UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 20, 2024 at 10:30 a.m.

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1. **23-24387-E-7** **JERRY HARDEMAN** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
RHS-1 **12-7-23 [1]**

The Status Conference is xxxxxxx

JUNE 20, 2024 STATUS CONFERENCE

On June 14, 2024, Debtor Jerry Hardeman filed a Motion to reconvert the Case to one under Chapter 13. Mtn; Dckt. 87. The Motion states with particularity the financial issues arising for the Debtor, his being a Class Member in a Class Action Lawsuit involving Ygrene and the removal of a tax lien from his property pursuant thereto.

Additionally, Debtor is now wanting to prosecute an adversary proceeding relating to a the transfer of title to the Debtor's real property. Debtor seeks to do that through a Chapter 13 Plan. The Motion states how the Debtor and family members will fund a 100% Chapter 13 Plan.

Debtor has filed Exhibits (Dckt. 88) in support of the Motion. Attached as Exhibits A.7 and A.8 are the declarations of two of the Debtor's daughters. Declaration are to be filed as separate documents and not as exhibits. L.B.R. 9004-2(c), (d). (For this Motion to Reconvert, and Only the Motion to Reconvert, the court waives the separate filing requirement in light of the circumstances.)

Debtor also provides as Exhibit A.1 the proposed Chapter 13 Plan to be filed and confirmation sought if the Case is reconverted to one under Chapter 13.

In reviewing the Docket, the Debtor has not filed a Notice of Hearing or the Certificate of Service for the Motion to Reconvert and it was not set on the court's June 20, 2024 Calendar. The court has specially set a hearing on the Motion to Reconvert so it may be conducted in conjunction with this Status Conference.

At the Status Conference, **XXXXXXX**

STATUS CONFERENCE

Debtor Jerry Hardeman commenced this Case under Chapter 13 in *pro se* on December 7, 2024. On December 15, 2024, the Chapter 13 Trustee filed a Motion to Dismiss, citing to a number of deficiencies in Debtor prosecuting this case in *pro se*. Mtn.; Dckt. 25. The hearing on the Motion to Dismiss was scheduled for March 20, 2024.

Facing the hearing on the Motion to Dismiss, on March 18, 2024, Debtor in pro se filed his Notice of Conversion of the Case to one under Chapter 7. Dckt. 36. Kimberly Husted has been appointed as the Chapter 7 Trustee.

In the court's Civil Minutes for the March 20, 2024 hearing, the court addresses the issue of whether Debtor is legally able to prosecute a bankruptcy case, citing to four prior cases (three in *pro se*) which were filed and dismissed since September of 2022. Civ. Min.; Dckt. 44. The court also noted that based on the filings by Debtor, he may have a $300,000+ in homestead exemption value to be protected.

At the March 20, 2024 hearing Debtor appeared at the hearing and a lengthy hearing ensued. Debtor advised the court that he elected to convert his Case to one under Chapter 7 on March 18, 2024. Dckt. 36. The court also discussed with Debtor and a friend who accompanied him to court the need for counsel, especially in light of the substantial homestead exemption. Debtor also identified that there is ongoing State Court litigation over title to the Property, a possible fraudulent conveyance of his late wife's interest, and other matters.

The court determined setting a Chapter 7 Status Conference was appropriate under these circumstances.

On April 22, 2024, a Substitution of Attorney (Dckt. 63) in which Nancy Haley, Esq. substituted in as counsel for the Debtor. Counsel Haley is the attorney identified by Debtor as representing him in state court proceedings.

On April 22, 2024, Counsel Haley filed a request to continue the Status Conference. Dckt. 71. In it she provides information regarding the various rights and interests of the Debtor for which she has been contacted by him. This information includes:

1. A fraudulent transfer claim relating to his residence by his late wife while she was actively dying from Metastatic Breast Cancer.

    a. For this claim, the Debtor's plan is to have Counsel Haley commence an adversary proceeding in this court to recover the alleged fraudulent conveyance.

2. Debtor and his residence are the subject of a national lawsuit brought by the Federal Trade Commission against Ygrene Energy Fund, Inc. regarding the defendant's practices in getting elderly persons to sign up for Ygrene's energy products. CD Cal No. 2:22-CV-07864.

a. There has been a settlement in the *FTC v. Ygrene Energy Fund, Inc*. action, but Debtor did not appreciate his interest in the settlement because due to some limitations and the information being sent in his mother-in-law's name.

Counsel Haley also notes that Debtor has suffered greatly from this situation and his late wife's passing. Counsel Haley is not a bankruptcy practitioner and has been studying this area of the law, as well as communicating with experienced practitioners about taking over the representation of the Debtor.

The court concluded that a continuance of the May 9, 2024 Status Conference would not be in the best interests of all parties, as the court wants to provide the key "players" with communication with the court and each other as soon and often as possible given the facts and circumstances concerning the Debtor.

MAY 9, 2024 STATUS CONFERENCE

At the Status Conference a number of points relating to the prosecution of a bankruptcy case were addressed, including other resources available for bankruptcy representation in light of the facts and circumstances.

At the Status Conference, counsel for the Debtor reported that Amended Schedules have been filed. Additionally, she provided a preliminary outline of how the Debtor may elect to proceed in this case under Chapter7. She is continuing to meet with other experienced bankruptcy attorneys about how such cases may be prosecuted. Additional counsel addressed with the court the funding of a Chapter 13 Plan and monies that may be available to fund bankruptcy counsel fees.

The Chapter 7 Status Conference is continued to 10:30 a.m. on June 20, 2024.

2. 23-24387-E-7 JERRY HARDEMAN MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-7-23 [1]

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.

Hearing Required.

The Motion was not properly noticed or set for hearing. The court noted such when preparing for the continued Chapter 7 Status Conference in this Case. The court has placed it on the Calendar to allow the Debtor, the Trustee, and other parties in interest to address the reconversion of this case and how such must be properly noticed and set for further hearing.

At the hearing, ----------.

The Motion to Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is xxxxxxx.

Jerry Glenn Hardeman ("Debtor") seeks to convert this case, initially filed under Chapter 13 and subsequently converted to Chapter 7, back to a case under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). However, the availability of this one-time, near-absolute right of conversion requires that "the case has not been converted under section 1112, 1208, or 1307 of this title." 11 U.S.C. § 706(a).

Debtor asserts that the case should be reconverted because Debtor's original Chapter 13 case was converted to a case under Chapter 7 when Debtor was appearing in *pro se* and did not realize his options. Mot. 3:11-22, Docket 87. Debtor filed the original Chapter 13 case on December 7, 2023, to obtain relief from a Special Tax Assessment placed on his property commonly known as 8962 Sedgewick court, Elk Grove, Ca 95624 ("Property") in the amount of $68,280.59 during the 2016-17 tax year. *Id.* at 1:24-27. The tax was placed on the Property by Ygrene Energy Fund ("Ygrene") in relation to the PACE home improvement loans Ygrene provided to homeowners. *Id.* at 1:27-2:2.

Debtor had a stroke on May 10, 2016, so his recollection is a little fuzzy regarding this time. However, FTC has filed a class action suit against Ygrene who took advantage of elderly people who were already vulnerable in their old age by fraudulently creating contracts and placing the costs of the contracts on their tax bills, without consent or knowledge. *Id.* at 2: 14-18. Debtor is a member of the class. When Debtor obtains relief as a member of the class, the tax lien will come off and his mortgage will be reduced from the current $2,399.62 per month to an affordable $1,137 per month. *Id.* at 3:1-6.

Debtor also has a claim against his son and grandson, Dackery Hardeman ("Dackery") and Dakari Hardeman ("Dakari") for committing Fraud and Financial Elder Abuse, among other implicated causes of actions, against both Debtor and his late wife when they forged, or had forged, Betty Hardeman' s signature on a deed and the Notary's book, in order to fraudulently convey Debtor's Property to Dakari Hardeman. *Id.* at 5:1-4. Debtor argues the case should be in Chapter 13 so he can keep his home, achieve relief in the Ygrene class action, and succeed in the adversary against his son and grandson.

DISCUSSION

Here, Debtor's case has been converted previously, pursuant to 11 U.S.C. § 1307(c). That extinguishes Debtor's near-absolute right under 11 U.S.C. § 706(a) to convert a Chapter 7 case "at any time." *Gualtieri v. Goux (In re Goux)*, 65 B.R. 121 (Bankr. E.D.N.Y. 1986); *see* H.R. REP. NO. 595 (1997) ("If the case has already once been converted from chapter 11 or 13 to [C]hapter 7, then the debtor does not have that right [of conversion].")

