UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 8, 2025 at 10:30 a.m.

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1. 24-22929-E-7 UST-2 | **TERESA SONLEY** | **Michael Moore** | **MOTION FOR FORFEITURE OF FEES, ASSESSMENT OF FINES AND DAMAGES AGAINST CARMEN LYDIA RUIZ, FOR VIOLATIONS OF 11 U.S.C §110 3-26-25 [59]**

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, and Carmen Lydia Ruiz on March 26, 2025. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Forfeiture of Fees, Assessment of Fines and Damages 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 Forfeiture of Fees, Assessment of Fines and Damages is granted.

Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. Trustee") moves this court for an order finding Carmen Lydia Ruiz ("Ms. Ruiz) has violated various provisions under 11 U.S.C. § 110 and issuing fines and awarding Teresa Dawniel Sonley ("Debtor") damages for these violations. U.S. Trustee pleads the following:

1. Ms. Ruiz received $300 from Debtor to prepare the Debtor's bankruptcy documents. She is not an attorney. Thus, Ms. Ruiz is a "bankruptcy petition preparer" within the meaning of 11 U.S.C. § 110(a)(1). And, as such, she was obligated to comply with the requirements of 11 U.S.C. § 110 of the

Bankruptcy Code, and General Order 23-06 of Bankruptcy Court for the Eastern District of California. Mot. 2:1-5.

2. Here, however, Ms. Ruiz committed numerous violations of § 110, i.e., by failing to disclose her address, using the word "legal" in her business, and failing to disclose her social security number and her compensation in this case. *Id.* at 2:6-8.

3. Additionally, and more egregiously, the Debtor's testimony establishes that Ms. Ruiz counseled the Debtor to conceal assets from the chapter 7 trustee; and fraudulently signed the Debtor's signature on the bankruptcy documents, in addition to filing the Petition, Schedules, Statements and amendments without first permitting the Debtor to review the documents being filed with the Court. *Id.* at 2:9-13.

Trustee makes the following requests in the prayer:

1. imposing fines totaling $28,500, payable by Ms. Ruiz pursuant to 11 U.S.C. § 110, to the U.S. Trustee;

2. requiring (A) the forfeiture of the full amount of the fee received or collected by Ms. Ruiz from the Debtor and (B) the return of such fee by Ms. Ruiz to the Debtor;

3. requiring Ms. Ruiz to pay $2,000 in damages to the Debtor pursuant to 11 U.S.C. § 110(i).

Mot. 2:17-20.

U.S. Trustee filed the Declaration of Shane Bharat in support to authenticate the facts alleged in the Motion and to authenticate Exhibits A, B, and C. Decl., Docket 64. Essential testimony of the Debtor from the 341 Meeting is authenticated in this Declaration. *Id.* at ¶ 3. The testimony is as follows:

a. [Ms. Ruiz] filed the bankruptcy documents for the Debtor;

b. [Ms. Ruiz] filed amendments for the Debtor on August 13, 2024, which the Debtor did not "get to review" before they were filed;

c. [Ms. Ruiz] signed all the [documents] that have been done [up to that time];

d. That Ms. Ruiz charged $500 and had been paid $300 for the bankruptcy work;

e. That Ms. Ruiz did not provide Debtor with copies of the Schedules, and Statements, and Petition prior to filing those documents, and that Ms. Ruiz signed the Petition and Schedules, and Statements for the Debtor;

f. That the Schedules filed by Ms. Ruiz were inaccurate;

g. Ms. Ruiz did not hold herself out to be an attorney; and

h. Ms. Ruiz advised the Debtor to place a vehicle that she owned in her child's name so that it would not be administered by the Trustee.

Decl. ¶ 3.

APPLICABLE LAW AND DISCUSSION

11 U.S.C. § 110 states in relevant part:

(a)In this section—

(1)"bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2)"document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)

(1)A bankruptcy petition preparer who prepares a document for filing shall **sign the document and print on the document the preparer's name and address.** If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—

(A)sign the document for filing; and

(B)print on the document the name and address of that officer, principal, responsible person, or partner.

(2)

(A)Before preparing any document for filing or accepting any fees from or on behalf of a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

(B)The notice under subparagraph (A)—

(i)shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

(ii)may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

(iii)shall—

(I)be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

(II)be filed with any document for filing.

(c)

(1)A bankruptcy petition preparer who prepares a document for filing shall place on the document, **after the preparer's signature, an identifying number that identifies individuals who prepared the document**.

(2)

(A)Subject to subparagraph (B), for purposes of this se**ction, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document** or assisted in its preparation.

(B)If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

(d)A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

(e)

(1)**A bankruptcy petition preparer shall not execute any document on behalf of a debtor.**

(2)

(A)**A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice**, including any legal advice described in subparagraph (B).

(B)The legal advice referred to in subparagraph (A) includes advising the debtor—

(i)whether—

(I)to file a petition under this title; or

(II)commencing a case under chapter 7, 11, 12, or 13 is appropriate;

(ii)whether the debtor's debts will be discharged in a case under this title;

(iii)**whether the debtor will be able to retain the debtor's home, car,** or other property after commencing a case under this title;

(iv)concerning—

(I)the tax consequences of a case brought under this title; or

(II)the dischargeability of tax claims;

(v)whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(vi)concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

(vii)concerning bankruptcy procedures and rights.

(f)A bankruptcy petition preparer **shall not use the word "legal" or any similar term in any advertisements, or advertise** under any category that includes the word "legal" or any similar term.

(g)A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(h)

(1)The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for the debtor or accepting any fee from or on behalf of the debtor.

(2)A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).

(3)

(A)The **court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (**2)—

(i)found to be in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or

(**ii)found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).**

(**B)All fees charged by a bankruptcy petition preparer may be forfeited** in any case in which the bankruptcy petition preparer fails to comply with th**is subsection or subsection (b), (c), (d), (e), (f), or (g)**.

(C)An individual may exempt any funds recovered under this paragraph under section 522(b).

(4)The debtor, the trustee, a creditor, the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court, may file a motion for an order under paragraph (3).

(5)A bankruptcy petition preparer shall be fined not more than $500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)

(1)If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—

(A)the **debtor's actual damages**;

(B)the **greater of**—

(i)**$2,000;** or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C)reasonable attorneys' fees and costs in moving for damages under this subsection.

(2)If the trustee or creditor moves for damages on behalf of the debtor under this subsection, **the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of $1,000 plus reasonable attorneys' fees and costs incurred. .** .

(l)

(1)A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

(2)**The court shall triple the amount of a fine assessed under paragraph (1) in any case in whic**h the court finds that a bankruptcy petition preparer—

(A)**advised the debtor to exclude assets** or income that should have been included on applicable **schedules**;

(B)advised the debtor to use a false Social Security account number;

(C)failed to inform the debtor that the debtor was filing for relief under this title; or

(D)prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

11 U.S.C. § 110 was enacted to curtail the abuse consumer debtors would experience when engaging non-lawyer petition preparers for help in filing a petition. The Bankruptcy Appellate Panel for the Ninth Circuit has discussed this Section and its legislative history, stating:

> Code Section 110 also was enacted to prevent fraud. The legislative history provides that Section 110 is "critically needed ... to confront the large scale fraudulent conduct of those who prey on the poor and unsophisticated." 140 Cong.Rec. § 14597 (Oct. 7, 1994). Section 110 was established to regulate abuses by non-lawyer petition preparers. *In re Fraga*, 210 B.R. 812, 816–17 (9th Cir. BAP 1997). "The purpose behind the law was to identify petition preparers and protect debtors from preparers who lacked legal training and ethics regulation, and to protect them from those who may take unfair advantage of debtors unfamiliar with the bankruptcy system." *Rausch* II, supra.

> Regulation was and is sorely needed. Many bankruptcy paralegals, who are not specially trained in the complex procedural and substantive areas of bankruptcy law, continue to give improper legal advice. "Such advice often causes harm to the unwary consumer." M. Testerman, *Bankruptcy Paralegal Regulation and the Bankruptcy Reform Act of 1994: Legitimate Legal Assistance Options for the Pro Se Bankruptcy Debtor*, 23 Cal. Bankr.J. 37, 37 (1996). "[B]adly assisted pro se debtors place a day-to-day administrative burden on the courts, Chapter 7 trustees, and the United States Trustee's office." 23 Cal. Bankruptcy J. at 38.
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> Jeter's complaint that bankruptcy trustees and debtors' attorneys are not required to disclose their social security numbers is not well taken.
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> > The distinction between bankruptcy petition preparers and attorneys and their employees is neither arbitrary nor irrational. Attorneys are subject to malpractice actions, rules of ethical conduct, disciplinary proceedings and continuing legal education requirements. Bankruptcy petition preparers are not. Attorneys are also held responsible for their employees, such as secretaries, law clerks, and other assistants.
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> *Rausch*, supra, 197 B.R. at 119. The Bankruptcy Code and Rules, e.g., Code Section 329 and Fed.R.Bankr.P.2016(b), contain ample provisions to protect consumers from abuses by lawyers. *Fraga*, supra, 210 B.R. at 819. In addition, bankruptcy trustees are significantly regulated. They are supervised by the Office of the United States Trustee, 28 U.S.C. § 586, they must post a bond before serving in a case, Code Section 322, they must be judged competent to perform, Code Section 321, and may be removed for cause, Code Section 324. Especially in light of the regulation of bankruptcy trustees and attorneys, Section 110's purpose of preventing abuse by non-lawyer petition preparers is a legitimate one.

In re Adams, 214 B.R. 212, 218 (B.A.P. 9th Cir. 1997). Collier's Treatise states regarding violations of 11 U.S.C. § 110:

> Section 110(l) combines penalty provisions formerly found in different subsections of section 1101 and expands them. Under section 110(l), a bankruptcy petition preparer who violates subsection (b), (c), (d), (e), (f), (g) or (h) continues to be punishable by a fine of up to $500 for each violation. Courts have held that, for purposes of such fines, each offending legal document filed is a separate violation,2 and each piece of legal advice is a separate violation.3 In addition, the court must triple the fine if the court finds that the petition preparer advised the debtor to exclude income or assets from the schedules, advised the debtor to use a false social security number, failed to inform the debtor that the debtor was filing a bankruptcy case, or prepared a document for filing without disclosing the identity of the petition preparer.4 These particularly egregious violations have been deemed by Congress to warrant a stricter penalty in every case in which they occur.

2 COLLIER ON BANKRUPTCY ¶ 110.13.

In this case, the statute is clear and unambiguous. It is clear that Ms. Ruiz is a bankruptcy petition preparer as defined in 11 U.S.C. § 110(a). Ms. Ruiz is not an attorney and helped fill out Debtor's bankruptcy petition for compensation. *See* Decl. ¶ 3, Docket 64. The court is given the authority to charge up to $500 for each violation of Sections (b), (c), (d), (e), (f), (g), and (h). The fines shall be tripled if the bankruptcy petition preparer made any violations under 11 U.S.C. § 110(l)(2). Ms. Ruiz committed various violations under Sections (b), (c), (d), (e), (f), (g), and (h), discussed further below. Moreover, because Ms. Ruiz instructed Debtor to transfer her car to her child's name, Ms. Ruiz violated the provisions of 11 U.S.C. § 110(l)(2), Ms. Ruiz's fines shall be tripled.

Violations of 11 U.S.C. § 110(b), (c), (d), (e), (f), and (h)

1. The court finds Ms. Ruiz violated 11 U.S.C. § 110(f). Ms. Ruiz identified her company as "Ruiz Legal Services" in the Debtor's bankruptcy filings. Voluntary Petition, Form B2030 at 2, Docket 1. Ms. Ruiz is liable in the amount of $500 for including the term "legal" with her services in violation of 11 U.S.C. § 110(f).

2. The court finds Ms. Ruiz violated 11 U.S.C. § 110(e)(1). Debtor testified that [Ms. Ruiz] filed amendments for the Debtor on August 13, 2024, which the Debtor did not "get to review" before they were filed; and that [Ms. Ruiz] signed all the [documents] that have been done [up to August 13, 2024]. Therefore, the Petition, Schedules, and Statements filed as ECF No.1 and the amendments filed on or prior to August 13, 2024, contain 14 debtor signatures executed by Ms. Ruiz. 14 separate documents executed by Ms. Ruiz is 14 separate violations of 11 U.S.C. § 110(e)(1). Ms. Ruiz is liable in the amount of $7,000 for 14 violations of 11 U.S.C. § 110(e)(1).

