UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 4, 2022 at 10:30 a.m.

1.	**20-90779-E-11** **DL-2**	**PRIMO FARMS, LLC** **David Johnston**	**MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **6-23-22 [112]**

CH 11 Status Conference Set for 2:00 P.M.
On August 4, 2022

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, and Office of the United States Trustee on June 23, 2022. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 11 bankruptcy case of Primo Farms, LLC ("Debtor") has been filed by Walter R. Dahl ("Movant"), the Chapter 11 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor has ceased to exist as an entity organized and recognized by the State of California for over one year;

B. Debtor failed to schedule its 50% owner as a creditor;

C. Debtor failed to include on their Schedules the claims of Mr. Cary Hahn which is a mismanagement of the estate; and

D. Debtor failed to take nay action in response to the submission to escrow of excessive interest demands by the holders of the first priority deeds of trust encumbering the estate's real property.

DEBTOR'S RESPONSE

Debtor filed an Response on July 21, 2022. Dckt. 117. Debtor consents to the Motion to Convert being granted.

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).

DISCUSSION

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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 Convert the Chapter 11 case filed by Walter R. Dahl ("the Chapter 11 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

2. **18-90029-E-11 CAE-1** **JEFFERY ARAMBEL** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 1-17-18 [1]**

2 thru 3

The Status Conference is continued to xxxxxxx x.m. on xxxxxxx , 2022

3. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION TO ABANDON**
FWP-13 **Pro Se** **4-8-21 [1410]**

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 Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is xxxxxxxxxxxx

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of

inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment

make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, xxxxxxxxxxxx

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 Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 Abandon is xxxxxxxxxxxx

4.	**18-90030-E-11 FWP-2**	**FILBIN LAND & CATTLE CO., INC.**	**CONTINUED STATUS CONFERENCE RE: MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN 12-9-21 [522]**

The Motion is xxxxxxx

AUGUST 4, 2022 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

REVIEW OF MOTION

Focus Management Group USA, Inc., the Plan Administrator in the Jeffery Arambel Chapter 11 Case, moves the court for an entry of an order in aid of execution of the First Amended Plan of Reorganization, dated January 10, 2019, in this Chapter 11 case. Dckt. 398. The Motion is supported by the Declarations of Juanita Schwartzkopf, Jay Crom, and Jason E. Rios. Dckts. 524, 525.

The Plan Administrator seeks an order compelling Jeffrey Arambel, the sole shareholder and Representative of Reorganized Debtor Filbin Land & Cattle Co., Inc. ("Reorganized Debtor"), to transfer the remaining property to the Arambel Estate subject to the senior rights of SBN V Ag I LLC ("Summit") as provided by the Reorganized Debtor's Plan and as represented by the Reorganized Debtor to the Internal Revenue Service in Federal Tax Returns filed on behalf of both FLCC and the Arambel Estate.

Reorganized Debtor's Opposition

On December 30, 2021, Reorganized Debtor filed an opposition. Dckt. 531. Reorganized Debtor opposes the Motion on the following grounds:

1. The Plan requires Reorganized Debtor exercise its discretion to dissolve, and Reorganized Debtor has not exercised such discretion.

2. Mr. Arambel was not aware the tax returns implied Reorganized Debtor would be dissolved.

3. Reorganized Debtor is working to sell the remaining property to pay toward the Class 4 Claim.

Reorganized Debtor states that based on the provisions of the Plan, transferring their assets is contingent on their Dissolution. Mr. Arambel does not intend to dissolve Reorganized Debtor.

Plan Administrator's Reply

The Plan Administrator filed a reply on January 6, 2022. Dckt. 535. The Plan Administrator states Mr. Arambel's statements regarding dissolution are not credible. Plan Administrator states this is evidenced by:

A. Testimony of the Professional Tax Advisor, Mr. Crom, employed by Reorganized Debtor and the Arambel Estate. In paragraphs 3-4 of Mr. Crom's Declaration, he details Mr. Arambel's election to dissolve the to "preserve and capture certain tax benefits for the Arambel estate." Dckt. 526.