While there is a sharp divide whether this permits debtors to request reconversion at all, a slight majority of courts have held that debtors may still make such a motion. *Compare In re Johnson*, 116 B.R. 224 (Bankr. D. Idaho 1990) (acknowledging the court's authority to allow reconversion while denying due to failure of debtors to demonstrate facts that would persuade the court to exercise its discretion), *with In re Banks*, 252 B.R. 399, 399 (Bankr. E.D. Mich. 2000) (interpreting 11 U.S.C. § 706(a) as placing a bar on any reconversion). While there is no binding precedent on this matter in this Circuit, previous decisions of this court, as well as of the Bankruptcy Appellate Panel for the Ninth Circuit, show a trend toward adoption of the majority rule: allowing reconversion on a discretionary basis. *In re De La Salle*, No. 10-29678-E-7, 2011 Bankr. LEXIS 5621, at *26 (Bankr. E.D. Cal. Sept. 6, 2011) ("If [debtors] wish to propose a confirmable plan, they may seek to re-convert this case to one under Chapter 13. . ."); *see Gallagher v. Dockery (In re Gallagher)*, No. CC-13-1368-TaKuPa, 2014 Bankr. LEXIS 1037 (B.A.P. 9th Cir. Mar. 17, 2014) (assessing whether a tax refund was rightfully the property of the Chapter 13 or Chapter 7 estate in a case converted to Chapter 7 then subsequently reconverted to Chapter 13).

It remains within the court's discretion, therefore, whether to grant such a reconversion. Generally, a court will grant such a motion absent abuse of bankruptcy law and if the confirmed plan is in accordance with the requirements of 11 U.S.C. § 1325, in particular whether a plan is feasible under 11 U.S.C. § 1325(a)(6). Of great weight in such considerations is any change in circumstance from the initial failed plan that would suggest more likelihood of success now. *In re Johnson*, 116 B.R. at 227.

PLAN FEASIBILITY

Debtor has shown he can make plan payments, especially with help from his two daughters. Keisha and Tamica Hardeman have submitted Declarations with the court showing that they will both contribute $800 each to fund their father's Plan, totaling $1,600. Exhibits. 6-7, Docket 88. Debtor's attorney is asking for an extremely modest amount of fees in prosecuting this case. The Plan proposes monthly payments of $2,010 for 58 months with $4,800 having already been paid through May 2024. However, this case being in Chapter 7, it is unclear who has been paid this $4,800 or whether the Debtor is holding the monies to make an initial lump sum plan payment.

At the hearing, **xxxxxxx**

The Plan's non-standard provisions provide that the mortgagee, PHH Mortgage Services ("Creditor"), will be treated as a Class 3 creditor, with the added requirement that order modifying the automatic stay must be obtained. Plan 9:19-20, Docket 88. Debtor will make adequate protection payments of $1,800 per month, pending a consensual loan modification agreement between PHH Mortgage Services and Debtor. Creditor has the right to refuse to enter into a loan modification. If no loan modification is reached, Creditor can move the court *Ex Parte* for relief from stay, which Debtor has the right to oppose. *Id.* at 11:17-28. The Plan seems feasible on its face, Creditor being provided with substantial adequate protection payments pending the loan modification.

Of note, the court does not agree that Creditor's Claim should be treated as a Class 3 Claim as Class 3 is for the surrender of collateral to a secured creditor. If a loan modification is agreed upon, Debtor can *Ex Parte* move the court to approve the loan modification whereby Creditor will be placed in Class 4 of the Plan. Creditor is accounted for in the Ensminger Provisions currently, not being placed in Class 3.

Furthermore, currently in Class 3 of the draft Plan is Ygrene. Class 3 provides for the surrender of collateral, so the court is unsure as to which items of collateral are being surrendered to Ygrene.

It does not appear that the purpose of proceeding with this Bankruptcy Case is to abandon the Property to the creditors.

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 Reconvert filed by Jerry Glenn Hardeman ("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 Reconvert is **XXXXXXX**.

3. 23-24459-E-7 SHAWN/CHRISTINE BALLARD CONTINUED REAFFIRMATION AGREEMENT WITH GLOBAL LENDING SERVICES LLC
2-28-24 [13]

Item 3 thru 4

The court continued the Reaffirmation Agreement from May 1, 2024 to the hearing at 10:30 a.m. on June 20, 2024, to be conducted in conjunction with the hearing on Debtor's Motion to Redeem the Vehicle that is the subject of the Reaffirmation Agreement.

Atty: Mark Shmorgon
Negative equity in vehicle of $5,754.76
Interest rate set at 20.87%

The Reaffirmation Agreement is disapproved, the court having entered an order authorizing the redemption of the vehicle for $4,000.

REVIEW OF THE REAFFIRMATION AGREEMENT

An agreement to reaffirm a debt owed to Global Lending Services, which is secured by a 2012 Ford Mustang having a value of $7,789, was filed by Shawn and Christine Ballard ("Debtor"). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 20.87% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is ($13,543.76) which has not been reduced from the pre-petition claim.

Debtor having income of $9,121.10 and expenses of ($9,094.12), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise in connection with this reaffirmation agreement. The proposed monthly payment is $406.12 for 48 months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

The effective interest rate for paying $13,543.76 for the vehicle worth (at retail) $7,789 is 55% per annum.

May 1, 2024 Hearing

On April 26, 2024, Debtor filed a Motion to Redeem the 2012 Ford Mustang, stating that the value is $4,000. The hearing on the Motion to Redeem is set for 10:30 a.m. on June 20, 2024.

June 20, 2024 Hearing

The court has granted Debtor's Motion to Redeem (DCN: MS-1) and authorized the Debtor to redeem the Vehicle for $4,000.00.

The court having authorized the redemption, the Reaffirmation Agreement is rendered moot and is disapproved.

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 hearing on the Reaffirmation Agreement for an obligation secured by a 2012 Ford Mustang having been conducted on June 20, 2024, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the Reaffirmation Agreement is disapproved, the court having entered an order authorizing the Debtor to redeem the Vehicle for $4,000.00.

4. 23-24459-E-7 SHAWN/CHRISTINE BALLARD MOTION TO REDEEM
MS-1 Mark Shmorgon 4-26-24 [26]

Final Ruling

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, other parties in interest, and Office of the United States Trustee on April 26, 2024. By the court's calculation, 55 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Redeem is granted.

Shawn Ballard and Christine Ballard ("Debtor") seek to redeem a 2012 Ford Mustang, vin ending in 0361 ("Property"), from the claim of Global Lending Services, LLC, ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Shawn Ballard and Christine Ballard. Debtor seeks to value the Property at a replacement value of $4,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the Property'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).

The lien perfected on the Property secures Creditor's claim with a balance of approximately $13,543.76. Amended Schedule D 16:2.1, Docket 30. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of $4,000.

Debtor has claimed an exemption in the amount of $4,000.00 in the Property pursuant to California Code of Civil Procedure § 703.140(b)(2). Amended Schedule C 14:2, Docket 30. Because Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor $4,000.00 at the time of redemption, which payment is in full satisfaction of the secured claim.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court shall issue an order in 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 Shawn Ballard and Christine Ballard ("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 granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2012 Ford Mustang, vin ending in 0361 ("Property") by paying Global Lending Services, LLC, the creditor holding the claim secured by the Property, the total amount of $4,000.00, in full at the time of redemption, which must be paid on or before July 20, 2024 (generally 30 days from hearing).

5. 23-24610-E-11 CAE-1 **LAFLEUR WAY, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-23-23 [1]**

Item 5 thru 7

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2024

The financial dilemma facing the "Debtor" was resolved with this court approving the modification of the loan securing the sole asset of the Debtor - the residential property of this Limited Liability Company. Order, entered on May 24, 2024; Dckt. 110. With that done, Debtor can now breathe easy.

The U.S. Trustee requested dismissal of this case, sighting to shortcomings of the fiduciary responsible representative/managing member of the Debtor/Debtor in Possession and counsel for the

Debtor/Debtor in Possession. The court granted the Motion and an order dismissing this Bankruptcy Case is being entered.

While this Bankruptcy Case will be dismissed and Debtor achieving its financial goals, there are aspects of this Case that the court must address. [Fn.1.]

FN. 1. While the court provides only a summary of the issues that have arisen, more detailed discussions can be found in the Civil Minutes for the May 23, 2024 Status Conference (Dckt. 106), and the Civil Minutes for the May 23, 2024 hearing on the Debtor/Debtor in Possession's Motion for Approval of a Loan Modification (Dckt. 107).

It is clear that the Debtor is a shell entity created by Carl Dexter, the managing and sole member of the Debtor, to be put on title and then a bankruptcy case filed to stay the pending foreclosure sale. From the start, the question existed as to whether the Debtor, it's managing member, and Debtor's counsel commenced and sought to prosecute this Bankruptcy Case in good faith (or actually filed and prosecuted it in bad faith).

The court in the Civil Minutes recounts some of the many misstatements by Debtor's and the Debtor in Possession's managing member under penalty of perjury and those of Debtor's and Debtor in Possession's counsel in documents and pleadings prepared and filed by said counsel. Debtor's sole member repeatedly (in documents prepared by Debtor's counsel) misrepresented himself as a shareholder. Further, he misrepresented his obligations and the obligations of the Debtor in Possession as the fiduciary of the bankruptcy estate.