3. The court finds Ms. Ruiz violated 11 U.S.C. § 110(e)(2). Ms. Ruiz provided Debtor legal advice, specifically, when Ms. Ruiz advised Debtor to place a vehicle Debtor owned in her child's name to avoid collection. Therefore, Ms. Ruiz is liable in the amount of $500 for providing legal advice in violation of 11 U.S.C. § 110(e)(2).

4. The court finds Ms. Ruiz violated 11 U.S.C. § 110(h)(2). Ms. Ruiz never filed a Form 119 or any declaration that discloses her amount of compensation. Moreover, Ms. Ruiz charged $500, which is more than the permitted $300 by General order 23-06. Therefore, Ms. Ruiz is liable in the amount of $500 for failing to disclose her compensation in violation of 11 U.S.C. § 110(h)(2).

5. The court finds Ms. Ruiz violated 11 U.S.C. § 110(b)(1). Ms. Ruiz, as the bankruptcy petition preparer, was required to provide her address or social security number on the documents filed in this case. She did not do so. Therefore, Ms. Ruiz is liable in the amount of $500 for failing to provide her address or social security number in violation of 11 U.S.C. § 110(b)(1).

6. Similarly, the court finds Ms. Ruiz violated 11 U.S.C. § 110(c)(1) as Ms. Ruiz never provided an identifying number to identify herself when preparing the bankruptcy documents on behalf of Debtor. Therefore, Ms. Ruiz is liable in the amount of $500 for violating 11 U.S.C. § 110(c)(1).

These fines, in total, are $9,500 for the violations of 11 U.S.C. § 110. However, 11 U.S.C. § 110(l)(2) requires the court to triple the fines if any of those four Subsections have been met. Here, 11 U.S.C. § 110(l)(2)(A) has been met and subjects these imposed fines to tripling. The record reflects, as testified by Debtor, Ms. Ruiz instructed Debtor to explicitly exclude assets that should have been included on the Schedules; namely, Ms. Ruiz instructed Debtor to transfer her car to her child to avoid being administered by the Chapter 7 Trustee. Therefore, these fines in the amount of $9,500 are statutorily tripled, and Ms. Ruiz is ordered to pay U.S. Trustee fines in the amount of $28,500 for her violations of 11 U.S.C. § 110.

Forfeiture of Fees

The United states Bankruptcy Court for the Eastern District of California General Order 23-06 only permits a bankruptcy petition preparer to collect a fee that shall not exceed $200. General Order 23-06, at 2:10-12. The record reflects in this case Ms. Ruiz charged $500 of which Debtor has paid $300. 11 U.S.C. § 110(h)(3)(B) provides that the bankruptcy petition preparer may be compelled to forfeit fees if the bankruptcy petition preparer failed to comply with 11 U.S.C. § 110. Here, the court has found many violations of 11 U.S.C. § 110 committed by Ms. Ruiz. Therefore, the court orders Ms. Ruiz to forfeit any fees she has collected from Debtor related to filing the documents in this case.

Damages

A court shall order a bankruptcy petition preparer who violates 11 U.S.C. § 110 to pay damages pursuant to 11 U.S.C. § 110(i). The court is to award the greater of $2,000 or twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services. Here, there has been no showing of Debtor's actual damages, and the greater amount in 11 U.S.C. § 110(i)(1)(B) is $2,000. Therefore, Ms. Ruiz is ordered to pay Debtor damages in the amount of $2,000 for violating 11 U.S.C. § 110.

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 Forfeiture of Fees, Assessment of Fines and Damages 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 is granted. Carmen Lydia Ruiz ("Ms. Ruiz) has violated 11 U.S.C. § 110(b), (c), (d), (e), (f), and (h). Carmen Lydia Ruiz shall pay to the U.S. Trustee $28,500 in fines for violating 11 U.S.C. § 110(b), (c), (d), (e), (f), and (h) by June 1, 2025. **Carmen Lydia Ruiz shall pay the fines to the U.S. Trustee, on or before August 1, 2025,** at the following address:

c/o Edmund Gee
501 I Street #7-500
Sacramento CA 95814

The fines shall be held in a special account of the United States Trustee System Fund, to be used to further enforce Section 110 actions throughout the country.

IT IS FURTHER ORDERED that Carmen Lydia Ruiz forfeits, pursuant to 11 U.S.C. § 110(h)(3)(B), any amounts Teresa Dawniel Sonley, Debtor, paid to Carmen Lydia Ruiz in relation to services provided in connection with this Bankruptcy Case, which includes the $300.00 as testified to by the Debtor at the 341 Meeting of Creditors and other additional amounts thereafter for such services related to this Bankruptcy Case, and **pay the $300.00 and any additional amounts** paid by or on behalf of Debtor **to the Chapter 13 Trustee on or before June 16, 2025.** As provided in 11 U.S.C. § 110(h)(3)(C), the Debtor may claim an exemption in these payments recovered.

IT IS FURTHER ORDERED that **Carmen Lydia Ruiz shall pay, on or before June 5, 2025**, $2,000 in statutory damages to Teresa Dawniel Sonley, the Debtor, for violating 110(b), (c), (d), (e), (f), and (h).

2. **25-20029-E-13** **SANDRA DAVIS** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
25-2005 **1-13-25 [1]**
CAE-1

DAVIS V. ESA MANAGEMENT, LLC

Item 2 thru 3

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 1/13/25
Answer: none

Nature of Action:
Declaratory judgment

Notes:

The Status Conference is xxxxxxx.

APRIL 16, 2025 STATUS CONFERENCE

On January 13, 2025, Plaintiff-Debtor Sandra Davis filed a Complaint in which ESA Management, LLC is named as the Defendant. Dckt. 1. The Complaint alleges that the Defendant violated the automatic stay by locking Plaintiff-Debtor out of her apartment and having personal property possessions moved. Plaintiff-Debtor asserts that this occurred after Defendant had knowledge of the automatic stay and Plaintiff-Debtor's bankruptcy case.

The Clerk of the Court issued the Summons in this Adversary Proceeding on January 13, 2025. Dckt. 3. No Certificate of Service has been filed documenting services of the summons, Complaint, and other documents on the Defendant.

The Summons must be served within seven (7) days after it was issued. Fed. R. Bankr. P. 7004(e). If not so timely served, a new summons may be issued. *Id*. Additionally, Federal Rule of Civil Procedure 4(m) is incorporated into Federal Rule of Bankruptcy Procedure 7004(a)(1), and provides that if a summons is not served within 90 days of the filing of the complaint, the court must dismiss the action or set a specific time in which the summons and complaint must be served.

Here, the Complaint was filed on January 13, 2025. Ninety days from January 13, 2025 expired on April 13, 2025.

The Plaintiff-Debtor's Bankruptcy Case, 25-20029, was dismissed on January 24, 2025. 25-20029; Dismissal Order for Failure to File Documents, Dckt. 13.

At the Status Conference, no appearance was made by Plaintiff.

The court shall issue an Order to Show Cause why this Adversary Proceeding should not be dismissed for lack of prosecution.

The Status Conference is continued to 10:30 a.m. on May 8, 2025, to be conducted in conjunction with the hearing on the court's Order to Show Cause.

3. **25-20029-E-13** **SANDRA DAVIS** **ORDER TO SHOW CAUSE**
25-2005 **Pro Se** **4-21-25 [7]**
RHS-1

DAVIS V. ESA MANAGEMENT, LLC

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*) and Chapter 13 Trustee as stated on the Certificate of Service on April 22, 2025. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to timely issue a summons and generally prosecute this case.

The Order to Show Cause is sustained, and the adversary proceeding is dismissed without prejudice.

On January 13, 2025, Sandra Davis, the Plaintiff-Debtor, filed a Complaint seeking relief pursuant to 11 U.S.C. § 362(k) for alleged violations of the Automatic Stay. Dckt. 1. The Complaint alleges that the Defendant violated the automatic stay by locking Plaintiff-Debtor out of her apartment and having personal property possessions moved. Plaintiff-Debtor asserts that this occurred after Defendant had knowledge of the automatic stay and Plaintiff-Debtor's bankruptcy case.

The Clerk of the Court issued the Summons in this Adversary Proceeding on January 13, 2025. Dckt. 3. No Certificate of Service has been filed documenting services of the summons, Complaint, and other documents on the Defendant.

The Summons must be served within seven (7) days after it was issued. Fed. R. Bankr. P. 7004(e). If not so timely served, a new summons may be issued. *Id*. Additionally, Federal Rule of Civil Procedure 4(m) is incorporated into Federal Rule of Bankruptcy Procedure 7004(a)(1), and provides that if a summons is not served within 90 days of the filing of the complaint, the court must dismiss the action or set a specific time in which the summons and complaint must be served.

Here, the Complaint was filed on January 13, 2025. Ninety days from January 13, 2025 expired on April 13, 2025.

The Plaintiff-Debtor's Bankruptcy Case, 25-20029, was dismissed on January 24, 2025. 25-20029; Dismissal Order for Failure to File Documents, Dckt. 13.

Dismissal Without Prejudice for Failure to Prosecute

and Failure to Serve Summons and Complaint

As addressed above the plaintiff in an adversary proceeding must timely serve the summons and complaint. Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004(a)(1) provides:

> (m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

As noted above, the Plaintiff-Debtor's Chapter 13 Bankruptcy Case, which was filed on January 6, 2025, was dismissed on January 24, 2025. Case 25-20029.

This Adversary Proceeding having been filed on January 13, 2025, and the 90 days in which the Summons and Complaint must be served having expired, the court must either dismiss this Adversary Proceeding without prejudice or set a further deadline for the Plaintiff-Debtor.

In light of the dismissal of the Chapter 13 Case eighteen days after it was filed, no action appearing to be taken in this Adversary Proceeding, the events upon which the relief pursuant to 11 U.S.C. § 362(k) necessarily having to have occurred in the January 6 to January 24, 2025 time period (when the automatic stay would have been in effect), and Plaintiff-Debtor not appearing at the April 16, 2025 Status Conference, the court concludes that dismissal without prejudice of this Adversary Proceeding is the proper course of action. It being without prejudice, if the Plaintiff-Debtor seeks to assert and enforce such 11 U.S.C. § 362(k) rights in the future, she may do so (whether by motion or an adversary proceeding).

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 sustained, no other sanctions are issued pursuant thereto, and the adversary proceeding is dismissed without prejudice.

4. 25-20231-E-7 RPK-1 | **VALENTYN/YULIA HORBATYUK** | **MOTION TO AVOID LIEN OF TRAVIS CREDIT UNION**
Ryan Keenan | **4-23-25 [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.

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 Creditor on April 23, 2025. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Consensual Lien is ~~denied~~.

This Motion requests an order avoiding the lien of Travis Credit Union ("Creditor") against property of the debtor, Valentyn Horbatyuk and Yulia Nikolavevna Horbatyuk ("Debtor"). The Motion seeks to avoid Creditor's lien in personal property identified as a 2022 Toyota Prius ("Vehicle").

Debtor originally purchased the Vehicle on December 21, 2023, obtaining a loan with Safe Credit Union to fund the purchase. Decl. ¶ 2, Docket 16. On January 18, 2024, Debtor refinanced the loan with Creditor, Travis Credit Union. *Id.* at ¶ 5. Debtor argues that the Vehicle is used as a tool of the trade, using the Vehicle in a DoorDash and Uber business. *Id.* at ¶ 2. Debtor Yulia Horbatyuk testifies that Creditor was granted a security interest in the Vehicle.

However, Debtor does not submit as an Exhibit an authenticated copy of the Vehicle Title showing perfection of the lien or the loan documents for the granting of a lien.

At the hearing, **XXXXXXX**

The statutory provisions cited by Debtor for the relief requested is 11 U.S.C. § 522(f), which states (emphasis added):

(f)

(1)Notwithstanding any waiver of exemptions but subject to paragraph (3), the **debtor may avoid the fixing of a lien on** an interest of the debtor **in property to the extent that such lien impairs an exemption** to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A)a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B)a nonpossessory, nonpurchase-money security interest in any—

(i)household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii)implements, professional books, or **tools, of the trade of the debtor** or the trade of a dependent of the debtor; or

(iii)professionally prescribed health aids for the debtor or a dependent of the debtor. . .