B. The federal tax returns signed and filed by Mr. Arambel. The 2019 tax return for the fiscal year ending on November 30, 2019 is filed as Exhibit A. Dckt. 527.

C. The statements of Reorganized Debtor's former counsel, Mr. St. James. Reorganized Debtor's Counsel, Michael St. James, told Mr. Rios, Plan Administrator's Counsel, that it had elected to dissolve to realize certain tax benefits. Declaration of Jason E. Rios, Dckt. 525.

D. The reorganized Debtor's own conduct in turning over $500,389.95 in furtherance of the dissolution. In furtherance of dissolution, Reorganized Debtor transferred its remaining cash of $500,389.95 on March 15, 2021, subject to Summit's senior rights and consent. Declaration of Juanita Schwartzkopf, Dckt. 524.

Applicable Law

Congress provides in 11 U.S.C. § 1142 the statutory basis for the bankruptcy court addressing issues concerning performance under the confirmed Chapter 11 plan:

> § 1142. Implementation of plan
>
> (a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
>
> (b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

This section focuses on the debtor or other party performing the plan. Collier on Bankruptcy provides an discussion of this provision.

¶ 1142.03 Authority of Court to Direct Compliance with a Confirmed Plan; § 1142(b)

Section 1142(b) empowers the court to direct any necessary party, including the debtor, to perform acts necessary for consummation of the plan. The statute effectively streamlines the substantive and procedural requirements that might otherwise constrain a plan proponent from obtaining affirmative injunctions, as may be necessary to cause plan implementation. For example, courts can order specific performance of plan provisions under section 1142 without having to weigh the adequacy of monetary damages.

[1] Broad Scope of Section 1142(b); Authority of Court to Issue Orders Necessary for Plan Implementation

Section 1142(b) grants courts authority to compel parties to take actions considerably broader than merely ministerial acts. Pursuant to section 1142(b), the court may issue any order necessary for the implementation of the plan.

Compliance orders that may be issued under section 1142(b) include those compelling:

> (1) lenders to execute and deliver loan documents required under the plan, clarify provisions of loan documents in accordance with the terms of the plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;
>
> (2) execution of documents extinguishing a lien that is released by the plan;
>
> (3) an investor to advance committed funds necessary to consummate the plan;
>
> (4) a change in corporate control or governance;
>
> (5) distributions on claims as required by the plan;
>
> (6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and
>
> (7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

In addition to directing parties to take actions, the court may order parties to refrain from taking actions if those actions interfere with implementation of the plan.

[2] Limitations on Court's Authority to Issue Orders under Section 1142(b)

> While phrased broadly, section 1142(b) has limits. Courts should not use section 1142(b) to authorize the debtor to avoid a law or regulatory requirement regarding public health and safety. Courts also should refrain from issuing orders directing or authorizing third parties to take action unless the action specifically is called for by the terms of the plan or is necessary to implement the plan. For example, the U.S. Bankruptcy Court for the Southern District of New York recognized that section 1142(b) does not operate on a stand-alone basis or confer any substantive rights beyond what is provided for in a plan. Accordingly, the court ruled that section 1142(b) did not permit a plan administrator to retroactively issue preferred stock where the plan did not expressly authorize it and the terms of the debtor's amended charter and amended bylaws, which prohibited the issuance of securities, were incorporated into the plan. Additionally, section 1142(b) does not authorize a court to order parties to execute an agreement where there is no agreement on the terms or if the terms are uncertain.
>
> The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

8 Collier on Bankruptcy P 1142.03 (16th 2020). The term "judgment" as used in the Bankruptcy Rules is defined to mean "any appealable order." Fed. R. Bankr. P. 9001. See also Federal Rule of Bankruptcy Procedure 7054, which incorporates Federal Rule of Civil Procedure 54(a) that defines the word "judgment" to include "[a] decree and any order from which an appeal lies" for adversary proceeding.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(d) that notwithstanding the entry of the order of confirmation, the bankruptcy court may issue any order necessary to administer the estate.