Some of the grossly incorrect statements made by the responsible representative of the Debtor in Possession, which were drafted by counsel for the Debtor in Possession include:

> The Supplemental Declaration of Carl Dexter again continues to make confusing statements about the Debtor/Debtor in Possession, who has a fiduciary duty to the Bankruptcy Estate, and Carl Dexter, the Responsible Representative of the Debtor/Debtor in Possession. Mr. Dexter continues to identify himself as a "shareholder" of the Debtor limited liability company. He states that "Shareholders" collect rents from the Property that is property of the Bankruptcy Estate. His testimony appears to show that the fiduciary duties of the Responsible Representative and the Debtor/Debtor in Possession Debtor in Possession are being violated, and the Shareholders are treating the property of the Bankruptcy Estate as their own.

Civil Minutes, p. 2; Dckt. 107.

> This "confusion" that somehow the "Shareholders" are separate actors is shown in Mr.
> Dexter's testimony in which he states:

> 8. I am the Managing Member of the Debtor, and am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor's payment.

Declaration, ¶ 8; Dckt. 97.

Id.

As discussed in the Civil Minutes, the purported loan modification documents were never drafted to be between the lender and the fiduciary Debtor/Debtor in Possession, but are addressed to the Debtor/Debtor in Possession's responsible representative personally - Carl Dexter. *Id*.; p. 4. It addresses Carl Dexter as the person who had acquired titled to the Property from the Frank Allen, the former owner and borrower who was reported to be deceased. The Debtor is completely absent from the loan modification paperwork.

As this court's record showed, Frank Allen had been filing Chapter 13 cases in 2023, the last of which was dismissed on November 3, 2023. *Id*.; p. 6.

Following that dismissal, and 11 U.S.C. § 362(c)(4) preventing the automatic stay from going into effect prior to August 25, 2024 (Frank Allen's first of two Chapter 13 cases filed in 2023 having been dismissed on August 25, 2023), *Id*., this Bankruptcy Case was filed by Debtor Lafleur Way, LLC on December 23, 2023.

As this court addressed in the Subchapter V Status Conference Minutes, the California Secretary of State Reports that the Debtor filed its initial documents with the Secretary of State on December 22, 2023 – the day before "Debtor" commenced this Subchapter V Case. Civ. Minutes, p. 9-10; Dckt. 106.

Carl Dexter, as the managing member of the Debtor, states under penalty of perjury that other than the one piece of residential real property, the Debtor had no other personal or real property assets. Schedule A/B; Dckt. 1.

It appears to the court that the present Bankruptcy Case is an intentional, purposeful legal abomination concocted by the Debtor/Debtor in Possession's managing member/responsible representative and the Debtor/Debtor in Possession's counsel in this case. As the court has addressed in prior hearing, the Schedules, Declarations, and other documents signed under penalty of perjury and filed by counsel for the Debtor/Debtor in Possession contain gross, obvious erroneous statements. Though pointed out by the court, the managing member/responsible representative and the counsel for the Debtor/Debtor in Possession continued to make such misrepresentations.

The court does note that counsel for the Debtor/Debtor in Possession has not sought approval of his fees in this Bankruptcy Case. Though the Case is dismissed, such approval must be sought, and the Case will not be closed until such has been presented to the court.

Carl Dexter, the responsible representative/managing member for the Debtor/Debtor in Possession has appeared before this court in at least several other cases. Counsel for the Debtor/Debtor in Possession has and continues to appear before this court on a number of matters. Many are cases in which counsel provides substantial benefit to his consumer clients, complies with the law, and acts in a proper, ethical manner. However, the court needs to make it clear to counsel that the filing of inaccurate pleadings,

inaccurate/false statements under penalty of perjury, and ignoring the law is not a practice to be expanded to other cases.

The court continues the Status Conference to allow for the filing of any and all post-dismissal motions that are necessary or proper in this Bankruptcy 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 Status Conference in this Bankruptcy Case having been conducted by the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on xxxxxxx, 2024.
>
> The Clerk of the Court shall not close the file in this Bankruptcy Case until the court has concluded the Status Conference in this Case and directs that the Clerk may close the file in this Bankruptcy Case.

6. 23-24610-E-11 LNH-1 | **LAFLEUR WAY, LLC** / **Peter Macaluso** | **MOTION FOR COMPENSATION FOR LISA HOLDER, CHAPTER 11 TRUSTEE(S)** **6-6-24 [116]**

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, Debtor's Attorney, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court's calculation, 14 days' notice was provided. The court set the hearing for June 20, 2024. Dckt. 122.

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

The Motion for Allowance of Professional Fees is granted.

Lisa A. Holder, the Chapter 11 Subchapter V Trustee ("Applicant") in the case of Lafleur Way, LLC ("Debtor / Debtor in Possession"), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 28, 2023, through June 5, 2024. Applicant was appointed as Chapter 11 Subchapter V Trustee on January 4, 2024. Dckt. 9. Applicant requests fees in the amount of $5,000, reduced from the actual earned fees of $5,130. Applicant is not requesting reimbursement for costs.

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 the following detailed services:

> Applicant analyzed Debtor's Petition, Schedules, and Statement of Financial Affairs; communicated with the Office of the United States Trustee regarding Debtor's case; analyzed documents received from Debtor and Debtor's attorney for the initial debtor interview and the meeting of creditors; participated in the IDI and MOC; discussed the case with Debtor's attorney and the Office of the United States Trustee; analyzed Debtor's status conference statements and monthly operating reports; attended Chapter 11 status conferences; analyzed motions filed by Debtor and interested parties and attended motion hearings; assisted with plan preparation or modifications with Debtor; analyzed Debtor's Plan of Reorganization and communicated with Debtor, and the Office of the United States Trustee regarding the plan; worked with Debtor on plan amendments; communicated with Debtor's attorney regarding the motion for loan modification; communicated with the Office of the United States Trustee regarding the motion to dismiss or convert; prepared monthly reports required by the Office of the United States Trustee (no charge); and prepared this fee application. Applicant must also still file the case closing papers (trustee's final report).

Decl. 3:19-4:4. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.1 hours in this category. Applicant prepared documents required by the OUST for my appointment, communicated with the OUST, analyzed documents filed with the bankruptcy court during the case, communicated with Debtor's counsel and interested parties, and attended status conferences. Decl. 4:13-17, Docket 118.

Relief from Stay: Applicant spent 1.1 hours in this category. Applicant analyzed the recorded documents regarding 2421 Marconi, and that secured lender's motion for relief from the automatic stay, and Debtor's stipulation for relief from stay; I did not charge a fee for this work because Debtor had no control over the apparent case hijacking. *Id.* at 4:18-22.

Initial Debtor Interview and 341 Meeting: Applicant spent 2.6 hours in this category. Applicant analyzed initial debtor interview documents, and participated in the Initial debtor interview, and participated in the meetings of creditors. *Id.* at 4:23-26.

Fee/Employment Applications: Applicant spent 2.0 hours in this category. Applicant prepared her fee application. *Id.* at 4:27-28.

Fee/Employment Applications of Others: Applicant spent 0.3 hours in this category. Applicant analyzed Debtor's attorney's employment application. *Id.* at 5:1-2.

Plan of Reorganization / Transaction: Applicant spent 4.1 hours in this category. Applicant worked with Debtor and parties in interest on plan terms, analyzed Debtors Plan of Reorganization, and worked with Debtor toward plan modifications; this category included Debtor's motion for loan modification because it substituted for a plan. *Id.* at 5:3-7.

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**
Lisa Holder	18.2	$300.00	$5,130.00
Total Fees for Period of Application			$5,130.00

Applicant is requesting reduced fees in the amount of $5,000.

FEES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $5,000 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor / Debtor in Possession.

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

Fees $5,000

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Lisa A. Holder, the Chapter 11 Subchapter V Trustee ("Applicant") in the case of Lafleur Way, LLC ("Debtor / Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Lisa A. Holder is allowed the following fees and expenses as a professional of the Estate:
>
> Lisa A. Holder, Chapter 11 Subchapter V Trustee,
>
> Fees in the amount of $5,000,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

7. 23-24610-E-11 UST-1 — LAFLEUR WAY, LLC — Peter Macaluso — MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 — 5-22-24 [100]

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 / Debtor in Possession, Debtor / Debtor in Possession's Attorney, creditors and parties in interest, and parties requesting special notice on May 22, 2024. The Motion was originally set pursuant to Local Bankruptcy Rule 9014-1(f)(1) to be heard on July 30, 2024. However, the court issued an Order on May 29, 2024, to hear this Motion on the court's June 20, 2024 date, due to the case coming to a conclusion with Debtor / Debtor in Possession entering into a loan modification with the sole creditor in this case. Docket 111. By the court's calculation, 29 days' notice was provided.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 Dismiss Case is Granted.