(**3)In a case in which State law that is applicable to the debtor**—

(A)permits a person to voluntarily waive a right to claim exemptions under subsection (d) or **prohibits a debtor from claiming exemptions under subsection (d)**; and

(**B)either permits the debtor to claim exemptions under State law without limitation in amount**, **except to the extent that the debtor has permitted the fixing of a consensual lien** on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

Debtor seeks to avoid Creditor's lien pursuant to 11 U.S.C. § 522(f)(1)(B)(ii), asserting that the Vehicle is used as a tool of the trade and is a nonpossessory, nonpurchase-money security interest. The Collier on Bankruptcy Treatise states regarding avoiding this type of lien (emphasis added):

One of the more significant changes in the bankruptcy laws brought by the Bankruptcy Reform Act of 1978 was **the grant of avoiding powers to debtors to**

provide additional protection for their exempt property. Described in its simplest terms, section **522(f) permits a debtor to wipe out the interest that a creditor has in particular property if the debtor's interest in that property would be exempt but for the existence of the creditor's lien or interest**. The debtor's avoiding power under this section is limited in that it **may be employed "only to the extent that the lien impairs the debtor's exemption."** Furthermore, only certain types of liens are subject to the avoiding power of section 522(f). **Nonpossessory, nonpurchase-money security interests** in certain household goods, **tools of the trade**, and health aids are subject to avoidance under section 522(f)(1)(B), and judicial liens on otherwise exempt property are subject to avoidance under section 522(f)(1)(A). Thus, in determining whether avoidance of liens is possible under section 522(f), one must ascertain the nature of the lien held by the creditor as well as to identify the property to which the lien attaches. . .

The second prerequisite to the application of section 522(f)(1)(B) is that the security interest be a nonpurchase-money security interest. The term "purchase-money security interest" is not directly defined by the Uniform Commercial Code, though U.C.C. Revised § 9-103(a) provides definitions of "purchase-money obligation" and "purchase-money collateral." **The term "purchase-money obligation" is defined as an "obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used**." Very few problems arise with respect to the creation of a purchase-money security interest in favor of the seller of collateral. The same is true when a lender makes an advance to a debtor that is payable to the debtor and seller for the purchase of collateral. In each of those instances, the security interest clearly is a purchase-money security interest. **The problem most frequently presented, however, occurs when the debtor refinances the outstanding indebtedness** or purchases additional collateral from the original seller and the refinancing and additional collateral are rolled into a single transaction. **A number of courts have held that such action destroys the purchase-money nature of the original transactions**. In addition, a purchase-money security interest does not exist if the collateral secured an obligation other than its price. **Some courts, however, focused on language defining a purchase-money security interest under the former Uniform Commercial Code and concluded that the security interest may retain its purchase-money character**. For transactions that do not involve consumer goods, **U.C.C. Revised § 9-103(f) adopts the position that a purchase-money security interest in nonconsumer goods does not lose its purchase-money status through refinancing.** U.C.C. Revised § 9-103(h) further provides that the proper rules in consumer-goods transactions shall be left to the courts to decide by applying "established approaches. . ."

There is an additional limit on the avoidance of liens on tools of the trade. Section 522(f)(3) prohibits the avoidance of nonpossessory, non-purchase money security interests in implements, professional books, or tools of the trade, farm animals or crops to the extent that the value of that property exceeds $7,575. The limitation applies if (1) the applicable state law permits the waiver of the debtor's exemptions under section 522(d), or if the state has opted out of the federal exemption scheme,

> and (2) if the state law either permits exemptions in an unlimited amount or prohibits the avoidance of consensual liens on the property.
>
> The language of section 522(f)(3) is confusing at best. For example, in section 522(f)(3)(A), it asks whether state law allows a debtor to waive the right to claim exemptions under section 522(d). Such a provision would seem to contradict section 522(e), which renders exemption waivers, including the waiver of the right to avoid transfers, unenforceable in bankruptcy cases. Thus, it would appear that this portion of the test for the application of the restriction on lien avoidance is unlikely to be met. However, **the first part of the test is met if the state has opted out of the federal exemptions set out in section 522(d), as most states have.**
>
> The limit on lien avoidance, however, requires also that the state law either permit exemptions in an unlimited amount, or prohibit the avoidance of consensual liens on otherwise exempt property of this kind. Whether a particular state exemption law meets the first part of the test simply requires a reading of the applicable statute. **No state permits exemptions in an unlimited amount**. Few, if any, prohibit the avoidance of security interests, simply because state law has never dealt with the avoidance of liens.

4 COLLIER ON BANKRUPTCY ¶¶ [1], [5], [6][b] & [c].

Pursuant to Debtor's Schedule A, the subject Vehicle has an approximate value of $21,711.00 as of the petition date. Schedule A at 12, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §§ 704.140(b)2), (6), and (5) in the amount of $21,711.00 on Schedule C. Schedule C at 17-18, Docket 1.

In researching this question, the court first came upon a Ninth Circuit Decision from 1984, addressing this very point, *In re Matthews*, 724 F.2d 798 (9th Cir. 1984). In *Matthews*, the Ninth Circuit stated:

> Transameric [as the subsequent lender] a made the decision to issue a new loan, and, in its own words, to "pay net balance due" on the old loan, rather than to extend the payments on the old loan. This procedure benefitted Transamerica because it converted a delinquent loan into a current loan on its books. To accomplish this, Transamerica sacrificed its purchase money security interest, taking instead a security interest (non-purchase money) in the property to secure the new loan.

Matthews, 724 F. 2d at 800.

The Matthews Decision cites back to the 1964 version of the California Commercial Code. The California Commercial Code has been revised many time since that date, and the Commercial Code section defining purchase money security interest and text has changed. The court looks to the 21st Century version of the California Commercial Code as follows.

California Commercial Code § 9103 provides the current definition of a "purchase money security interest," and provides in pertinent part:

§ 9103. Purchase money security interest; Application of payments; Burden of establishing nature of interest
(a) In this section:

(1) "Purchase money collateral" means goods or software that secures a purchase money obligation incurred with respect to that collateral.

(2) **"Purchase money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral** or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase money security interest as follows:

(1) **To the extent that the goods are purchase money collateral with respect to that security interest**.

. . .

(f) **In a transaction other than a consumer–goods** transaction, a purchase money security interest does not lose its status as such, even if any of the following conditions are satisfied:

(1) The purchase money collateral also secures an obligation that is not a purchase money obligation.

(2) Collateral that is not purchase money collateral also secures the purchase money obligation.

(3) **The purchase money obligation has been renewed, refinanced, consolidated, or restructured.**

(g) In a transaction other than a consumer–goods transaction, a secured party claiming a purchase money security interest has the burden of establishing the extent to which the security interest is a purchase money security interest.

(h) The limitation of the rules in subdivisions (e), (f), and (g) to transactions other than consumer–goods transactions is intended to leave to the court the determination of the proper rules in consumer–goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer–goods transactions and may continue to apply established approaches.

In 4 Witkin Summary of California Law, Transactions, § 36, it provides the following statement concerning the refinancing of a purchase money transaction for non-consumer goods (emphasis added):

U.C.C. 9103(f) buttresses the dual-status rule by making it clear that **(in a transaction other than a consumer-goods transaction**) cross-collateralization and renewals, **refinancings**, and restructurings **do not cause a purchase money security interest to lose its status**. It provides that in a transaction other than a consumer-goods transaction, a purchase money security interest does not lose its

> status, even if (1) the purchase money collateral also secures an obligation that is not a purchase money obligation (U.C.C. 9103(f)(1)), (2) collateral that is not purchase money collateral also secures the purchase money obligation (U.C.C. 9103(f)(2)), or (3) the purchase money obligation has been renewed, refinanced, consolidated, or restructured (U.C.C. 9103(f)(3)). **In these nonconsumer-goods transactions, a secured party claiming a purchase money security interest has the burden of establishing the extent to which the security interest is a purchase money security interest. (U.C.C. 9103(g).)**

The Ninth Circuit Decision and the current California Uniform Commercial Code, as well as the Witkin Treatise appear to be easily identified resources and information as to California Law for an attorney as part of fulfilling the certifications being made pursuant to Federal Rule of Bankruptcy Procedure 9011.

In Yulia Horbatyuk's Declaration she testifies under penalty of perjury that:

> 2. I purchased a 2022 Toyota Prius on December 21, 2023 for the business purpose of driving for UberEats and Door Dash
>
> 3. In connection with that purchase, I obtained a loan with Safe Credit Union on December 21, 2023 with an interest rate of 8.39%. See a true and correct copy of the original purchase agreement attached hereto as Exhibit "A".

Dec., ¶¶ 2, 3; Dckt. 16. She testifies that the Safe Credit Union loan was the purchase money loan for the Vehicle. Then she testifies that the Safe Credit Union loan used to purchase the vehicle was refinanced through Creditor, Debtor being able to reduce the interest rate that was being charged on the Safe Credit Union loan, and gave Creditor a lien on the vehicle to secure the refinance loan. *Id.*; ¶¶ 5, 6.

Based on the evidence presented by Debtor and applicable California Law, Creditor's refinance loan and continues to have the same purchase money status as the Safe Credit Union loan and lien.

California Law clearly providing in the Commercial Code that the purchase money status is not terminated by a refinance, Debtor's requested relief is not supported by 11 U.S.C. § 522(f)(1)(B) which requires the lien to be one based on a nonpossessory, nonpurchase money security interest if it is to be avoided pursuant to that section.

At the hearing, **xxxxxxx**

After application of 11 U.S.C. § 522(f)(2)(A) and the California Commercial Code, the requested relief is denied.

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Valentyn Horbatyuk and Yulia Nikolavevna Horbatyuk ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion to Avoid the Security Interest of Travis Credit Union ("Creditor"), is denied.~~

5. **23-23834-E-7** **ANTONETTE TIN** **MOTION TO SELL FREE AND CLEAR**
DNL-22 **Peter Macaluso** **OF LIENS**
4-10-25 [314]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties in interest, and Office of the United States Trustee on April 10, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Nikki Farris, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 986 Greenhurst Way, Sacramento, CA 95831 ("Property").

The proposed purchaser of the Property is Edward Jose Molina Castaneda ("Buyer"), and the terms of the sale are:

(a) the Trustee shall sell and the Buyer shall buy the Subject Property for the purchase price of $665,000.00;

(b) all contingency periods begin upon execution of the Sale Agreement and will be removed in writing pursuant to the time lines in the Sale Agreement

(c) escrow shall close within 21 days of the filing of the signed Court's order approving the sale;

(d) the Buyer shall take the Subject Property as-is and where-is, with all its faults and in its present condition;

(e) the sale is without representation of condition or warranties, expressed or implied, of any kind by the Trustee;

(f) the Trustee will make no repairs nor give any credits to offset cost of repair;

(g) the Trustee will give the Buyer a $10,000.00 credit for closing costs;

(h) the Buyer shall pay for a home warranty;

(i) the Trustee shall pay for the Natural Hazard Zone Disclosure Report;

(j) the Trustee shall pay for smoke alarms, CO detectors, and water heater bracing;

(k) Escrow fees will be split equally between the Trustee and the Buyer;

(l) the Trustee shall pay for the Owner's title insurance policy, county transfer tax, and city transfer tax;

(m) the Buyer shall pay for the home warranty plan;

(n) the Bankruptcy Court has full jurisdiction to determine and resolve all disputes between the parties; and

(o) the Buyer has remitted a $7,000.00 deposit into escrow.

Mot. 3:8-22.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of Antonette Tin, Exequiel Allan Fernando, and Erlinda B. Lynch.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant again seeks relief pursuant to 11 U.S.C. § 363(f)(2) as the parties have consented under the Stipulation Agreement to forfeit any interests in the Property. The court approved this Stipulation by Order Dated December 20, 2024. Docket 275. This language in the approved Compromise clearly states that any interests of Antonette Tin, Exequiel Allan Fernando, or Erlinda B. Lynch of any claims of interest each of the settling parties may have had.