In Federal Rule of Bankruptcy Procedure 7001, the Supreme Court specifies the types of relief that must be requested through an adversary proceeding, which include (identified by paragraph number used in Rule 7001):

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
> . . .
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; . . .

Confirmation of the Chapter 11 plans works as a modification of the pre-petition obligations of the parties, binding the debtor and creditors to such modified terms. 11 U.S.C. § 1141(a).

Federal Rule of Bankruptcy Procedure 9014 makes the enforcement of judgments provisions of the Federal Rules of Civil Procedure incorporated into the Federal Rules of Bankruptcy Procedure, including:

A. Fed. R. Civ. P. 70, Fed. R. Bankr. P. 7070; Judgment for Specific Acts; Vesting Title, including:

1. Judgment Divesting a Party of Title to Property;

2. Ordering Another Person to Perform the Specific Acts of a Party that Fails to Comply Within the Time Period to Complete a Specific Act;

3. Issue a Writ of Assistance; and

4. Holding the Disobedient Party in Contempt (for which the civil sanctions issued by the bankruptcy judge include incarceration until there is compliance with the Order.

Review of Evidence Presented

In review of the Plan Administer's Motion and supporting pleadings, the Reorganized Debtor's Opposition, and the Plan Administrator's Reply, there exists a disputed material fact as to whether Mr. Arambel intends to dissolve the Reorganized Debtor. From the evidence presented from the Plan Administer, the Plan Administrator asserts there are serious doubts as to Mr. Arambel's credibility.

The Declaration from Juanita Schwartzkopf, the Senior Managing Director of the Plan Administrator declares under penalty of perjury that Mr. Arambel elected to dissolve the Reorganized Debtor and filed a tax return pursuant to such election. Declaration at ¶ 4, Dckt. 524. Additionally, Ms. Schwartzkop declared under penalty of perjury that the Plan Administrator received consent from Summit for the dissolution and the Reorganized Debtor transferred its remaining cash in the amount of $500,389.95 in furtherance of this dissolution.

The Declaration of Jason E. Rios, attorney for the Plan Administrator, states under penalty of perjury that Counsel for the Reorganized Debtor, Mr. St. James, indicated that Reorganized Debtor was dissolving and distributing the remaining property to the Arambel Estate to "realize certain tax benefits." Additionally, Mr. St. James stated Mr. Arambel signed a deed of trust transferring the remaining property to the Arambel Estate, but Mr. Arambel would not record the deed until receiving Summit's consent. Mr. Rios stated Summit provided its consent in August of 2021 to the dissolution of Reorganized Debtor. Summit signed a proposed Stipulation evidencing this "winding up," however, Reorganized Debtor's attorney failed to sign. Exhibit C, Dckt. 527.

Mr. Crom, the Arambel Bankruptcy Estate's and the Reorganized Debtor's public accountant, who was employed by Mr. Arambel when he was the debtor in possession in his case and as the responsible representative for the debtor in possession in the Filbin case, testified that Mr. Arambel elected to dissolve the Reorganized Debtor to preserve and capture certain tax benefits. Declaration at ¶ 3, Dckt. 526. This led to the Arambel Estate receiving benefits in the amount of $680,000.00. Mr. Crom declares under penalty

of perjury that if the remaining property is not transferred to the Arambel estate as represented in the 2019 tax returns, there could be a cost to the Arambel Estate of approximately $680,000.00 to $850,000.00.

Jeffery Arambel, as representative for Reorganized Debtor, states under penalty of perjury that Reorganized Debtor has not made an election to dissolve. Declaration at ¶ 2, Dckt. 532. Mr. Arambel also does not understand how the tax returns indicate Reorganized Debtor has been or will be dissolved. Mr. Arambel states the tax returns should be corrected to show Reorganized Debtor is not and will not be dissolving.