The Tracy Hope Davis, the United States Trustee ("Movant"), filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §1112(b) and Fed. R. Bankr. P. 1017(f).

The Motion states the following with particularity (Fed. R. Bankr. P. 9013):

1. The case was filed on December 23, 2023.

2. Lisa Holder is the duly appointed Subchapter V Trustee ("Trustee"). Docket 9.

3. Debtor / Debtor in Possession, Lafleur Way, LLC, ("ΔIP") primary asset is residential real property located at 1078 La Fleur Way, in Sacramento, CA 95831 (the "Property"). ΔIP values the Property at $950,000. Schedule A/B 10, Docket 1.

4. ΔIP's only creditor in the case is the Mortgage Law Firm, PLC ("Creditor"). Creditor has a secured claim of $550,449.95. *Id.* at 13-14.

5. ΔIP's monthly operating reports ("MOR") have consistently been submitted late. Similarly, the MORs contain inaccurate or incomplete information, do not reconcile with each other, and lack important attachments required by the Bankruptcy Code and U.S. Trustee's office. *See* Carla Cordero Decl. ¶¶ 4-12, Docket 102.

6. Therefore, cause exists pursuant to 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(F). 11 U.S.C. § 1112(b)(4)(F) states there is cause to dismiss a case when a debtor fails to satisfy timely any filing or reporting requirement, which is the case here.

7. Movant seeks dismissal rather than conversion as there are no unsecured claims and there is only one secured creditor in the case.

Movant filed the Declaration of Carla Cordero, ΔIP's attorney of record/responsible person, to provide testimony attesting to the facts asserted in the Motion. Decl., Dckt. 102. Ms. Cordero testifies that:

1. The Debtor's amended December MOR reflects a starting and ending balance of $0 with no receipts or disbursements. The Debtor's amended January 2024 report reflects an opening balance of $3,950. This does not reconcile with the ending balance of $0 reported in December. *Id.* at 4:20-23.

2. The Debtor's amended February 2024 report reflects an opening balance in Debtor's accounts of $7,900, cash receipts of $3,950, no disbursements, and a projected cash flow for next month of $897.11. [ECF No. 81]. The Debtor again failed to provide supporting exhibits to indicate where money is being deposited, the sources of funds, and whether disbursements are being made during the operating month. Based on the figures in the February MOR, the Debtor should have $11,850 in cash on hand at the end of the month but instead indicates that it has $3,950 at the end of the month with no explanation for where the balance of funds went. *Id.* at 3:1-7.

3. The March 2024 report reflects an opening balance in Debtor's accounts of $4,672.11, cash receipts of $3,950 for the period, and disbursements of $3,227.89, leaving cash on hand at the end of the month of $5,394.22 with projected net cash flow for the next month indicated as $722.11. [ECF No. 82]. Again, the $4,672.11 figure for cash on hand at the beginning of March 2024 does not reconcile with Debtor's February MOR which indicated

$3,950 at the end of February 2024, nor with the $7,900 the Debtor had on hand at the beginning of February 2024. *Id.* at 3:8-13.

4. On May 13, 2024, the Debtor filed its April monthly operating report. The report indicates that the Debtor had $5,394.22 in cash on hand at the beginning of April 2024, and goes on to indicate that $3,950 was received in April 2024. The report next indicates that $5,377.11 was disbursed in April, leaving $3,967.11 in cash on hand at the end of April 2024. The report again fails to attach bank statements or profit and loss or balance sheets as required. *Id.* at 3:16-20.

5. Additionally, the December MOR was 63 days late, the January MOR was 34 days late, the February MOR was five days late, and the March MOR was one day late. *Id.* at 3:23-4:2.

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). 11 U.S.C. § 1112(b)(4)(F) states,

> (4)For purposes of this subsection, the term "cause" includes—
>
> . . .
>
> (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;

Fed. R. Bankr. P. 2015(6) states:

> [I]n a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by §308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the

> month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

DISCUSSION

In this case, Movant has demonstrated cause exists to dismiss this case due to ΔIP's failure to timely and accurately file MORs. The facts in this particular case warrant dismissal, rather than conversion, as there are no unsecured creditors who may be affected. Furthermore, this court granted ΔIP authority to enter into a loan modification with Creditor. Order, Docket 110. The requested dismissal could allow ΔIP to resolve claims and move on to a "fresh start"outside of bankruptcy, the only creditor in this case now having been provided for.

Modification of Loan and
Prosecution of this Chapter 11 Case

The financial dilemma facing the "Debtor" was resolved with this court approving the modification of the loan securing the sole asset of the Debtor - the residential property of this Limited Liability Company. Order, entered on May 24, 2024; Dckt. 110. With that done, Debtor can now breathe easy.

While this Bankruptcy Case will be dismissed and Debtor achieving its financial goals, there are aspects of this Case that the court must address.

It is clear that the Debtor is a shell entity created by Carl Dexter, the managing and sole member of the Debtor, to be put on title and then a bankruptcy case filed to stay the pending foreclosure sale. From the start, the question existed as to whether the Debtor, it's managing member, and Debtor's counsel commenced and sought to prosecute this Bankruptcy Case in good faith (or actually filed and prosecuted it in bad faith).

The court in the Civil Minutes recounts some of the many misstatements by Debtor's and the Debtor in Possession's managing member under penalty of perjury and those of Debtor's and Debtor in Possession's counsel in documents and pleadings prepared and filed by said counsel. Debtor's sole member repeatedly (in documents prepared by Debtor's counsel) misrepresented himself as a shareholder. Further, he misrepresented his obligations and the obligations of the Debtor in Possession as the fiduciary of the bankruptcy estate.

Some of the grossly incorrect statements made by the responsible representative of the Debtor in Possession, which were drafted by counsel for the Debtor in Possession include:

> The Supplemental Declaration of Carl Dexter again continues to make confusing statements about the Debtor/Debtor in Possession, who has a fiduciary duty to the Bankruptcy Estate, and Carl Dexter, the Responsible Representative of the Debtor/Debtor in Possession. Mr. Dexter continues to identify himself as a "shareholder" of the Debtor limited liability company. He states that "Shareholders" collect rents from the Property that is property of the Bankruptcy Estate. His testimony appears to show that the fiduciary duties of the Responsible Representative

> and the Debtor/Debtor in Possession Debtor in Possession are being violated, and the Shareholders are treating the property of the Bankruptcy Estate as their own.

Civil Minutes, p. 2; Dckt. 107.

> This "confusion" that somehow the "Shareholders" are separate actors is shown in Mr.
> Dexter's testimony in which he states:
>
> > 8. I am the Managing Member of the Debtor, and am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor's payment.
>
> Declaration, ¶ 8; Dckt. 97.

Id.

As discussed in the Civil Minutes, the purported loan modification documents were never drafted to be between the lender and the fiduciary Debtor/Debtor in Possession, but are addressed to the Debtor/Debtor in Possession's responsible representative personally - Carl Dexter. *Id*.; p. 4. It addresses Carl Dexter as the person who had acquired titled to the Property from the Frank Allen, the former owner and borrower who was reported to be deceased. The Debtor is completely absent from the loan modification paperwork.

As this court's record showed, Frank Allen had been filing Chapter 13 cases in 2023, the last of which was dismissed on November 3, 2023. *Id*.; p. 6.

Following that dismissal, and 11 U.S.C. § 362(c)(4) preventing the automatic stay from going into effect prior to August 25, 2024 (Frank Allen's first of two Chapter 13 cases filed in 2023 having been dismissed on August 25, 2023), *Id*., this Bankruptcy Case was filed by Debtor Lafleur Way, LLC on December 23, 2023.

As this court addressed in the Subchapter V Status Conference Minutes, the California Secretary of State Reports that the Debtor filed its initial documents with the Secretary of State on December 22, 2023 – the day before "Debtor" commenced this Subchapter V Case. Civ. Minutes, p. 9-10; Dckt. 106.

Carl Dexter, as the managing member of the Debtor, states under penalty of perjury that other than the one piece of residential real property, the Debtor had no other personal or real property assets. Schedule A/B; Dckt. 1.

It appears to the court that the present Bankruptcy Case is an intentional, purposeful legal abomination concocted by the Debtor/Debtor in Possession's managing member/responsible representative and the Debtor/Debtor in Possession's counsel in this case. As the court has addressed in prior hearing, the Schedules, Declarations, and other documents signed under penalty of perjury and filed by counsel for the Debtor/Debtor in Possession contain gross, obvious erroneous statements. Though pointed out by the court, the managing member/responsible representative and the counsel for the Debtor/Debtor in Possession continued to make such misrepresentations.

The U.S. Trustee seeks to have the case dismissed rather than converted, and the court concurs. There is no reason to waste the time and expense of a Chapter 7 trustee which will not benefit the Bankruptcy Estate.

The court does note that counsel for the Debtor/Debtor in Possession has not sought approval of his fees in this Bankruptcy Case. Though the Case is dismissed, such approval must be sought, and the Case will not be closed until such has been presented to the court.