The court grants the relief, with the order to provide that given the Stipulation approved by the court in which the specified persons have agreed that they have no interests in the Property and that the Property is owed by the Bankruptcy Estate, the court orders that the sale is free and clear of any interests that could be asserted by Antonette Tin, Exequiel Allan Fernando, or Erlinda B. Lynch.

Overbidding Procedures

Trustee requests approval of overbid procedures that require a proposed overbidder, prior to or at the hearing on this motion, to provide the Trustee with a deposit by cashier's check in the amount of $12,000.00 ($7,000.00 deposit + first overbid of $5,000.00) and provide proof of funds for the balance of the purchase price. Any overbidding shall proceed in increments of at least $5,000.00. Mot. 4:7-11. The court finds these requested procedures to be reasonable and adopts them for purposes of this Motion.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Trustee will realize funds of 365,790.10 after paying costs associated with the sale and liens. This is a substantial return for the Estate.

Movant has estimated that a 5.5 percent broker's commission from the sale of the Property will equal approximately $36,575.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5.5 percent commission to be paid to Reed Block Realty.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so the sale can move forward immediately. Mot. 5:9-12.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

Counsel shall prepare and lodge with the court a proposed order consistent with this Ruling.

6. 25-21136-E-7 DIAMANTINA CARVER
Eric Seyvertsen

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-1-25 [14]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 1, 2025. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney filed an Amended Petition on April 25, 2025, correcting the email address. Docket 18.

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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

7.	**24-24338-E-7** **KMT-3**	**CHRISTIAN STEINBACH** **Michael Hays**	**MOTION TO EMPLOY TMC AUCTION, INC. AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES** **O.S.T.** **4-23-25 [53]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on April 23, 2025. By the court's calculation, 15 days' notice was provided. The court set the hearing for May 8, 2025. Dckt. 59.

The Motion to Employ Auctioneer and for Authorization of Auctioneer's Fees and Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer's Fees and Expenses are granted.

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(3) and Bankruptcy Code Sections 327, 328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Christian Michael Steinbach ("Debtor"):

1. 2017 Volkswagen Atlas SEL Premium 4 Motion, VIN ending in 6133 ("Vehicle").

Trustee argues that Auctioneer's appointment and retention is necessary to facilitate a liquidation of the Vehicle and produce the highest and best return to the estate on short notice, and it is a convenient opportunity given the Auctioneer is selling a large number of vehicles on May 13, 2025. Mot. 2:6-11.

The essential terms of the Employment Agreement are as follows:

> (a) A commission of twenty percent (20%) will be charged to the estate and will be deducted from the gross sale proceeds.
>
> (b) The Auctioneer will be entitled to reimbursement of any expenses incurred in preparing for and conducting the auction in an amount not to exceed $500.
>
> (c) Within 30 business days of the auction, the Auctioneer will remit payment to the Trustee the net sale proceeds.
>
> (d) All gross proceeds of the sale shall be maintained separate from the Auctioneer's personal or general funds and accounts pursuant to California Civil Code § 1812.607(j).

Id. at ps. 2:25-3:4.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction is a full-service auction company providing auctions and accelerated marketing services, as well as liquidations of business and other financial assets for corporations, financial institutions, trustees, individuals, and estates. The Auctioneer has extensive experience in assisting bankruptcy trustees similar to the Trustee. Decl. ¶ 2, Docket 56. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 7-9.

DISCUSSION
Motion to Employ and
Authorization to Sell

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be

provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 55. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Auctioneer is authorized to sell the 2017 Volkswagen Atlas SEL Premium 4 Motion, VIN ending in 6133.

Motion for Authorization of Fees and Expenses

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)).

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)).

Here, Trustee has estimated that a twenty percent broker's commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed $500 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed $500, in connection with the auction.

The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so the sale be allowed to move forward as soon as possible. Mot. 4:14-17.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Nikki B. Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective May 8, 2025, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 55.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the 2017 Volkswagen Atlas SEL Premium 4 Motion, VIN ending in 6133.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and expenses not to exceed $500 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

8. 25-20045-E-7 OSMAN SYED MOTION TO REDEEM
JC-1 Jake Cline 4-3-25 [17]

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 Creditor and other parties in interest on April 3, 2025. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 Redeem is xxxxxxx.

Debtor Osman Ali Syed ("Debtor") moves the court for an order valuing creditor Chase Bank, N.A.'s ("Creditor") claim in the amount of $27,827 and permitting Debtor to redeem the collateral securing Creditor's claim in the same amount. Creditor's claim is secured by a 2023 Tesla Model Y, Vin ending in 2275 ("Vehicle") and is asserted to be in the total amount of $57,700. Decl. ¶ 3, Docket 19.

Debtor seeks to value the Vehicle at a replacement value of $27,827 as of the petition filing date. Decl. ¶ 4, Docket 19. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor explains he acquired the Vehicle for personal use. Decl. ¶ 1.

APPLICABLE LAW

11 U.S.C. § 722 is the statutory grounds for a debtor to redeem personal property that is collateral securing a debt in Chapter 7 cases, which states:

> **An individual debtor may**, whether or not the debtor has waived the right to redeem under this section, **redeem tangible personal property intended primarily for personal, family, or household use**, from a lien securing a dischargeable consumer debt, **if such property is exempted under section 522** of this title or has been abandoned under section 554 of this title, **by paying the holder of such lien the amount of the allowed secured claim** of such holder that is secured by such lien in full at the time of redemption.

Collier's Treatise states regarding redemption:

> Section 722 of the Bankruptcy Code provides that an individual debtor may redeem consumer goods from a lien securing a dischargeable consumer debt, if the property is exempted under section 522 or has been abandoned under section 554, by paying the lienholder the amount of the allowed claim secured by the lien, i.e., the value of the lienholder's collateral if he or she is undersecured. The right to redeem amounts to a right of first refusal for the debtor to purchase consumer goods that might otherwise be repossessed.

6 COLLIER ON BANKRUPTCY ¶ 722.01.

> The property redeemed must be intended primarily for "personal, family, or household" use. . . To be subject to redemption, the property must also be exempted under section 522 or have been abandoned under section 554. With respect to exempt property, section 722 is designed for use in cases in which the creditor's lien on the property cannot be avoided under section 522(f). . .
>
> Because the debtor has the right to redeem certain types of abandoned property, any motion for abandonment of such property should be served upon the debtor as a party in interest, and the court should not allow abandonment until it determines whether the debtor intends to redeem the property. Such a determination may be made based upon the debtor's statement of intention with respect to property securing consumer debts, filed pursuant to section 521(a)(2) of the Code. This statement must be filed, using Official Form 108, the Chapter 7 Individual Debtor's Statement of Intention, within 30 days of the filing of the petition or before the date of the meeting of creditors, whichever is earlier. Federal Rule of Bankruptcy Procedure 1007(b)(2) requires the debtor to serve a copy of this statement on the trustee and all creditors named in the statement. No abandonment should occur before that statement is filed, and if the debtor has stated an intent to redeem, the debtor must be given the opportunity to carry out that intent at least for the time period allowed by section 521(a)(2).

6 COLLIER ON BANKRUPTCY ¶ 722.02[1]-[3].

> When the debtor and the secured creditor agree on the amount of the allowed secured claim, redemption may be accomplished by the debtor simply paying that amount to the creditor in exchange for release or satisfaction of the lien. . .
>
> When there is a dispute as to value, the court must hear evidence on that issue. In cases of motor vehicles, many courts favor the presentation of standard industry guides, with some even establishing a presumption based on the published value of a used vehicle absent evidence that would justify an upward or downward adjustment based on the condition of the vehicle. As to both vehicles and other property, the debtor is also competent to testify as to his or her opinion on value.

6 COLLIER ON BANKRUPTCY ¶ 722.05[1] & [2].

There are essentially three prerequisites mentioned in 11 U.S.C. § 722 that must be met first for a Debtor to be able to exercise the right of redemption. These are:

1. the property subject to the Motion must be tangible personal property intended primarily for personal, family, or household use;

2. the lien must be securing a dischargeable consumer debt; and

3. the property is exempted under section 522 of this title or has been abandoned under section 554 of this title.

The court finds that two of the prerequisites have been met in this Motion. The evidence reflects that the Vehicle is tangible personal property intended primarily for personal use. The lien also secures a dischargeable consumer debt, this not being a business debt or otherwise nondischargeable obligation. *See* 11 U.S.C. §§ 727(b), 524.

However, the record does not reflect that the Vehicle has either been:

(1) exempted under Section 522 or

(2) has been abandoned under Section 554.

There is no Motion to Abandon on file by the Chapter 7 Trustee or the Debtor. In reviewing Schedule C filed by Debtor there has been no exemption claimed in the Vehicle. Sch. C; Dckt. 1 at 16-17. This may have occurred since Debtor notes that the debt secured by the Vehicle well exceeds the retail value of the Vehicle and presumed that there was no value to claiming an exemption in such over encumbered Vehicle.

California Code of Civil Procedure § 704.010 provides for a $7,500 exemption that can be claimed in the Vehicle.

Therefore, though it may have been a "clerical error" that the vehicle exemption is not listed on Schedule C, the court is unable to grant the Motion to Redeem at this stage.

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 Redeem filed by Osman Ali Syed ("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 Redeem is **xxxxxxx**.

9. 23-23959-E-13 LASHUNDA PHILLIPS
24-2176 Carl Gustafson
CRG-1

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

PHILLIPS ET AL V. BANKERS HEALTHCARE GROUP, LLC

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

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

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

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

The Motion is xxxxxxx.

May 8, 2025 Hearing

The court continued the hearing on this Motion as the Parties requested a short continuance so they could further meet and confer to identify the specific items to be produced and a deadline for production. The Parties filed a Pretrial Conference Statement on April 15, 2025, indicating a Stipulation resolving this Motion would be on file soon. As of the court's review on May 5, 2025, no Stipulation has been filed with the court.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

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

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

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

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

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

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

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

Mot. 2:9-21.

Debtor-Plaintiff pleads as follows:

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

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

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

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

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

DEFENDANT'S OPPOSITION

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

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

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

In its Memorandum of Points and Authorities, Defendant states:

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

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

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

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

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

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

DEBTOR-PLAINTIFF'S REPLY

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

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

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

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

APPLICABLE LAW

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

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

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

(3) Specific Motions.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31 ;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4) ;

(iii) a party fails to answer an interrogatory submitted under Rule 33 ; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34. . .

(5) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

> (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
>
> (iii) other circumstances make an award of expenses unjust.

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

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

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

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

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

As an initial matter, Defendant is reminded of its duty to engage in discovery in good faith. *See Payne v. Exxon Corp.*, 121 F.3d 503 (9th Cir. 1997) (affirming the district court's discovery sanctions when party failed to comply with at least four discovery orders). It is undisputed that Defendant has failed to

comply with discovery in a timely manner in this case. As an example, Debtor-Plaintiff provides evidence that Defendant is objecting to commonly known terms such as "debt" as vague. Support Document 2:2-7, Docket 33. Such objections are frivolous and made to stalwart discovery attempts. That type of behavior is considered in whether or not to issue sanctions.

Another example Debtor-Plaintiff provided is as follows:

> 3) Interrogatory No. 2: Describe in detail all actions taken by you or your representatives to collect on the debt owed by Lashunda Kelly Phillips or Robert Phillips after November 3, 2023.
>
> a) Response: BHG objects to this Interrogatory on the basis that it is vague, overly burdensome, and overly broad. "Action" is not defined, and its common definition is so broad that it could encompass many irrelevant "actions" or "acts" that were in furtherance of the collection of a debt. BHG further objects on the grounds that the question imprecisely and unnecessarily lumps in debts owed by Lashunda whether or not related to the debt complained of.

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

A further example is provided:

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

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

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

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

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

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

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

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

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

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

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

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

Continuance of Hearing

At the hearing, the respective counsel for the Parties engaged the court in a construction of the issues, and requested a short continuance so they could further meet and confer to identify the specific items

to be produced and a deadline for production. Even if the Parties cannot fully resolve the matter, the specific points remaining in dispute will be more clearly focused for the court and the Parties.

The Hearing on the Motion is continued to 10:30 a.m. on April 15, 2025.