Exhibit A filed by the Plan Administrator is identified as a copy of the Arambel Bankruptcy Estate Fiscal Year 2019 Tax Return. Dckt. 527. On the first page, it states that $1,348,000 in estimated tax payments were made, but only $176,941 was owed, resulting in a $1,171,059 overpayment. Tax Return, lines 25, 22, 30; *Id*. at 3.

On Schedule D for the 2018 Arambel Bankruptcy Estate Return, it is stated that there was a ($4,340,311) loss (line 10) and that the total Net long-term capital gain was $6,239,899 (line 15), after applying the ($4,340,311) to the $10,580,210 long term gain (line 11) for 2018. *Id*. at 4.

The Arambel Bankruptcy Estate lists the ($4,340,311) loss as relating to the asset identified as "Filbin Land & Cattle Co, Inc.," stating that it was disposed on November 30, 2019 (stated to be the end of the Arambel Bankruptcy Estate fiscal year). *Id*. at 5.

On Form 4797 for, Sales or Exchanges of Business Property, the Arambel Bankruptcy Estate lists property describe of as "Filbin Land & Cattle, Inc. (2019)" resulting in a gain of $10,580,210. *Id*. at 6. No information as to date of acquisition, sale, depreciation or other field for the Form 4797 are filled out. The identification of the property is marked with a "*" and the following information is provided as the bottom of the Form 4797, "* ENTIRE DISPOSITION OF ACTIVITY." (Emphasis in original).

In the Declaration of Jay Crom, he testifies that:

> 4. Thus, in coordination with the filing of the Arambel Estate's 2019 tax return, Mr. Arambel also signed and caused to be filed for FLCC a final corporate tax return for its dissolution showing the "real property distribution" of the Remaining Property to the Arambel Estate with a value of $2.5 million at Statement 10. This final return further shows the Remaining Property as "disposed" on Form 4797 at a "sale price" of $2.5 million based upon the value of the distribution to the Arambel Estate. This $2.5 million pass through gain triggered by the distribution of the Remaining Property to the Arambel Estate. The distribution left FLCC with no assets and the stock was rendered worthless. . . .

Declaration, ¶ 4; Dckt. 526. The asserted 2019 final corporate tax return for Filbin has not been provided as an exhibit in support of the Motion. Mr. Crom testifies that this dissolution and distribution of property generated approximately $680,000 in tax benefits for the Arambel Bankruptcy Estate. He further states that if the property is not transferred as stated on the final tax return for Filbin and tax benefit taken by the Arambel Bankruptcy Estate, for which both Mr. Arambel was the fiduciary serving as the responsible representative of the Filbin Debtor in Possession and as the fiduciary Debtor in Possession the Arambel bankruptcy case, the financial losses to the Arambel Bankruptcy Estate, and now Plan Estate could total $850,000.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that there are ongoing negotiations to try and resolve this matter. Plan Administrator states that the conditions. A continuance was requested. The court continues it one final time to afford the Parties time to, in good faith, reach an agreement resolving this matter. If not resolved, the court will set the deadlines and final hearing date.

April 12, 2022 Joint Status Report

On April 12, 2022, the Plan Administrator submitted a status report stating parties have continued to engage in meet and confer discussions but have yet to reach an agreement. The parties intend to continue evaluating whether they can resolve the matter by agreement. The parties intend to proceed as follows:

1. Parties to submit additional evidence no later than May 4, 2022

2. FLCC's counsel can conduct informal discovery of the tax professional, Jay Crom, by teleconference on April 27, 2022 at 1:30 pm

3. The parties request the court set an evidentiary hearing in May 2022 to allow FLCC time to cross-examine Mr. Crom.

4. Other evidence submitted shall be the written declarations and documents already submitted by the parties.

Dckt. 558.

Continuance of the February 17, 2022 hearing.

At the February 15, 2022 hearing in another related matter, the Plan Administrator and other parties in attendance reported that this matter should be continued to allow for the parties to complete their substantive work that would result in this matter being resolved. A schedule proposed by the counsel for Debtor and counsel for the Plan Administrator, which is stated in the Joint Status Report. Dckt. 558.

