if any, representing the party in that proceeding and the court in which the petition will be filed." *Id*., p. 7:21-25.

D. "Both parties agree and have entered into this agreement after having made a complete independent Investigation of the extent and value of said property divided hereunder. Tho parties hereby stipulate that tho division of community property contained herein is a substantially equal division and that, to the extent that such division is not an exactly equal division, the parties hereby waive their rights to such an exactly equal division." *Id*., p. :1-5.

Under the MSA the residence is to be sold and community property debts paid, with neither ex-spouse continuing to have those liabilities going into the future.

On Schedule A/B Debtor states that he is the sole owner of the Residence, but then states that it is community property. Dckt. 1 at 11. As is well known to California attorneys, California law provides for the ownership interests in community property as follows:

§ 751. Community property; interests of parties

> The respective interests of each spouse in community property during continuance of the marriage relation are present, existing, and equal interests.

Cal. Fam. § 751. Thus, it appears that Debtor checked the wrong box given that he is not the sole owner of community property.

When Debtor, as one of the two community property owners of the Residence, filed bankruptcy, then federal law made the community property, and all of it, property of this bankruptcy estate to be administered in this case.

> § 541. Property of the estate
>
> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
> . . .
> (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
>
> > (A) under the sole, equal, or joint management and control of the debtor; or
> >
> > (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541 (a)(2). While the non-debtor spouse has an equal interest in the community property, all interests of the debtor and non-debtor spouse become property of the bankruptcy estate.

For the non-debtor spouse, the law provides certain rights with respect to how the property is administered and a marshaling of assets whether there are community and non-community property debts for a bankruptcy estate with community and separate property.

In Debtor's original Plan, for the residence the payment of two secured claims are provided in Class 4 (for which there could not be any default in payment) and then in Class 2(B) for the Internal Revenue Service secured claim. Dckt. 2 That Plan was confirmed on December 27, 2019. Order, Dckt. 36.

On June 11, 2020, less than a year after the original plan had been confirmed, Debtor filed a First Modified Plan. Dckt. 50. The First Modified Plan did not alter the treatment of the claims secured by the Residence. The First Modified Plan was filed in response to the Chapter 13 Trustee's Motion to Dismiss this Case (Dckt. 39) due to material and substantial monetary defaults in plan payments. The court confirmed the First Modified Plan.

On April 4, 2022, the Chapter 13 Trustee filed a new Motion to Dismiss (Dckt. 83), alleging that Debtor in default in $3,818.00 in plan payments (2 months of payments). Debtor filed a response acknowledging the defaults, stating that he intended to be current in all plan payments as of the May 4,

2022 hearing on the Motion to Dismiss. Response, Dckt. 87.

Martial Disputes Spilling into Bankruptcy Court

Both Debtor and Movant misstate and appear to misunderstand property rights and interests under California law and the Bankruptcy Code as the supreme law of the land. Debtor asserts that Movant is a "mere" creditor with a general unsecured claim. Movant asserts that the Residence should be administered in the State Court family law proceeding. Both miss the mark.

The Residence is property of this Bankruptcy Estate, and now plan estate, which is community property owned equally by Debtor and Movant. Since it is community property, the non-exempt value of the Residence is used to pay creditors in this case – on separate claims and community claims.

Here, the court is presented with a pro se Marital Settlement Agreement which has been incorporated into the State Court judge's order which the Debtor and Movant agreed are:

> (e) The parties intend this Agreement to be a final and complete settlement of all their marital rights and obligation between them, including a complete and final division of their property rights and property claims and obligations and the right of either Petitioner or Respondent to spousal support from the other, with the exceptions herein provided.

MSA, ¶ 1(e); Dckt. 77. The MSA expressly states that the Residence is listed for sale and that Debtor and Movant have bound the other contractually that the proceeds are to be paid for specific debts. That property and those claims are now part of this bankruptcy case.

Debtor asserts that Movant has no rights as the co-owner of the Residence, and that Debtor now "needs" the Residence for an effective reorganization. Opposition, ¶ 10; Dckt. 92. Neither the Opposition nor Debtor's Declaration (Dckt. 94) explains what the Residence is "necessary" for an effective reorganization.

Looking at the Confirmed Modified Plan, it provides that upon confirmation the property of the bankruptcy estate revests in the Debtor and is no longer in the Bankruptcy Estate. Mod. Plan ¶ 6.01; Dckt. 50. In Paragraph 3.11(a), the Modified Plan provides that upon confirmation the automatic stay is "modified" to allow the holder of a Class 4 claim to exercise its rights in the collateral securing the claim. The stay is not modified for everyone.

While Movant seeks to, via this Motion for Relief, to have the Residence "removed" from this Bankruptcy Case and the federal court, such is not appropriate bankruptcy relief. However, Debtor premises such relief by stating that there is a state court order/judgment, the MSA, for the sale of the Residence. In substance, she asserts that the Residence is to be sold pursuant to the MSA/Order/Judgment of the State Court and creditors paid – and is not to be an ongoing, long term residential property for Debtor and the secured claim for the mortgage on the Residence and Federal tax debt are not to be ongoing liabilities hanging over Debtor and Movant, but promptly paid.

This court, as would any other federal or state court, read the MSA and order thereon to

determine the contractual meaning thereof. If this court concluded that it was vague or the meaning unclear with the State Court judge was ordering thereon, it may be appropriate to modify the automatic stay to allow the State Court judge to clarify that order/judgment. Then, Debtor could avail himself of rights under the Bankruptcy Code with regard to that Property and the contractual and non-bankruptcy order/judgment.

At the hearing, **xxxxxxx**

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

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

The Motion for Relief from the Automatic Stay filed by Connie Haynes ("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 Relief from the Automatic Stay is **xxxxxxx**