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

The Motion to Compel Discovery and Request for Attorney's Fees filed by Debtor-Plaintiff Lashunda Kelly Phillips and Robert Phillips ("Debtor-Plaintiff"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Discovery and Request for Attorney's Fees is **xxxxxxx**.

10. 25-21165-E-7 RUBEN RIVERA MARTINEZ
Carl Gustafson

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-4-25 [13]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 ("O.S.C.") was served by the Clerk of the Court on Debtor's Attorney, Carl Gustafson, as stated on the Certificate of Service on April 4, 2025. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the email address for Debtor's counsel in PACER and on the petition. Specifically, Mr. Gustafson omitted any email address for him or his office on the petition.

The Order to Show Cause is xxxxxxx.

On April 22, 2025, Mr. Gustafson filed a Response to this O.S.C. Mr. Gustafson states:

1. The omission of an email address from the voluntary petition helps efficiently manage messages from the Court and other parties. Counsel operates different emails in each district in which he operates. However, the software Counsel uses does not permit this distinction. Furthermore, counsel has different email accounts for clients of various types (bankruptcy, student loan, creditors, etc.) These emails allow Counsel to

better serve his clients, including Debtor herein, Mr. Martinez. Response 3:16-20.

2. Counsel found no specific requirement to list his email address in the petition and found that continued use of his various email addresses. *Id.* at 3:21-22.

3. Even if the factual allegation in the OSC is accurate — that the email address listed in PACER differs from the one listed on the petition, which is blank — that difference is not a violation of any rule and is not sanctionable. *Id.* at 5:12-14.

DISCUSSION

The O.S.C. was issued pursuant to Local Bankruptcy Rule 5005.5-1(e). That rule states:

> (e) Duty to Maintain PACER Account. Each registered user of CM/ECF and/or PACER shall maintain a complete and accurate PACER registration. That registration shall include a valid email address for receiving notice, Fed. R. Bankr. P. 9036, and, where applicable, shall include the law firm affiliation of the registered user. The registered user shall update PACER registration promptly whenever a material change occurs.

It is apparent there is no requirement to fill in the email address option on Form 101 from Local Bankruptcy Rule 5005.5-1(e).

The court has not found a Local Rule on point that would require Counsel to disclose the email address on Form 101. However, at the top of Form 101, parties are directed to "Answer every question." Form 101 at 1.

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 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**.

11. 24-22967-E-7 VANESSA FRANKLIN MOTION TO AMEND
BM-1 Pro Se 4-21-25 [185]

Item 11 thru 12

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on April 21, 2025. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Amend is xxxxxxx.

Creditor Landlord Prime Legends, LLC ("Movant") moves the court for an order amending the court's order granting Movant from Relief from Stay in the case entered on December 6, 2204 at Docket 100 ("Order"). Movant seeks relief pursuant to Fed. R. Civ. P. 60(a) and (b) as incorporated into bankruptcy through Fed. R. Bankr. P. 9024. Movant states:

> 1. Movant commenced an unlawful detainer action against the Debtor by filing a complaint on September 13, 2024. Movant was identified as "Prime Group, LLC" in the unlawful detainer pleadings by mistake. When prior counsel for the Landlord conducted intake, the client's representative identified the client as "Prime Group," which is the Landlord's registered fictitious business name. At that time, counsel did not know that Prime Group was a trade name used by Prime Legends, LLC and not its formal name. Next, counsel added the "LLC" suffix from a drop-down menu in her electronic intake system because the client's representative informed her that the client is a limited liability company, which is correct. Mot. 3:27-4:10.

2. On November 4, 2024, the Landlord filed its Motion for Relief from the Automatic Stay Provision of 11 USC § 362(a) *Nunc Pro Tunc* ("Motion for Relief"); Points and Authorities ("Motion for Relief from Stay"), requesting that the automatic stay be lifted retroactive to the Petition Date, using the name ". Following upon the papers filed in the unlawful detainer action, the motion misidentified the movant as "Prime Group, LLC." Nevertheless, the Lease Agreement (properly identifying the Landlord) was submitted with the motion. *Id.* at 3:11-16.

3. The Motion for Relief was granted by the Order entered on December 6, 2025. But the Order does not mention retroactive relief. Also, the Order identifies the Landlord as "Prime Group, LLC." *Id.* at 4:25-27.

Movant filed the Declarations of Stephanie Marian (Docket 189) and Laurie Li (Docket 190) to authenticate the facts alleged in the Motion.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 23, 2025. Debtor opposes on similar grounds as raised in her Motion to Vacate and Motion for Contempt proceedings, but Debtor does not discuss the application of Fed. R. Civ. P. 60(a) in her Opposition. One point of Opposition is that Debtor argues the incorrect name of Movant on the Motion for Relief was not harmless because using the wrong name was "a deliberate and prejudicial misidentification of the movant that misled both the Court and the Debtor, deprived her of procedural rights, and jeopardized the integrity of the Court's order." Opp'n 2.

Based upon a review of the pleadings in this Bankruptcy Case, such alleged "misidentification" did not cause the Debtor to be mislead that the Motion was filed by her landlord who was seeking the relief. Looking at the Motion for Relief, while misnamed in the Motion for Relief as "Prime Group, LLC:"

A. The Motion for Relief expressly states:

1. "[M]ovant, , the owner of the real property located at 180 South Lexington Drive #722, Folsom, California 95630 (the "Property"), entered into a written lease agreement with Debtor, VANESSA LYNN FRANKLIN ("Debtor") for the Property. (See Daniela Chen Declaration ¶3; Exhibit 1.)" Mtn., ¶ 3; Dckt. 76.

2. "Debtor failed to pay rent for September 2024. Movant caused Debtor to be served with a 3-Day Notice to Pay Rent or Quit ("Notice") on September 5, 2024. The Notice demanded that Debtor either pay the rent owed or return possession of the Property to Movant." *Id.*; ¶ 5.

3. "On September 13, 2024, Movant filed an action for Unlawful Detainer in the Superior Court of California, County of Sacramento case number 24UD002158." *Id.*; ¶ 7.

B. Declaration of Daniel Cuen includes:

1. "I am the Authorized Agent for Movant and owner of the residential real property located 24 at 180 South Lexington Drive #722, Folsom, California 95630 (the "Property")." Dec., ¶ 1; Dckt. 80.

2. "Movant, the owner of the real property located at 180 South Lexington Drive #722, Folsom, California 95630 (the "Property"), entered into a written lease agreement with Debtor, Vanessa Lynn Franklin ("Debtor") for the subject premises on or around January 29, 2024. A 4 true and correct copy of the agreement is attached hereto as Exhibit "l"." *Id*.; ¶ 3.

3. "Debtor failed to pay rent for September 2024. Movant caused Debtor to be served with a 3-Day Notice to Pay Rent or Quit ("Notice") on September 5, 2024. The Notice demanded that Debtor either pay the rent owed or return possession of the Property to Movant." *Id*.; ¶ 5.

4. "On September 13, 2024, Movant filed an action for Unlawful Detainer in the Superior of California, County of Sacramento case number 24UD002158." *Id*.; ¶ 7.

C. The Lease Agreement was filed as Exhibit 1 in support of the Motion for Relief.

1. The Lessor on the Lease Agreement is identified as " Prime Legends LLC The Legends at Willow Creek." The email address for the Lessor is stated to be "thelegends@primegrp.com." Exhibit 1, Lease Agreement§ 1; Dckt. 79 at 2.

2. The Lessor is identified as: [1] "Prime Legends LLC The Legends at Willow Creek" on the Assignable Items Agreement (*Id.* at 9), [2] the Garage License Agreement (*Id*. at 79), [3] the Parking License Agreement (*Id.* at 11), [4] the Pet Agreement (*Id.* at 12), [5] the Satellite Agreement (*Id.* at 13), [6] Ventilation Instructions & Agreement (*Id.* at 14), [7] Lead Based Paint Disclosure (*Id.* at 16), and various other Attachments and Addenda to the Lease Agreement (which run 46 pages long).

While there may have been an error in the name of the entity filing the Motion for Relief, it was clear that: (1) it was filed by the entity that leased the 180 South Lexington Drive #722 property to the Debtor, (2) it was the entity that had given the notice of default, and (3) it was the entity that commenced the unlawful detainer action against the Debtor.

The substance of the Motion for Relief and supporting pleadings made it clear that it was the landlord entity that rented the 180 South Lexington Drive #722 property to the Debtor that was seeking such relief.

Debtor's counsel representative appeared at that hearing and did not contest the requested relief from the Automatic Stay. Civ. Minutes; Dckt. 99.

The Opposition is muddled, including arguing that this type of Motion cannot be noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2). There is no such rule denying Movant the ability to bring this Motion pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Additionally, Debtor is citing to cases that are either incorrectly cited or do not exist, such as Debtor citing the court to the fictitious case *Geller v. General Motors Corp.*, 556 F.2d 1251, 1255 (5th Cir. 1977). Opp'n 10. When checking that citation, it actually is for *Weathersby v. Gore*, 556 F.2d 1247 (5th Cir. 1977), which deals with who can be an authorized agent and the Commercial Code.

Doing a Google internet search, there is a *Geller v. General Motors Corp*, 410 NE 2d 262 (Ill App Court 1980), which addressed when a plaintiff may reinstate an earlier dismissed action under Illinois law.

Debtor explains how *Geller* supports her position, articulating that the Fifth Circuit has ruled in a manner that supports her position, stating:

> The Landlord now seeks to avoid the consequences of this misstep by asking the Court to simply swap in the correct name retroactively. But courts have repeatedly held that Rule 60 cannot be used to substitute new parties or correct jurisdictional defects after judgment has been entered. *See Geller v. General Motors Corp.*, 556 F.2d 1251, 1255 (5th Cir. 1977). In *Geller*, the Fifth Circuit held that changing the name of the party was not a clerical correction because it altered the identity of the judgment itself. The same applies here.

However, no such case exists and if the case were read by Debtor, she would know that it does not exist.

The court consulted both the Westlaw and LEXIS legal search services, and found no trace of this case in existence. This is a sign that Debtor is consulting Artificial Intelligence without reviewing the information, which will only lead to trouble. Courts across the nation, including Judge Kim in this very courthouse, are beginning to issue sanctions for attorneys relying on artificial intelligence and submitting fictitious cases for a court to consider. *See, e.g.*, *United States v. Hayes*, —F. Supp. 3d —, 2025 WL 235531 (E.D. Cal. 2025).

At the hearing, **xxxxxxx**

APPLICABLE LAW
AND DISCUSSION

Federal Rule of Civil Procedure P. 60(a), which is incorporated into Federal Rule of Bankruptcy Procedure 9024, states:

> (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

A leading treatise on Civil Procedure, Moore's Federal Practice, states regarding fed. R. Civ. P. 60(a):

> Rule 60(a) authorizes district courts to correct a "clerical mistake … whenever one is found in a judgment, order, or other part of the record."1 The language of the rule

> itself leaves no doubt as to a court's power to correct clerical mistakes in judgment or orders, but the rule does not define what constitutes the "record" for purposes of the application of the rule. . .
>
> One may obtain relief under Rule 60(a) from a "clerical" mistake, but that does not mean that the mistake must be committed by the clerk or by the court. The Rule may also be used to correct mistakes made by the jury or by a party.

12 MOORE'S FEDERAL PRACTICE - CIVIL § 60.10[1] & [2].

> Rule 60(a) applies when the record indicates that the court intended to do one thing but, by virtue of a clerical mistake or oversight, did another. The mistake to be corrected must be clerical or mechanical, because Rule 60(a) does not provide relief from substantive errors in judgment (see [3], below).0.1 The Seventh Circuit expressed this idea clearly when it observed that:1
>
> If the flaw lies in the translation of the original meaning to the judgment, then Rule 60(a) allows a correction; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.
>
> Because a Rule 60(a) correction does not change the substance of the original judgment, it does not start a new time to appeal from the underlying judgment. Thus, although the entry of a corrected judgment under Rule 60(a) is itself an appealable order, the appeal is limited in scope to the disposition of the Rule 60(a) motion and does not bring up for review the underlying judgment.