Carl Dexter, the responsible representative/managing member for the Debtor/Debtor in Possession has appeared before this court in at least several other cases. Counsel for the Debtor/Debtor in Possession has and continues to appear before this court on a number of matters. Many are cases in which counsel provides substantial benefit to his consumer clients, complies with the law, and acts in a proper, ethical manner. However, the court needs to make it clear to counsel that the filing of inaccurate pleadings, inaccurate/false statements under penalty of perjury, and ignoring the law is not a practice to be expanded to other cases.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by Tracy Hope Davis, the United States Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the case is dismissed.
>
> The Clerk of the Court shall not close the file in this Bankruptcy Case, the court having continued the Status Conference and Counsel for the Debtor/Debtor in Possession not yet having filed an application for the allowance of attorney's fees and costs for representing the Debtor/Debtor in Possession.

8. **23-23834-E-7** **ANTONETTE TIN** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALEXANDER G. FABROS AND CARLOTA SERAME**
DNL-6 **Peter Macaluso** **5-14-24 [136]**

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, all creditors and parties in interest, and Office of the United States Trustee on May 14, 2024. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Nikki Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Alexander G. Fabros and Carlota Serame ("Settlors," "Claimants"). Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion). Ex. A, Docket 138. The claims and disputes to be resolved by the proposed settlement are as follows:

1. ALLOWANCE OF PROOF OF CLAIM 3-3: Upon the Approval Order becoming final and non-appealable ("Effective Date"), Proof of Claim 3-3 (filed by the Claimants in the Tin case) shall be allowed in the amount of $1,282,721.13, allocated as follows: (a) $229,265.50 unpaid wages; (b) $38,395.31 penalties; (c) $109,248,725.00 interest on unpaid wages; (d) $5,461.70 initial cost award, (e) $289,725.00 initial attorney fee award; (f)

$183,246.48 second attorney fee and cost award; (g) $421,206.72 additional attorney fees incurred; (h) $5,178.88 interest on second fee and cost award; and (i) $992.86 additional costs incurred. The Claimants irrevocably waive, as to the Trustee and Bankruptcy Estate only (i.e. not the Debtors), all other claims that have been asserted or could be asserted, including the Additional Fees. Mot. to Approve Settlement 5:20-28, Docket 136.

2. DISTRIBUTION ON PROOF OF CLAIM 3-3: On account of Proof of Claim 3-3, Claimants shall receive, up to the $1,282,721.13 allowed amount, 80% of the Trustee's recovery on all administered assets (including the Malpractice Claims), net of all administrative claims allowed against the Bankruptcy Estate, including, without limitation: (a) compensation claims of the Trustee, her counsel, accountant(s) and broker(s) for all services rendered in connection with the Bankruptcy Case; (b) federal and state income tax obligations arising from administration of Bankruptcy Estate property; and (c) payroll taxes arising from distributions made on account of the wage component of allowed claims, including Proof of Claim 3-3. The remaining 20% shall be retained by the Trustee for the benefit of other unsecured creditors, to be paid in accordance with the provisions of 11 U.S.C. Section 726, except that the deficiency, if any, on Proof of Claim 3-3 shall be allowed and paid as a penalty pursuant to 11 U.S.C. Section 726(a)(4). Mot. to Approve Settlement 6:1-11, Docket 136.

3. WITHDRAWAL OF PROOF OF CLAIM 1-1: Within 14 days after the Effective Date, the Claimants shall withdraw Proof of Claim 1-1 (filed by Claimants in the Retreat at Royal Green, LLC case). *Id.* at 6:12-13.

4. AVOIDANCE OF LIENS: On the Effective Date, all liens that have been asserted or could be asserted by the Claimants against the Bankruptcy Estate, the Defendants, the Family Trusts, and the Family Properties, including the Judgment Liens, shall be avoided, preserved and recovered by the Trustee for the benefit of the Bankruptcy Estate pursuant to applicable bankruptcy and non-bankruptcy law, including 11 U.S.C. Sections 544, 547, 548, 549, 550 and 551. Mot. to Approve Settlement 6:14-18, Docket 136.

5. ASSIGNMENT OF CLAIMS: On the Effective Date, all damage claims that the Claimants have asserted or could assert against the Defendants in connection with the Employment Case and the Transfer Avoidance Case, including the Interference Claims, shall be deemed irrevocably assigned to the Trustee for the benefit of the Bankruptcy Estate. At the Trustee's request, the Claimants shall consent to substitution of the Trustee as plaintiff in the Transfer Avoidance Case. *Id.* at 6:19-23.

6. EXCHANGE OF RELEASES: At the Trustee's request, the Claimants shall exchange a mutual release of claims (related to the Employment Case and Transfer Avoidance Case) and waive the provisions of California Civil Code Section 1542, with any or all of the Defendants. Mot. to Approve Settlement 6:24-26, Docket 136.

The parties move this court on the following factual grounds:

1. Claimant asserts a claim of $1,282,721.13 as of the petition date on a judgment entered against Antonette Tin ("Tin") and the Retreat at Royal Green, LLC ("RRG") (collectively, "Debtors") in Sacramento County Superior Court Case No. 34-2018-00239030 ("Employment Case"). Prior to Consolidation, the Claimants filed Proof of Claim 1-1 in The Retreat at Royal Green, LLC case based on the same judgment. The Claimants assert an additional $225,000.00 attorney fees incurred pre-petition and post-petition (collectively "Additional Fees"). Mot. to Approve Settlement 2:12-18, Docket 136.

2. The Claimants are also the plaintiff, and the Debtors and the following affiliates are the defendants, in Adversary Proceeding No. 23-2098 ("Transfer Avoidance Case"): Erlinda B. Lynch, Alfred B. Tin, Antonio B. Tin, and Exequiel Allan Fernando. In the Transfer Avoidance Case, the Claimants seek relief against the defendants with respect to their interests in the following trusts: The 2018 Antonette Butlig Tin Trust ("Tine Trust"), the EBL Family Trust ("EBL Trust"), The Ra Coronel Family Trust ("RAC Trust"), and the 2018 Exequiel Fernando Trust ("EAF Trust"). Mot. to Approve Settlement 2:19-27, Docket 136.

3. In the Transfer Avoidance Case, the relief sought against the Tin Trust, EBL Trust, RAC Trust and EAF Trust (collectively "Family Trusts") includes claims in and to the following Sacramento County real property:

Property Address	**Title Holder**
779 Skylake Way	Tin Trust
8865 Haflinger Way	RAC Trust
8983 Richborough Way	Tin Trust
986 Greenhurst Way	EAF Trust
865 Royal Green Avenue	EBL Trust
9706 Nature Trail Way	EBL Trust

Id. at 3:1-15.

4. The Debtor is the sole settlor, beneficiary, and trustee of the Tin Trust, which was created by her September 20, 2018 execution of a document entitled Irrevocable Trust Agreement ("ITA"). It (a) includes a spendthrift provision; (b) states that it is irrevocable; and (c) retains full control for the settlor and trustor, to wit the Debtor, until such time that she cannot carry on the functions of trustee. The spendthrift provision will not likely bar the Trustee's direct administration of assets in the Tin Trust since it is self-settled and, as of the petition date, the Debtor was both beneficiary and trustee. The Trustee estimates that liquidation of that trust's principal assets would

net after exemptions about $165,000: (a) $165,000 for 779 Skylake Way; and (b) or 8983 Richborough Way (due to that asset having been fully exempted). *Id.* at 3:16-24.

5. Debtor Tin is the sole beneficiary and trustee of the RAC Trust, which was created by Roberto Coronel's June 12, 2020 execution of a declaration of trust which: (a) includes a spendthrift provision; (b) states that it is irrevocable; and (c) provides for outright distribution of all trust property to the Debtor Tin upon death of the trustor. Mr. Coronel passed away in February. On April 28, 2021, contrary to trust terms, the Debtor Tin as successor trustee recorded a deed to herself as trustee of the RAC Trust. The spendthrift provision will not likely bar the Trustee's direct administration of assets of the RAC Trust since Mr. Coronel passed away pre-petition and the Trust expressly provided for outright distribution to the Debtor Tin upon death. The Trustee estimates that liquidation of that Trust's principal asset, 8865 Haflinger Way, would net about $138,000. *Id.* at 3:25-4:6.

6. Exequiel is sole settlor, beneficiary and trustee of the EAF Trust. Its principal asset is 986 Greenhurst Way, which was purchased by Exequiel in 2016. The Estate's claim of interest in the real property, which is the location of one of the two care homes currently operated by the Debtor Tin, is based on the Debtor Tin's rights under California Family Code Section 2640 to reimbursement for contributed community property. The Estate may also assert an equitable lien to the extent that proceeds of avoidable transfers were used to acquire, maintain, and hold 986 Greenhurst. Exequiel disputes those claims. Before recovery of the estimated $150,000 net equity, the Trustee would have to prevail in heavily contested litigation. *Id.* at 4:7-16.

7. The assets of the EBL Trust, of which Lynch is a trustee and beneficiary, include 865 Royal Green Avenue and 9706 Nature Trail Way. The Estate asserts a joint venture interest in 865 Royal Green Avenue based on a loosely worded written agreement by which Lynch provided the capital to start up a now-shuddered care home at that location. The Estate may also assert an equitable lien to the extent that proceeds of avoidable transfers were used to acquire, maintain, and hold both 865 Royal Green Avenue and 9706 Nature Trail Way. Lynch disputes those claims. Before recovery of any net equity, the Trustee would have to prevail in heavily contested litigation. *Id.* at 4:17-24.

8. The Estate also hold 100% of the stock in two LLC s used by the Debtor Tin to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way. Sale of those LLC's to a third-party would net an aggregate of about $0 to $200,0000, depending on the level of cooperation by the Debtor Tin. *Id.* at 4:25-28.

9. The Claimants assert liens (collectively "Judgment Liens") against the Defendants, Family Trusts and Family Properties based on: (1) a copy of the Employment Case judgment recorded in Sacramento County on December 5, 2022; (2) a J-1 judgment lien notice filed with the Secretary of State on December 7, 2022; (3) rent assignment and restraining orders served on June 30, 2023; and (4) orders to appear for examination served on August 11, 2023. *Id.* at 5:1-5.

10. The Trustee's administration of the Family Properties, including the two that would not likely require litigation (779 Skylake Way and 8865 Haflinger Way), would be subject to the Claimant's Judgment Liens which were perfected by an abstract recorded well-outside the preference period. *Id.* at 5:6-9.

11. In the Transfer Avoidance Case, in addition to enforcement of the Judgment Liens against the Defendants' interests in the Family Properties, the Claimants assert damage claims ("Interference Claims") based on alleged acts of interference with enforcement of the judgment and orders entered in the Employment Case. Property of the Bankruptcy Estate also includes potential claims (collectively "Malpractice Claims") against professionals engaged by the Debtors in connection with the Employment Case. *Id.* at 5:10-15.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that this factor supports approving the compromise because the expected result of litigating the dispute is at best uncertain regrading the assets of the EBL Trust and the EAF Trust. Mot. to Approve Settlement 7:24-25, Docket 136. The time to appeal the underlying judgment has long passed and the Judgment Liens as to the Family Properties were perfected outside the preference period. Mot. to Approve Settlement 7:24-27, Docket 136. The Trustee has been advised by counsel that the compromise is a fair and equitable result accounting the risks of litigation. *Id.* at 7:27-28. "Rather than an exhaustive investigation or a mini-trial on the merits, the bankruptcy court need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." *Spirtos v. Ray* (*In re* Spirtos) BAP Nos. CC-04-1621-MoBK, CC-05-1118-MoBK, 2006 WL 6811021, at *32 (9th Cir. BAP R. 2006). Mot. to Approve Settlement 8:1-3, Docket 138.

Difficulties in Collection

Movant argues that this factor is neutral because the Trustee is in a defensive position as to the enforcement of judgment liens asserted by the Claimants. *Id.* at 8:5-6.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that this factor supports approving the compromise. Any continued litigation will require time and expense that is otherwise wholly avoidable by the compromise. Even if the Trustee is successful, such litigation would consume time and resources, especially taking into consideration the differing analyses likely applicable to the different types of property subject to the enforcement of judgment liens. The law favors compromise and not litigation for its own sake. *In re* Blair, 538 F.2d 849, 851 (9th Cir. 1976). Mot. to Approve Settlement 8:8-13, Docket 138.

Paramount Interest of Creditors

Movant argues that this factor supports approving the compromise. Consolidating the Claimants' rights into the hands of the Trustee: (a) increases the likelihood and amount of the ultimate recovery; (b) avoids possible conflicts and collection competition that arise; and (c) maximizes flexibility in the event the matter is mediated. *Id.* at 8:15-18. The other creditors will benefit from the 20% carve out of the net recovery after payment of administrative expenses. The Court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re* A & C Properties, 784 F.2d 1377 (9th Cir. 1986). It is the Trustee's opinion that the compromise is in the best interest of the estate. Mot. to Approve Settlement 8:18-21, Docket 138.

Distribution Percentage and "Penalty" to be Paid Claimants

At the core of the Settlement is the agreement between Claimants and the Trustee to allow the Trustee to use her "super power" under the Bankruptcy Code to recover avoidable transfers and enforce the liens of Claimants (having been avoided and preserved for the bankruptcy estate) to get the properties liquidated and reduced to dollars.

From these dollars, net of the administrative expenses of the Bankruptcy Estate, 80% will be disbursed to Claimants and 20% disbursed to other creditors holding unsecured claims. However, the provision states that there is a deficiency arising for Claimants after application of their 80% of the net monies for payment of their claim, then their Claim shall be allowed and paid as a penalty as provided in 11 U.S.C. § 726(a)(4). Settlement Agreement, ¶ 4; Exhibit A, Dckt. 138.

11 U.S.C. § 726 provides for the distribution of property of the bankruptcy estate, with 11 U.S.C. § 726(a)(4) providing for fourth in priority for distribution of unencumbered monies the following:

> (4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim; . . . .

This section is very clear that it is only for a fine, penalty, or forfeiture, or exemplary/punitive damages arising before the filing of the bankruptcy case (the order for relief in a voluntary case) or the appointment for a trustee. Both deadlines have already expired before there could be such a "penalty" under the terms of the Settlement Agreement.

Further, as described above, Claimants' claim consists of the following component monetary damages parts:

(a) $229,265.50 unpaid wages;

(b) $38,395.31 penalties;

(c) $109,248,725.00 interest on unpaid wages;

(d) $5,461.70 initial cost award,

(e) $289,725.00 initial attorney fee award;

(f) $183,246.48 second attorney fee and cost award;

(g) $421,206.72 additional attorney fees incurred;

(h) $5,178.88 interest on second fee and cost award; and

(i) $992.86 additional costs incurred.

Settlement Agreement, ¶ 3; Exhibit A, Dckt. 138. It may be that it is the $38,395.31 is the penalty amount (the nature of the penalty not explained) for which the priority as an unsecured claim is sought.

Alternatively, it may be that the Claimants assert that they have the right to be paid in full before any other creditors get paid on their unsecured claims. In that case, it could be argued that the proposed settlement which on the one hand purports to say that of the net sales proceeds (after payment of administrative expenses), 20% is reserved for other creditors holding general unsecured claims is illusory. Rather, the Settlement worked out between Claimants and the Trustee provides that from the sales proceeds the Bankruptcy Estate first pays all administrative expenses, then Claimants are paid in full, and then whatever remains, if anything, will be disbursed to other creditor who hold unsecured claims.

At the hearing, counsel for the Trustee and counsel for Claimants clarified this point, stating **xxxxxxx**

Consideration of Additional Offers

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

~~Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the probability of success in litigation is uncertain and a compromise is in the best interest of creditors by avoiding costly litigation. The Motion is granted.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Nikki Farris, the Chapter 7 Trustee, ("Movant," "Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Alexander G. Fabros and Carlota Serame ("Settlors," "Claimants") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket 138).~~

9. 24-20265-E-12 RCW-5 HARDAVE/SUKHBINDER DULAI Ryan Wood MOTION TO VALUE COLLATERAL OF HD OWNER, LLC 5-21-24 [102]

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 Amended Certificate of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, Chapter 12 Trustee, attorneys of record who have appeared in the case, and Office of the United States Trustee on May 23, 2024.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Name of Creditor ("Creditor") is xxxxxxx.

The Motion to Value filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Debtor in Possession") to value the secured claim of HD Owner, LLC ("Creditor") is accompanied by Debtor in Possession's declaration. Declaration, Docket 104. Debtor in Possession is the owner of the following five parcels of subject real farm property commonly known as:

1. 943 Center: Avenue: 3 Parcels 27.77 acres total; Home, Shop, Thresher Planted: Walnuts, Peaches and Kiwis- APNs: 024-130-019, 024-130-020; 024-130-021;

2. At Lone Tree, Palermo Road and Cox Land and Railway Tracks 64.22 Acres Planted: Pistachios; and East of Broadway South of Sanders Road - 40 Acres - Planted: Walnuts, Peaches, Prune - APN: 10-180-037; 10-180-038

("Property"). Debtor in Possession seeks to value the Property at a fair market value of $1,832,142.70 as of the petition filing date. As the owner, Debtor in Possession'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 in Possession offers their own testimony as to the value of the Property being worth $1,832,142.70. Declaration ¶ 3, Docket 104. Debtor in Possession states they reached this valuation by "speaking with farm real estate agents, farm real estate loan brokers, and other farmers." *Id.* at ¶ 4. This valuation equates to $13,571.28 per acre. The Property was originally valued at $2,516,040 in Debtor's Amended Schedule A/B filed on April 25, 2024. Docket 79 at 1. Explaining the decrease in value of the Property, Debtor in Possession states the price of walnuts and walnut orchards have recently decreased significantly. *Id.* at ¶¶ 6-7.