12 MOORE'S FEDERAL PRACTICE - CIVIL § 60.11[1][a].

Correction of Name of Landlord

In this Motion Movant requests that the court correct the clerical error(s) that began with misstating the name of the Landlord that was seeking the relief from the Automatic Stay.

In opposition to this request, Debtor states that if the "correction" was made, it would prejudice the Debtor. The stated prejudice is stated to be:

A. First, Debtor states that allowing such "correction" would be supporting what she has identified as widespread misidentification of the Movant in various unlawful detainer proceedings throughout the State. Opposition, § D, starting on page 8; Dckt. 193. In her Opposition and other pleadings Debtor advances arguments in the nature of a class action lawsuit.

B. Debtor then states:
> Had the Landlord used the correct name — "Prime Legends, LLC" — the Debtor could have investigated and challenged the legitimacy of that entity's actions sooner. She could have identified the conflicts in the lease documents, questioned the service of process, or sought sanctions for

> violations of the automatic stay under the correct name. The misidentification caused procedural disadvantage, delayed her ability to uncover key facts, and forced her to defend against a motion brought by an unauthorized party.

Id. at 9.

While making this argument, Debtor does not offer an explanation as to why, when she and her attorney reviewed the Motion for Relief, Declaration, and the Lease Agreement, they did not take any action if they thought someone other than the Landlord for the 180 South Lexington Drive #722, Folsom, California seeking relief from the Automatic Stay. As discussed above, the Motion for Relief clearly identified the rental property in which Debtor was residing. That Motion and Declaration expressly reference the Unlawful Detainer Proceeding that the "Movant" had filed against the Debtor. Further, the Lease Agreement filed as Exhibit 1 in support of that Motion contains all of the correct name information for the Landlord.

While stating that the name "Prime Group LLC" has been misused by Movant and its attorneys in at least 150 other unlawful detainer actions (*Id.* at 9, second full paragraph) and this shows a "long standing and strategic use of a misleading or misappropriated corporate name" (*Id.*), Debtor does not state how this actually prejudiced her and her attorney in responding to a Motion filed by an entity stating to be her landlord for the 180 South Lexington Drive #722 property, or how she was prevented from reading the Lease Agreement Exhibit.

In concluding her discussion of the prejudice caused Debtor by the correction and the misstated name of the Landlord in the Motion for Relief, Debtor first states:

> This kind of prejudice goes far beyond inconvenience. It deprived the Debtor of the ability to fully and timely assert her defenses, to identify the correct party responsible for stay violations, and to understand who had legal authority to act in this case. That is the very kind of prejudice that Rule 60(b)(1) and (b)(6) are designed to prevent — and which Rule 60(a) cannot excuse.

Then the Debtor concludes, stating:

> Courts have consistently held that a correction which would alter the outcome of the proceeding or materially disadvantage the opposing party cannot be granted as harmless. This Court should follow that reasoning and deny the motion in full.

In her Declaration, Debtor testifies that the prejudice arises because:

> 7. I was prejudiced by the use of the name "Prime Group LLC." I relied on the caption and declarations when reviewing and preparing my filings. Had the motion been filed under "Prime Legends, LLC," I could have conducted a more targeted investigation of their corporate records, authority, and standing.

Dec., ¶ 7; Dckt. 194.

Though making this argument, Debtor does not show how the error in the name of the Landlord in the Motion for Relief deprived her of the ability to address and defend the Motion for Relief that was filed by an entity stated to be the Landlord for the 180 South Lexington Drive #722 property. What Debtor does testify is that she read the caption of the Motion for Relief and the Declaration, and then relied on that to just ignore that such a motion had been filed by an entity stating to be the Landlord for the 180 South Lexington Drive #722 property that Debtor was living in and was the Landlord that had filed an unlawful detainer action against the Debtor with respect to the 180 South Lexington Drive #722 property.

Conspicuously absent from the testimony is whether the Debtor reviewed the Lease Agreement filed as Exhibit 1 in support of the Motion for Relief or, if Debtor did ignore it, why she would do so after carefully reading the Motion for Relief and Declaration.

Debtor also argues that by correcting the name error it would alter the outcome of the proceeding or materially disadvantage Debtor. Debtor does not show how correcting the name would alter the outcome of the Motion for Relief proceeding. The court granted to Debtors' "Landlord" relief from the automatic stay. Debtor and Debtor's Counsel had those pleadings, including the Lease Agreement Exhibit, and clearly knew that the person asserting to be the Landlord of the 180 South Lexington Drive #722 property was seeking relief from the automatic stay to evict the Debtor. Whether named Prime Group LLC or Prime Legends, LLC, the Debtor and her Counsel knew that the Landlord for the 180 South Lexington Drive #722 property was seeking the relief and if granted, the Landlord could proceed with the eviction.

Moreover, Movant has provided the court with an adequate reason why the mistaken name of Prime Group, LLC was used in the Motion instead of Prime Legends, LLC, which is the correct alias. The law is clear that a clerical mistake to be corrected under Fed. R. Civ. P. 60(a) may be committed by either the court or a party. Movant explains that it was merely a mistake using the wrong alias, and Movant clearly explains why the incorrect alias was used. Moreover, the correct alias was included in the evidence in support of the Motion for Relief. *See* Lease Agreement at 2, Exhibit, Docket 79. Therefore, the Motion is granted, and the court will amend its Order at Docket 100 to include retroactive relief from stay as discussed in the Civil Minutes at Docket 99, and the correct name of the Movant will be amended to Prime Legends, LLC.

Clerical Error in Not Stating
Retroactive Relief in Order

In this case, the court included discussion of and affirmatively stating that it was granting relief from stay retroactively. *See* Civil Minutes at 3-4, Docket 99; which states:

> While using the legal term *Nunc Pro Tunc* in the title of the Motion and in the prayer requesting the relief, the body of the Motion and legal authorities clearly state that it is retroactive relief which is requested, and cites cases provides such retroactive relief, not *nunc pro tunc* relief.
>
> Here, the court finds that annulment of the stay is warranted. The evidence shows Movant was not aware of the bankruptcy petition when filing the unlawful detainer action and taking other actions against Debtor. Moreover, Debtor failed to pay rent in September, which is conduct that prejudices Movant. Therefore, the stay is annulled through and up to September 5, 2024, when Movant began taking actions against Debtor.

Civ. Minutes; Dckt. 99 at 3-4.

Therefore, it was a clerical error to not include retroactive relief in the Order.

IS AMENDMENT OF THE PLEADINGS ALSO REQUIRED

With the relief as requested, the court is "merely" amending the Order Granting Relief From the Automatic Stay, but no order is requested correcting the clerical error in Movant's pleadings, which were then replicated in the court's civil minutes.

At the hearing, **xxxxxxx**

Alternative Relief Requested Pursuant to Fed. R. Civ. P. 60(b)(6)

Movant states that Federal Rule of Civil Procedure 60(b)(6) provides an alternative basis for relief stating:

> Rule 60(b)(6) also provides alternative authority for correcting the Order. Rule 60(b)(6) provides, in pertinent part, that relief from an order may be granted for "any other reason that justifies relief." Rule 60(b)(6) "gives the district court a grand reservoir of equitable power to do justice in a particular case." *Radack v. Norwegian Am. Line Agency*, 318 F.2d 538, 542 (2d Cir. 1963) (quotation marks and citation omitted). Here, the misidentification of the Landlord was a mistake, and correcting the mistake will not
> prejudice the Debtor.

Motion, ¶ 21; Dckt. 185. Federal Rule of Civil Procedure 60(b) provides that the court may "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . ." Granting relief from the order would be for the court to vacate the order, not correct a clerical error. *See*, 12 Moore's Federal Practice, Civil § 60.02[2]. It does not allow the court to "amended" the order, such amendment must be sought pursuant to Federal Rule of Civil Procedure 59. In the *Radack* Decision cited above, the correct relief granted pursuant to Federal Rule of Civil Procedure 60(b)(6) was vacating

In a related Motion the Debtor is seeking to vacate the relief from stay order, in part based upon misstatements under penalty of perjury as to when Movant learned of the Bankruptcy Case. The court has not yet issued its ruling on that Motion.

It may well be that Movant may well desire to have the order vacated, both parties then file supplemental pleadings addressing the Motion for Relief and the Opposition, and not fight further over Debtor's request for relief pursuant to Federal Rule of Civil Procedure 60(b) and alleged fraud on the court.

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

The Motion to Amend Order filed by Creditor and Landlord Prime Legends, LLC ("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 to Motion to Amend Order ~~granted pursuant to Fed. R. Civ. P. 60(a). The court will amend its Order at Docket 100 to include granting retroactive relief from stay as discussed in the Civil Minutes at Docket 99, and to correct and amend the name of the Movant to the proper alias of Prime Legends, LLC.~~

12. 24-22967-E-7 VLF-2

VANESSA FRANKLIN
Pro Se

CONTINUED AMENDED MOTION TO VACATE , AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
3-25-25 [151]

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.

The Proof of Service states that the Motion and supporting pleadings were served on Prime Legends, LLC; Prime Administration, LLC; and Prime Residential GP, LLC on March 24, 2025. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

As Debtor checked the box for Rule 7004 Service, Debtor was required to append Attachment 6A-1 to the Certificate. Opposition was filed by the "Prime Parties," rendering the error of no substantive defect.

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

The Motion to Vacate is xxxxxxx

May 8, 2025 Hearing

The court continued the hearing on this Motion anticipating it would get the ruling out on the Motion to Vacate prior to the continued date and would conduct a status conference on the bifurcated Motions.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

BIFURCATION OF PROCEEDINGS

Fed. R. Civ. P. 42(b), as incorporated into bankruptcy through Fed. R. Bankr. P. 7042, authorizes the court to bifurcate trials. Fed. R. Civ. P. 42(b) states:

> (b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

This Motion has been brought requesting the court to both vacate the order for relief at Docket 100, and to find that Prime Legends, LLC ("Prime," "Landlord"), Creditor and former Landlord, has violated the automatic stay. The Motion seeks damages in excess of $2 million resulting from the alleged violations. As the court views the proceedings, the Motion for Sanctions for Violating the Automatic Stay and request for related damages depends directly on whether the court vacates its order granting relief from the automatic stay, including retroactive relief. *See* Order, Docket 100. Therefore, as a matter of convenience and to economize the proceeds, the court bifurcates the proceedings and only considers the Motion to Vacate now.

The hearing on the Motion for Sanctions for Violating the Automatic Stay and request for related damages is continued to 10:30 a.m. on May 8, 2025, for a Status and Scheduling Conference.

THE MOTION

Vanessa Lynn Franklin ("Debtor") moves the court for an order vacating the order for relief at Docket 100 pursuant to Federal Rule of Civil Procedure 60(d)(3), which states:

> (d) Other Powers to Grant Relief. This rule does not limit a court's power to:
> . . .
> (3) set aside a judgment for fraud on the court.

While that states a general power of the court, Federal Rule of Civil Procedure 60(b)(3) is the specific provision which relates to fraud or misconduct by a party:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> . . .
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . .

The court has worked through the Motion and has organized the following grounds Motion to Vacate, and are summarized them as follows:

1. Prime's deliberate misrepresentations and calculated concealment of facts constitute fraud on the court.

2. On July 8, 2024, the Debtor filed for Chapter 13 bankruptcy. That same day, the Debtor emailed Trina Gross, Prime's Senior Community Director and Authorized management Person, with the official Notice of Bankruptcy Case Filing.

3. Ms. Gross acknowledged the notice and promptly cc'd Daniela Cuen, Assistant Community Director and Authorized Agent, confirming that both had direct knowledge of the bankruptcy.

4. Despite this clear notice, Prime violated the automatic stay by demanding rent just three days later on July 11, 2024.

5. Prime used various aliases to manipulate and mislead. Repeated fraudulent misrepresentation of a corporate identity constituted fraud on the court and warrant *vacatur* of a judgment obtained through deceit.

6. The absence of opposition in the original Motion for Relief was not due to negligence, but rather the result of the Debtor's mental health crisis that directly impacted her ability to communicate with her attorney for the three weeks leading up to the hearing.

Prime's Opposition

Prime filed an Opposition on April 10, 2025. Docket 161. Prime states, as relevant to the Motion to Vacate:

1. Although the Landlord was included in the Debtor's Schedule E/F, the Debtor omitted the Landlord from her Verification of Master Address List and the amended list, and the Landlord did not receive notice of the commencement of this case. *Id.* at 7:17-8:1.