CREDITOR'S OPPOSITION

Creditor filed an Opposition, Declaration in support, and supporting Exhibits on June 6, 2024. Dockets 117-19. Creditor states:

1. It is the primary secured creditor in this case, having timely filed its proof of claim in the amount of $3,935,598.70. *See* POC 16-1.

2. Creditor's claim is based on a loan (the "Loan") dated April 14, 2020 in the original principal amount of $4,700,000.00 in which the Debtors are Borrower and MetLife is Lender. Opp'n. 3:14-16, Docket 117. Creditor is the assignee of the rights to enforce the Loan. *Id.* at 4:2.

3. The Loan is in default because, among other things, the Debtors failed to pay installments due under the Note on January 10, 2022 and July 10, 2022, each in the amount of $147,823.52, and failed to pay certain real estate taxes owing for the year 2021. *Id.* at 3:19-21.

4. Since the 2022 Bankruptcy Case was initiated, the Debtors have made no payments on the Loan. *Id.* at 24-25.

5. Debtor in Possession valued the Property at $2,516,040 as recently as April 25, 2024, then made a dramatic decease in valuation to $1,832,142.70 on May 21, 2024. *Id.* at 4:25-5:4.

6. To rebut Debtor in Possession's valuation, Creditor submits this Opposition and supporting pleadings. The Declaration of Dan Kevorkian is submitted in support. Decl., Docket 118. Mr. Kevorkian is a Senior Vice President – Ag Division of Pearson Realty. He has a Bachelor of Science Degree in Agricultural Management from California Polytechnic State University. Among Mr. Kevorkian's qualifications are that he has received the Accredited Land Consultant designation by the Realtors Land Institute ("RLI"). The RLI has recognized him as the top broker of farm (crops) property in California for 2023. He is a member of the American Society of Farm Managers and Rural Appraisers. Mr. Kevorkian has worked in the agricultural real estate industry since 1982 and engages in local, regional

and statewide agricultural real estate transactions. He has prepared several hundred BOVs during his 42-year career. *Id.* at ¶¶ 1-6.

7. Mr. Kevorkian's valuation of the Property, based upon inspection and investigation of the subject properties, comparable sales in the areas of the subject properties, and due diligence regarding the relative qualities of the subject properties, is in the range of $2,819,205 - $3,083,185. *Id.* at ¶¶ 8-11.

8. Because Debtor in Possession is not an expert giving his valuation, and because Creditor has given the testimony of an expert on valuation, Debtor's opinion is less credible. Opp'n. 6:3-11, Docket 117.

9. Debtor in Possession's recent decreased valuation appears to be "reverse engineered as a Hail Mary to create feasibility for their Proposed Plan." *Id.* at 6:22-23.

10. Mr. Dulai's declaration in support of the Motion is vague in describing the basis for his opinion of value, and he does not cite to any specific information that would support it. *Id.* at 6:23-25.

11. Creditor requests the court enter an order determining that creditor's secured claim is not less than $2,819,205, and that its allowed unsecured claim is an amount that is the difference between HDO's total claim of $3,935,598.74, as evidenced by its proof of claim, and the amount of its allowed secured claim. *Id.* at 7:2-5.

Creditor's Evidence in Support of the Opposition

Exhibit 1 is Mr. Kevorkian's resume, depicting his experience and qualifications of being an expert on valuing farm land. Ex. 1 at 3, Docket 119. Exhibit 2 is Mr. Kevorkian's expert opinion, when considering comparable properties, which concludes that the Property here is worth between $2,819,205 and $3,083,185. Ex. 2 at 6, Docket 119.

Mr. Kevorkian's Declaration at Docket 118, already discussed above, authenticates these Exhibits and provides further testimony and foundation for the expert opinion of the Property's value.

DEBTOR'S RESPONSE TO CREDITOR'S OPPOSITION

Debtor submitted a Response on June 13, 2024. Docket 123. Debtor states:

1. Creditor's Opposition fails to address or account for the huge decrease in farmland prices that has occurred over the last six months. Creditor has failed to present comparable sales that occurred over the last six months. *Id.* at 1:22-25.

2. Creditor is now trying to argue Debtor in Possession's Property is worth more than what HD Owner (Creditor) and Met Life Insurance Company ("Lender") actually paid for Debtors' now foreclosed farmland on January 23, 2024. *Id.* at 2:1-3. On January 23, 2024, Creditor foreclosed on part of Debtors' farmland with a per acre value of $13,571.43. It is disingenuous or simply untruthful to argue Debtor in Possession's similar farmland is somehow worth $900,000.00 or more than Creditor bid themselves for comparable farmland and no other party would pay more at auction. *Id.* at 2:4-8.

3. Debtor in Possession will need to serve discovery to obtain Lender and Creditor's records regarding how they value the farmland they currently own and that Debtor in Possession's farmland has decreased in value since the filing of this Chapter 12 case. Creditor is valuing Debtors' land inconsistently, and higher than Creditor believes similar farmland is worth and have not been forthcoming with comparable farmland values within their own portfolio. *Id.* at 2:11-16.

While citing to a nonjudicial foreclosure sale price, counsel for the Debtor in Possession does not explain how that is relevant to the actual fair market value of such property or the fair market value of the Bankruptcy Estate's property in a commercially reasonable, properly marketed, non-foreclosure, arms length sale to a willing seller by a willing buyer, neither being under a compulsion to sell or buy.

Counsel for the Debtor in Possession argues that they want to conduct discovery against Creditor to discover how Creditor's non-expert employees value the property previously foreclosed on and how these employees believe the property of the Bankruptcy Estate has declined in value these past six month.

What is at issue before the court is the fair market value of the Property, for which expert testimony must be provided by the Creditor and expert testimony can be provided by the Debtor in Possession, in addition to the Debtor in Possession's layperson, non-expert owner's opinion as to the value of the Property.

Debtor in Possession's Evidence in Support of the Response to Creditor's Opposition

Debtor in Possession submits two Declarations in support of their Response. Dockets 124, 125. The Declaration of Gurveer Butter contains testimony that Mr. Butter is a licensed realtor in California employed with Codwell Bankers Associated Brokers. Decl. ¶ 1, Docket 124. Mr. Butter's testimony includes five sales of "comparable" farmland properties in the last seven months. *Id.* at ¶ 7. These properties were sold for $16,499.99 per acre, $4,855.51 per acre, $17,903 per acre, $15,561.30 per acre, and $13,895.16 per acre. *Id.*

Mr. Butter does not testify to any experience of his own that would qualify him as an expert in selling farmland. Instead, Mr. Butter states is personal "finding" that:

> My diverse background and experience have allowed me to gain the knowledge needed to execute all types of real estate such as residential, commercial, and land.

Decl. ¶ 4, Docket 124. That is a conclusion. There is no testimony concerning Mr. Butter's diverse background and experience in these types of farmland sales to properly qualify him as an expert. There is no resume or CV attached to Mr. Butter's Declaration.

Moreover, in reviewing the Declaration, Mr. Butter never testified as to the value of the Property at all. Mr. Butter has provided the price of five recent sales of farmland without testifying as to how the listed properties are comparable. Some of the "comparable" properties include what crop has been grown on them, but the court does not know how many acres are planted, what condition the crops are in, or how these crops compare in value to the crops grown on Debtor in Possession's Property.

Debtor in Possession submits his own Declaration at Docket 125. Debtor in Possession reiterates much of what was stated in the Response. The following paragraphs of Debtor in Possession's Declaration are either an exact duplication or extremely similar to the Response:

1. Paragraphs 3-4 of the Declaration and paragraph 1 of the Response are identical.

2. Paragraph 5 of the Declaration and paragraph 2 of the Response are almost identical.

3. Paragraph 6 of the Declaration and paragraph 3 of the Response are almost identical.

4. Paragraph 7 of the Declaration and paragraph 4 of the Response are almost identical.

5. Paragraph 8 of the Declaration and paragraph 5 of the Response are almost identical.

When the court sees such "cut and paste" of arguments of counsel into the declaration of the client, the court questions whether a debtor even read the declaration they signed and the credibility of such is in significant question.

At the hearing, **xxxxxxx**

DEBTOR'S STATEMENT OF DISPUTED MATERIAL FACTS

Debtor in Possession submitted with the court a Statement of Disputed Material Facts pursuant to Local Bankruptcy Rule 9014-1(f)(C) and Fed. R. Civ. P. 43(c) on June 12, 2024. Docket 121. Debtor in Possession states:

1. Disputed Material Fact: Declaration of Dan Kevorkian, Paragraphs 8-9: range of valuation is not consistent with Creditor's filed proof of claim or Creditor's valuation of Debtors' property Creditor foreclosed upon the same day this case was filed. The value of Debtors' property is a material fact. Creditors range is not consistent with the current market conditions. Docket 121 at 1:27-2:2.

Proof of Claim 16-1 filed by Creditor on April 1, 2024, asserts a secured claim in the amount of ($2,786,724) and the balance as an unsecured claim in the amount of ($1,148,873.77). In the Opposition, Creditor now values its secured claim to be ($2,819.205).

2. Disputed Material Fact: Declaration of Dan Kevorkian, Paragraph 10, and Exhibit "2," is disputed as the BOV fails to properly evaluate the current market value of farmland within Creditors own portfolio and what Creditor was willing to pay for Debtors' land Creditor foreclosed upon the same day this case was filed. *Id.* at 2:3-6.

It does not appear to have been stated by the Debtor in Possession why or how the Creditor's valuation of property it may own is relevant to the determination of the value of the Property at issue. Both Parties have provided their experts, as well as the Debtor in Possession providing his non-expert, personal owner's opinion of value.

3. Disputed Material Fact: Declaration of Dan Kevorkian, Paragraph 9, alleges a distinction, but Creditor makes no distinction between properties used as comparable sales that have a well for irrigation or irrigation by canal and or well. Agricultural land values are significantly different for land with only a well versus multiple forms of irrigation. Irrigation status is material to valuing all farmland. *Id.* at 2:7-11.

4. Disputed Material Fact: Opposition Docket No. 117, Page 6, Lines 13 – 26, provides wild conjecture and is not consistent with the Bankruptcy Code as debtors may amend schedules at any time up to discharge or dismissal. Lines 13-26 wild conjecture with absolutely no evidentiary or declaration support. Creditor is making an inconsistent argument with their own filed claim, Claim No. 16. Debtor, as provided in the Declaration of Hardave Dulai in Support of this Statement and Reply, recognizes based upon real world comparable sales the value of Debtors' land has decreased significantly within the last six months. *Id.* at 2:12-18.

5. Disputed Material Fact: Creditors valuation of Debtors farmland fails incorporate current market values and their own valuation of Debtors' farmland foreclosed on by Creditor. *Id.* at 2:19-20.

6. Disputed Material Fact: Debtors' disputes the properties listed in Exhibit "2" of Declaration of Dan Kevorkian, as follows:

No.	APN/Location	Sale Date	Price/Acre	MATERIAL/DISPUTED FACTS
1	024-090-016 Gridley, CA	3/5/2024	$42,632.00	Material comparable sale that is not relevant and disputed as to the Debtors' property, as this is not a commercial site or farm, but purchased for a home site.
2	028-030-032 Oroville, CA	2/28/2024	$13,811.00	**NO DISPUTE:** THIS COMPARABLE REFLECTS THE CURRENT MARKET AND $13,811.00 PER ACRE
3	025-160-147	2/23/2024	$20,375.00	This is not a comparable sale as it is NOT farmland property.
4	023-1240-185, 181, 182, 183, 184, 186, 180	2/9/2024	$22,003.00	Unrelated crops located in different market area. TOMATOE CROP
5	024-090-015	1/18/2024	$77,778.00	This is not farmland and totals only 4.5 acres. NOT FARMLAND
6	023-260-155 & 154	1/16/2024	$35,267.00	Not a comparable sale as a different market entirely.
7	025-200-154	1/3/2024	$37,907.00	Homes site and not farmland and value has decreased since the sale; no mention of decline in value since sale as of today.
8 -26		4/20/2022 - 11/7/2023		All of these comparable are no longer relevant due to recent market conditions; due to timing of sales and decline in farmland value.

Id. at 3:1-28.

In reviewing the above, the court notes that one basis for asserting that the fact is in dispute is that there has been a decrease in value of farm property over the past six months. However, no evidence of such properties and decreases have been provided.

APPLICABLE LAW

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

As noted above, Debtor in Possession's opinion of value as the owner 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). But when a debtor's lay opinion has been rebutted by expert testimony, "the lay opinion of the debtor typically is found to be less credible." *In re Cocreham*, No. 13-26465-A-13J, 2013 WL 4510694, *3 (Bankr. E.D. Cal. Aug. 23, 2013). Owners are generally considered less able to accurately value land through their publicly available data sources, such as Zillow. *See In re Darosa,* 442 B.R. 173, 177 (Bankr. D. Mass. 2010).

Federal Rule of Evidence §702 provides for testimony to be provided by an expert witness and the purpose for which such expert testimony is provided, stating (emphasis added):

> Rule 702. Testimony by Expert Witnesses
>
> A witness **who is qualified as an expert** by knowledge, skill, experience, training, or education **may testify in the form of an opinion or otherwise** if the proponent demonstrates to the court **that it is more likely than not that**:
>
> > (a) the expert's scientific, technical, or other specialized knowledge **will help the trier of fact** to understand the evidence or to **determine a fact in issue**;
> >
> > (b) the **testimony is based on sufficient facts or data**;
> >
> > (c) the testimony is the **product of reliable principles and methods**; and

(d) the expert's opinion **reflects a reliable application of the principles and methods to the facts of the case**.

DISCUSSION

Here, Debtor in Possession's opinion of value is being rebutted by Creditor's expert, Mr. Kavorkian's opinion. Mr. Kavorkian qualifies as an expert within the meaning of Federal Rules of Evidence §702. There has been no showing that Mr. Kavorkian's expert opinion is not credible. Mr. Kavorkian has clearly explained comparable properties as a part of his appraisal report, outlining certain adjustments for fixtures on the comparable parcels of real property. Mr. Kavorkian has included detailed notes of the types of crops on the relevant farm properties as well as their respective locations. The court finds that the appraisal report is helpful for the trier of fact to determine the ultimate conclusion.

Debtor in Possession has submitted a Statement of Disputed Material Facts, alleging certain defaults in Mr. Kavorkian's valuation, and offering its own expert, Mr. Butter, to support the Statement of Disputed Material Facts. As noted above, Mr. Butter does not provide the court with a solid foundation for accepting his Declaration as reliable or credible expert testimony that can assist the finder of fact (the judge) based on the expert's scientific, technical, or other specialized knowledge to make the required factual determinations. Nor does Mr. Butter provide the court with a basis for deciding why the properties listed compare to the Properties subject to this Motion.

Neither party has explained to the court the nature of the physical structures fixed onto the Property. The court is left with questions pertaining to how the dwellings and physical structures, including the "home" and "shop," affect the value of the Property.

Valuation of Properties Stated By Experts

Beginning with the Declaration of Dan Kevorkian, he does not provide the court with opinions of valuation for each of the three Properties that are the subject of this Motion. Rather, his testimony is that the combined value of the three properties is in the range of $2,819,204 to $3,083,185. Dec., ¶ 11; Dckt. 118. In his Broker's Opinion of Value Letter, Exhibit 2, Dckt. 119; Mr. Kevorkian provides a long list of comparable properties, but does not provide an analysis of differences and what adjustments need to be made to the value of the comparables in the court determining the values of each of the three Properties now before the court.

The Declaration of Gurveer Butter, the Debtor in Possession's expert, offers no opinion as to value, but cites to five properties that he states are comparables. No analysis is provided as to why or how the properties are comparables, and what adjustments need to be made in values of such for the court to determine the values of the three Properties of the Bankruptcy Estate at issue in this Motion.

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 Value Collateral and Secured Claim filed by Hardave Singh Dulai and Sukhbinder Kaur Dulai ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is **XXXXXXX**.

FINAL RULINGS

10. 24-21710-E-11 **SWANSTON OAK, LLC**
Karl Schweikert

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-24 [15]

Final Ruling: No appearance at the June 20, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on May 9, 2024. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $1,738 due on April 25, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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.

11. 24-21040-E-7 **BAO LOR**
Pauldeep Bains

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-24 [27]

Final Ruling: No appearance at the June 20, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on May 14, 2024. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $338 due on March 15, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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.

12. 24-20546-E-7 UST-1

COREY VANDE VOORT AND MARIA CRISTINA NILLOS
Timothy Walsh

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
5-10-24 [15]

Final Ruling: No appearance at the June 20, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and parties requesting special notice on May 10, 2024. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge or a Motion to Dismiss is granted.

Tracy Hope Davis, the United States Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Corey John Vande Voort and Maria Cristina Delgado's ("Debtor") discharge, and for an extension to file a Motion to Dismiss, because the previous deadline expired on May 10, 2024, but the 341 Meeting was continued to May 14, 2024, four days after the deadline. The Motion requests that the deadline to object to Debtor's discharge be extended to June 28, 2024, after the 341 Meeting has been concluded.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on May 10, 2024, before the deadline to object to the discharge of Debtor expired.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to June 28, 2024.

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 Extend Deadline to File a Complaint Objecting to Discharge or a Motion to Dismiss filed by Tracy Hope Davis, the United States Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the deadline for Movant to file a Motion to Dismiss or object to Corey John Vande Voort and Maria Cristina Delgado's ("Debtor") discharge is extended to June 28, 2024.