2. Debtor paid rent for July on July 11, 2024, three days after commencing this case. *Id.* at 8:3-6.

3. Thereafter, the Debtor was current on rent until she failed to pay rent for September, 2024. The Debtor never paid any further rent. All of the unpaid rent accrued post-petition. *Id.* at 8:12-15.

4. The Landlord commenced an unlawful detainer action against the Debtor by filing a complaint on September 13, 2024. As mentioned above, "Prime Group" is the Landlord's registered fictitious business name. The Landlord

was identified as "Prime Group, LLC" in the unlawful detainer pleadings by mistake. *Id.* at 8:19-22.

5. The Debtor filed her answer on October 3, 2024, ultimately alerting the Landlord of the bankruptcy case. The Landlord promptly ceased work on the unlawful detainer action. *Id.* at 9:24-10:1. That action was resolved in January of 2025 when Debtor voluntarily moved out.

6. Debtor is not entitled to relief under Rule 60(b)(3) because (1) she cannot prove that the Landlord's alleged actions prevented her from opposing the Motion for Relief from Stay, and (2) she cannot prove fraud, by clear and convincing evidence, among other necessary elements. *Id.* at 14:11-15.

7. The Debtor alleges that the Landlord made two intentional misrepresentations: (a) that the Landlord did not know about the bankruptcy case until October, 2024; and (b) that the Landlord somehow defrauded the Court by mistakenly identifying itself as "Prime Group, LLC" in its pleadings. On the contrary, the Landlord's misstatements were innocent mistakes that caused no prejudice. *Id.* at 19:3-8.

8. Even if the Debtor's emails came to light at the hearing on the Motion for Relief from Stay, the Court still would have granted retroactive relief from the automatic stay. Knowledge of a bankruptcy case is a major factor, but it is not dispositive. *See National Environmental Waste Corp. v. City of Riverside*, 129 F.3d 1052 (9th Cir. 1997) *Id.* at 20:5-8.

9. In the event the Court is not inclined to deny the Motion on the basis of undisputed facts (which support denial of the Motion), the Court should set an evidentiary hearing. *Id.* at 28:37-29:1.

Debtor's Reply

Debtor filed a Reply on April 18, 2025, reiterating her initial points and disputing Prime's Opposition. Docket 174.

APPLICABLE LAW

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

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

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

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

In the context of Fed. R. Civ. P. 60(b)(3), Moore's Federal Treatise informs:

> Rule 60(b)(3) authorizes the court to grant a motion to relieve a party from a final judgment, order, or proceeding because of fraud, misrepresentation, or misconduct by an opposing party. For example, misconduct for which relief may be granted under this provision includes witness tampering, which consists of threatening a witness or attempting to dissuade a witness from testifying.
>
> Under Rule 60(b)(3), both intentional and unintentional misrepresentations and failures to disclose are a sufficient basis for relief. . .
>
> Courts determining Rule 60(b)(3) motions always require proof that the alleged fraud or other misconduct prevented the moving party from fully and fairly presenting his or her case at trial.

12 MOORE'S FEDERAL PRACTICE - CIVIL § 60.43[1][a] & [c].

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(3) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, there appear to be three grounds alleged to support vacating under Rule 60(b)(3): Prime used various aliases to confuse parties; Prime was aware of the bankruptcy proceedings through Ms. Trina Gross, Prime's Senior Community Director and Authorized management Person; and Debtor's failure to timely oppose the Motion for Relief stems from Debtor's mental health crisis.

In regard to the various aliases allegations, the court does not find that using the name of Prime Group, LLC, in the Motion for Relief as opposed to the true and correct name Prime Legends, LLC, results in obtaining the judgment through fraud. Nor does Prime using aliases in running its business operations result in fraud. The Motion was brought and filed against Debtor, regardless of the name of the moving party. Debtor's rights were affected regardless of who brought the Motion. Debtor's counsel appeared at that hearing on behalf of Debtor and did not present any opposition. Therefore, the court cannot conclude Prime using the incorrect alias in its Motion for Relief gives rise to the extraordinary grounds for relief under Rule 60(b)(3).

The more interesting discussion revolves around whether Prime misrepresented facts through misstatements and omissions to obtain relief. According to the record, notice of the bankruptcy was provided to Trina Gross, Prime's Senior Community Director and Authorized management Person, on July 8, 2024. It is not disputed that Prime did not bring this fact forward in obtaining its Motion for Relief. *See* Mot., Docket 76. In fact, Prime alleged in its Motion that Prime only learned of the bankruptcy on October 15, 2024. Mot. 2:16-20, Docket 76. This is a clear misrepresentation by Prime.

Prime makes no allegation that Ms. Gross is a low-level employee who had no responsibility to relay bankruptcy information to management. In fact, Debtor has presented evidence that Ms. Gross is an employee at Prime holding a high-level title. In her email signature, Ms. Gross signs off as "Senior Community Director." Ex. at 14, Docket 153. It appears she, being the point of contact for residents, should have conveyed this information to management at Prime. Further, it appears Ms. Gross in this email exchange blatantly continued recovery efforts for July's rent despite just being informed of the bankruptcy process. *Id.* Omitting this information is clearly a misrepresentation Prime made to the court.

However, the court also considers that Debtor has had an opportunity to bring these facts to light in opposing the Motion for Relief. Moore's informs us that "[c]ourts determining Rule 60(b)(3) motions always require proof that the alleged fraud or other misconduct prevented the moving party from fully and fairly presenting his or her case at trial." These misrepresentation were known by Debtor and not brought forward at the hearing on the Motion for Relief. Debtor's attorney appeared and did not oppose the Motion.

Debtor informs the court that no opposition was made due to a mental health crisis preventing her from communicating with her counsel in the days preceding the Motion for Relief. The mental health crisis is described in paragraph 4 of Debtor's Declaration, Docket 146, where she states she needed psychiatric intervention. Rule 60(b) gives the court broad equitable discretion in determining whether relief should be granted, especially applicable as here, where there are clear misrepresentations made to the court.

At the hearing an extended discussion was conducted concerning the "misidentification" of Prime Group in the Motion and other pleadings. While such misstatement was made, based on the record it is clear that the Motion was being brought by the Debtor's landlord and a copy of the lease, which identifies "Prime Legends LLC at the Legends at Willow Creek" as the "Lessor." Exhibit 1; Dckt. 79.

With respect to the knowledge of the Bankruptcy Case being filed, Debtor focuses in on the email communications in which she disclosed the filing of the Bankruptcy Case on the day it was filed on July 7, 2024. This communication was by email with Trina Gross, with Daniela Cuen copied on the email by Ms. Gross. Exhibit 14; Dckt. 154.

The Parties also discussed the conduct occurring post-petition pre-filing of the Motion for Relief From Stay on November 4, 2024, which was four months after the Bankruptcy Case was filed. While rent monies were paid, the amounts paid were for the current months and not pre-petition amounts. While the Debtor drew an except for the July 2024 rent, which was a full month's rent, was made for a month with seven pre-petition days. Though the Debtor filed bankruptcy, that does not mean that post-petition rent, which may be pro rated for the filing month, does not accrue and is owed by the Debtor.

The Creditor also reports that the Debtor received a discharge in a bankruptcy case in the 8 year period prior to the filing of this Bankruptcy Case. The reported bankruptcy case is stated to be in the Northern District of California and is case number 16-42164.

The hearing on the Motion to Vacate is continued to 10:30 a.m. on May 8, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Vanessa Lynn Franklin ("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 is **XXXXXXX**.

13. 24-24493-E-11 RDW-1 | **TOWN & COUNTRY WEST LLC** **Nancy Weng** | **MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 (FILING FEE NOT PAID OR NOT REQUIRED) 4-10-25 [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 in Possession and all creditors and parties in interest on April 10, 2025. By the court's calculation, 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Case is xxxxxxx.

Qualfax, Inc. ("Creditor"), seeks dismissal of the jointly administered cases pursuant to 11 U.S.C. § 1112(b) on the basis that:

1. This is a jointly administered case with two Debtors in Possession, Town & Country West, LLC ("West Debtor") and Town & Country Event Center, LLC ("Event Debtor"). Both Debtors in Possession appear to be mismanaging their respective estates by not collecting rents, not reporting rents received, and not taking actions against non-paying tenants. In addition, the Debtors have either failed to file monthly operating reports, or filed incomplete reports. All of this negatively affects the value of the properties and diminishes the small amount of equity in the estates. Mot. 1:15-19.

2. First, the West Debtor's and Event Debtor's failure to file monthly operating reports is cause to dismiss or convert this case pursuant to 11 U.S.C. §1112(b)(F) and (H). No January or February 2025 monthly operating reports were filed in either case. Mot. 1:20-22.

3. Second, the West Debtor's and Event Debtor's failure to pay post-petition property taxes constitutes cause to convert this case pursuant to 11 U.S.C. §1112(b)(4)(A). The West Debtor has failed to pay $206,246.10 in tax

obligations that have come due since the petition date. The Event Debtor has failed to pay $32,341.72. Mot. 1:25-2:2.

4. Third, there has been substantial loss to the estates, and there is no reasonable likelihood of rehabilitation. Neither estate has positive cash flow, and the debt on the estate assets, including tax debt, is increasing. While there was a proposal to liquidate assets with an April 15, 2025, deadline, that time has come and gone with no progress being made. *Id.* at 6:3-6.

    a. In their Status Conference Statements, the West Debtor and Event Debtor state that the rental income from the Properties is not sufficient to cover the mortgage payments. This is supported by the MORs (to the extent they can be relied upon), and the fact that the pre and postpetition property taxes are not being paid and Mr. Khan is making monthly contributions to the Debtors. The accumulation of debt at this rate will rapidly result in the depletion of any equity in the Properties. Mot. 15:6-11.

5. Fourth, the Debtors' gross mismanagement of the estates is grounds for dismissal or conversion. *Id.* at 6:7-8.

    a. Despite the fact that the 2961 Fulton Avenue, Sacramento, CA ("Fulton Property") is occupied by 22 tenants unrelated to Mr. Kahn, is being used by the Event Debtor for business, and is occupied by at least four (4) of Mr. Kahn's other entities, the MORs only provide for up to six (6) rental payments a month. This is of great concern. Either tenants, related and unrelated to Mr. Kahn, are not paying rent and should be removed from the Fulton Property so market rent tenants can replace them, or tenants are paying rent, and those rents are not listed in the MORs and are being withheld or diverted to insiders. Mot. 16:4-10.

Creditor submitted the Declaration of counsel Reilly D. Wilkinson in support of the Motion to authenticate the facts alleged in the Motion and the attached Exhibits. Decl., Docket 109.

Debtors' in Possession Opposition

Debtors in Possession filed an Opposition to the Creditor's Motion on April 24, 2025. Docket 118. Debtors in Possession state:

1. This Chapter 11 case remains both viable and value-maximizing. The Disclosure statement and Plan of Reorganization as proposed will pay secured claims, priority claims, and unsecured claims a 100% dividend. Opp'n 2:23-28.

2. Debtors in Possession have made consistent adequate protection payments, currently 50% of its regular contractual obligations, and are able to increase that amount to 75% going forward. *Id.* at 3:2-3.

3. Importantly, the Debtors have cooperated fully as debtors in possession: filing monthly operating reports (the Debtors are now current), maintaining all necessary insurance, and responsibly managing the estate. *Id.* at 3:4-6.

4. The managing member of the debtors in Possession, Waqar Khan, is certain that the properties can sell if given no more than six (6) more months. *Id.* at 3:14.

5. The properties in these cases have been on the market since January 2025 and have begun to draw significant buyer interest, including physical tours, access to diligence data rooms, and early-stage negotiations. The Debtor anticipates receiving binding offers in the coming weeks. The concurrently filed declaration in support of this Opposition of David Herrera outlines what has been happening to date, the average sales time for these types of properties (~1 year) and how much more time (6 months) is needed to get reasonable, fair market offers to sell and effectuate the intended Chapter 11 Plan. *Id.* at 4:4-9.

6. The concern regarding the principal's direct payment of certain expenses was not ignored—it was promptly addressed. All such payments have ceased, and the Debtor will now make all payments directly through the DIP account. This ensures proper accounting, transparency, and consistency with Chapter 11 protocol. *Id.* at 5:11-15.

7. The estates hold substantial equity. *Id.* at 5:18.

8. If this case is converted now, the likely result will be fire-sale pricing, loss of broker continuity, collapse of buyer negotiations, and a significantly lower return for all creditors. *Id.* at 6:10-11.

Debtors in Possession submit the Declaration of David Herrera in support. Decl., Docket 119. Mr. Herrera is the commercial real estate broker employed in the case. Mr. Herrera testifies that he is receiving interest in selling the Properties. He states:

> In my professional judgment, an additional 6–9 months of marketing and diligence is commercially reasonable and necessary to realize full and fair value for the estate. The current offers are not mature and would not withstand standard scrutiny in non-distressed commercial transactions.

Decl. ¶ 9, docket 119.

Moreover, Mr. Khan filed a Supplemental Declaration in support of the Opposition on May 4, 2025. Mr. Khan testifies that a fully executed Purchase Agreement is in place, dated April 28, 2025, with a committed buyer and non-refundable deposits that will pay secured creditor, Qualfax, Inc., in full no later

than August 11, 2025. Decl. ¶ 3, Docket 125. The Purchase Agreement is attached as Exhibit A, Docket 126. The qualified buyer is in contract, with proof of funds and a firm time line. The contract was negotiated at arm's length after wide marketing efforts. *Id.* at ¶ 15. All delinquent taxes are to be paid fully by close of escrow. *Id.* at ¶ 12.

In regard to Creditor's grounds for dismissal that Debtors in Possession are not collecting rent from their tenants, Mr. Khan testifies:

> Discrepancies in rent figures are based on improperly adding owner capital contributions to the figures -- which is not tenant rent. The monthly amounts of $29,438.33 (White Rock) and $100,905.00 (Fulton) were never represented as tenant rent. They are owner capital contributions committed to cover any rent shortfall and ensure full debt-service coverage during lease- up. Qualfax multiplies those figures by 12 to reach $353,260 and $1,210,860, but those totals have always appeared on MOR line 8("Capital Contributions"), not the "Rental Income" line. The Debtor through counsel explained this early to secured creditor's counsels back in Sept. and August of 2024. For October 2024–February 2025, the Event Debtor reported $37,498 in tenant rent and $112,000inownercontributions—totaling $149,498, virtually the pro-forma amount Qualfax expected. The MORs therefore reconcile when both columns are considered.

Id. at ¶ 11. Mr. Kahn testifies as to the following timeline in prosecuting these cases:

> a) May 7, 2025, March 2025 MORs will be filed;
>
> b) May 10, 2025, Adequate Protection Payments ($60,000.00) for the secured creditors;
>
> c) May 10, 2025, or prior, Motion to Authorize Sale (filed and set for hearing);
>
> d) May 20, 2025, New Disclosure Statement and Chapter 11 Plan;
>
> e) Anything else the Court would like addressed / completed.

Id. at ¶ 9.

Creditor's Reply

The Creditor filed a Reply to the Opposition on May 1, 2025. Docket 64. The Reply came in time before Mr. Kahn's Supplemental Declaration was on file. Creditor states the issues with the MORs have not been remedied, including failing to file the MOR for March of 2025. Creditor recommends dismissal or conversion in the event there is equity.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and

the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

> (4) For purposes of this subsection, the term "cause" includes—
>
> (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
>
> (B) gross mismanagement of the estate;
>
> (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
>
> (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
>
> (E) failure to comply with an order of the court;
>
> (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
>
> (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
>
> (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
>
> (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
>
> (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
>
> (K) failure to pay any fees or charges required under chapter 123 of title 28;
>
> (L) revocation of an order of confirmation under section 1144;

> (M) inability to effectuate substantial consummation of a confirmed plan;
>
> (N) material default by the debtor with respect to a confirmed plan;
>
> (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
>
> (P)failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

The Ninth Circuit has held that, although "section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court's finding that the Chapter 11 Petition was not filed in good faith when "the debtor's Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond." *Id.* at 829.

The court would note that bankruptcy court's have found that a "desire for orderly liquidation of assets" is not a reason that would support a bad faith filing, but is a "legitimate reason[] to file bankruptcy." *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

Collier's Treatise states on the subject:

> The first example of cause listed in section 1112(b)(4) is "substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation." In general, this standard has two basic requirements. First, it tests whether, after the commencement of the case, the debtor has suffered or continued to experience a negative cash flow, or, alternatively, declining asset values. Second, it tests whether there is any reasonable likelihood that the debtor, or some other party, will be able to stem the debtor's losses and place the debtor's business enterprise back on solid financial footing within a reasonable amount of time. Both tests must be satisfied in order for cause to exist under this subparagraph to dismiss or convert the case under section 1112(b)(4)(A).
>
> This standard asks two questions. First, does the debtor have a negative cash flow or declining asset values? This includes looking at the financial history of the debtor and determining if a pattern of decline exists. Second, will the debtor or another party be able to "stop the bleeding" and return the debtor to solid financial footing within a reasonable amount of time? The first question must be answered in the affirmative and the second in the negative for cause to exist. However, the "loss or diminution prong" is not relevant if the debtor is not an operating company but merely holds an intangible asset

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][a].

> The example of subsection (b)(4)(B) focuses on the management of the estate and not on the debtor. Since the focus is on the bankruptcy estate, the inquiry cannot include mismanagement by the debtor prior to the bankruptcy filing. However, if mismanagement continues after the petition has been filed, it is not in the interest of creditors to permit continuance of gross mismanagement.
>
> "A debtor in possession is vested with significant powers under the provision of the Bankruptcy Code. As is often the case, those powers come with certain responsibilities. Significantly, a debtor in possession owes a fiduciary duty to its creditors." Gross mismanagement may be found notwithstanding the debtor's management's good intentions. Failure to maintain an effective corporate management team has been held to constitute gross mismanagement. Mismanagement may include failure by debtor's manager to comply with the requirements of the Bankruptcy Code, including seeking approval for postpetition lending and borrowing, and the failure to keep the court and other parties in interest apprised of the debtor's business operations.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][a].

> Congress added to the enumerated causes under section 1112(b)(4) the failure by the debtor to timely file or report information as required by other provisions of the Bankruptcy Code. By adding this provision, Congress has provided the statutory remedy for such failure where the remedy is not expressed within the Code provision setting forth the required reporting. For example, where a small business debtor fails to timely file the documents required to be appended to the petition pursuant to section 1116(1), such failure constitutes a failure to report. Similarly, section 1188(c) requires debtors proceeding under subchapter V to file a report of the debtor's efforts to obtain a consensual plan at least 14 days before the status conference scheduled by the court under section 1188(a). The failure to timely file this report constitutes cause. Nevertheless, by providing that the failure to report or file must be unexcused in order to constitute cause for dismissal or conversion, the statute provides to the court discretion in determining whether such cause has been established. "By inference the court, therefore, has the ability and some discretion to determine what is an 'excused' or 'unexcused' failure to 'timely file' the designated documents." Where the debtor subsequently cured the deficient filing and provided a good explanation for the delinquency in filing the documents required by section 1116(1), the court found that the failure to file or report was "excused."
>
> Unexcused failures to report or file required information however will constitute cause. When such unexcused failure has been demonstrated by the movant, the court shall dismiss or convert the case (or appoint a trustee or examiner), unless unusual circumstances are specifically found by the court to make such actions not in the best interest of creditors and the estate.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][f].

> The ninth example of cause enumerated in section 1112(b)(4) is "failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief." Before the inclusion of this example of cause in section 1112(b), some courts held that the failure to pay postpetition taxes could constitute grounds for conversion or dismissal under section 1112(b). The example includes both the failure to pay postpetition taxes as well as the failure to file tax returns that come due postpetition. Courts have disagreed whether the timeliness requirement under the language of section 1112(b)(4)(I) applies solely to the payment of taxes or also to the filing of any postpetition return.

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][i].

DISCUSSION

As an initial matter, this does not appear to be a case where a debtor is sitting idly and allowing assets to depreciate. Debtors in Possession have been actively marketing the assets in this case for sale and have presented to the court evidence that a sale is under contract. Debtors in Possession have presented facts that support a reasonable likelihood of rehabilitation.

The evidence also reflects that dismissal or conversion at this stage risks destroying progress toward the sale, as well as tenants potentially abandoning leases in a Chapter 7 case. The court does not find that Debtors in Possession have been grossly mismanaging the estates.

It is true that Debtors in Possession have not paid post-petition taxes that have come due, which is an enumerated ground for cause for dismissal under 11 U.S.C. § 1112(b)(4(I). However, while the court finds that there could potentially be cause to dismiss or convert this case, Debtors in Possession have presented evidence that there is a resolution in sight. A sale of the properties is in place that will pay all creditors in full, including the delinquent post-petition taxes.

At the hearing, **xxxxxxx**

~~Therefore, the Motion is denied without prejudice.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by Qualfax, Inc. ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**.

FINAL RULINGS

14. 25-21215-E-7 **JENNIFER DIAZ**
Eric Seyvertsen

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-3-25 [14]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 3, 2025. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney filed an Amended Petition on April 25, 2025, correcting the email address. Docket 18.

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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

15. 25-21347-E-7 **AJANAY CUMMINGS**
Gregory Smith

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-11-25 [12]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 11, 2025. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney filed a change of address on April 29, 2025, correcting the email address.

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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

16. 25-21172-E-7 **ALBERTA FOSTER**
Peter Macaluso

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-2-25 [14]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 2, 2025. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney corrected the email address on April 9, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

17. 25-21275-E-7 **VISOTHY MAIN**
Kristy Hernandez

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-8-25 [14]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 8, 2025. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney corrected the email address on April 21, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

18. 25-21277-E-7 **BOE BRAUNER**
Stephen Johnson

ORDER TO SHOW CAUSE FOR FAILURE TO UPDATE CONTACT INFORMATION IN PACER
4-8-25 [12]

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney as stated on the Certificate of Service on April 8, 2025. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on a discrepancy between the Email Address for Debtor's counsel in PACER and on the petition.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default that is the subject of the Order to Show Cause has been cured. Debtor's attorney corrected the email address on April 21, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

19. 20-24790-E-7 KJH-2 | **ANTON AXELSSON** / **Michael Hays** | **MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **3-24-25 [143]**

Final Ruling: No appearance at the May 8, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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, all creditors and parties in interest, and Office of the United States Trustee on March 24, 2025. By the court's calculation, 45 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.

Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Kimberly Husted and the Estate of Anton Mar Axelsson makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 18, 2022 through January 23, 202. 5 The order of the court approving employment of Applicant was entered on April 8, 2022. Dckt. 116. Applicant requests fees in the amount of $1,252.00 and costs in the amount of $71.28.

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 tax consultation services and administrative functions for preparing this 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.

Tax Consultation Involving Projected Tax on FVT Settlement: Applicant spent 1.9 hours in this category. This category included consultation with trustee and counsel regarding tax implication of settlement agreement, allocation of fire settlement proceeds between taxable and nontaxable components, preparation of tax analysis and settlement exhibit. Mot. 2:11-13.

Preparing the Fee Application: Applicant spent 0.9 hours in this category.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	0.6	$425.00	$255.00
Michael Gabrielson	1.3	$445.00	$578.50
Michael Gabrielson	0.9	$465.00	$418.50
Total Fees for Period of Application			$1,252.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $71.28 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	----------	$47.68
Copying Charges	----------	$23.60

Total Costs Requested in Application	$71.28

FEES AND COSTS & EXPENSES ALLOWED
Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,252.00 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 $71.28 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.

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

Fees	$1,252.00
Costs and Expenses	$71.28

pursuant to this Application as final fees and costs 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 Michael Gabrielson, the Accountant ("Applicant") for Chapter 7 Trustee Kimberly Husted and the Estate of Jerod K. Kenoyer having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael Gabrielson is allowed the following fees and expenses as a professional of the Estate:
>
> Michael Gabrielson, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,252.00
> Expenses in the amount of $71.28,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for Chapter 7 Trustee Kimberly Husted and the Estate of Anton Mar Axelsson.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.