April 19, 2022 Hearing

Counsel for the Plan Administrator reported that significant headway has been made on resolving this matter, with the parties reaching agreement of a broad range of issues. However, a final agreement has not been reached.

5. **20-90435-E-7 DCJ-3** | **CHARLES MACAWILE** **David Johnston** | **CONTINUED OBJECTION TO CLAIM OF MICHAEL OMEREGBEE, CLAIM NUMBER 14 4-22-22 [261]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 7 Trustee, and Office of the United States Trustee on April 22, 2022. By the court's calculation, 34 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Objection to Proof of Claim Number 14 of Michael Omeregbee is
xxxxxxxxxxxxx

REVIEW OF OBJECTION

Charles Collantes Macawile, Jr., the Debtor, ("Objector") requests that the court disallow the claim of Michael Omeregbee ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $135,000.00. Objector asserts that the claim is not supported by any admissible evidence. Objector states no details beyond "Fraud/Conversion Civil Complaint" are provided in the proof of claim itself as to what Debtor obtained by fraud, what Debtor converted, how much of the $135,000.00 is based on fraud, and how much is based on conversion. Rather, Creditor provides a copy of the state court complaint.

As admitted by Objector, attached to Proof of Claim 14-1 is copy of the twenty-five (25) page state court complaint in which claims for Negligence, Elder Abuse, Unfair Business Practices, and Conversion. In the prayer at the end of the Complaint it states that the conversion damages are $65,000 and punitive damages of $1,000,000.00. No other dollar amounts for damages are identified in the prayer or with the Negligence, Elder Abuse, or Unfair Business Practices claims for relief. However, it is stated that for the unfair business practices claim for relief, Creditor seeks to recover "all funds paid to Defendant" along

with attorney's fees and costs. For the Elder Abuse and Negligence the damages are stated to be "damages as stated below." This appears to incorporate the conversion damages and the unfair business practices damages (all monies paid to the Defendants in the State Court Action).

REUSED DOCKET CONTROL NUMBER

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

DISCUSSION

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

The court notes Creditor has attached a copy of their twenty-six (26) page state court complaint which details their causes of actions for (1) negligence; (2) dependant adult abuse/neglect; (3) unfair business practices; and (4) conversion. Within the Complaint, Creditor details, well beyond a short and plain statement and with particularity, the four causes of actions against defendant. The Proof of Claim provides substantial evidence where a "reasonable mind might accept as adequate to support a conclusion." Creditor satisfies the requirements for a Proof of Claim.

Many arguments in Objector's objection appear to be denying allegations in the Complaint. Objector can then present evidence and legal authorities that counters the prima facie validity of the asserted claim based on which is stated in Proof of Claim 14-1 and the twenty-six page State Court Complaint attached thereto.

The Objection to Claim states the following grounds upon which Objector alleges the claim should be disallowed in its entirety:

A. Proof of Claim 14-1 is not "supported by admissible evidence:

1. While making this introductory statement, it is then argued that Federal Rule of Bankruptcy Procedure 3001(a) requires a written statement setting forth creditor's claim. Objection, p. 2:11-16; Dckt. 261.

2. Objector then argues that the proof of claim must be filed under penalty of perjury. Since the Creditor's attorney signed it, and can't have actual knowledge, and the Proof of Claim form itself does not have written statement, then it must fail.

3. Objector asserts that the Complaint is not verified and therefore is not sufficient. Further, that Exhibit A to the Complaint (identifying the property converted) is not attached, so it is insufficient. It is also stated to be vague as to the damages requested. As the court could readily identified, there is only $60,000 in damages for conversion, Elder Abuse, and unfair business practices (which damages overlap) and $1,000,000.00 in punitive damages.

B. Objector then asserts the following counter facts to what is alleged in the Complaint:

1. Objector was a principal of the entity that owned the property where the residential facility in which Creditor alleges the misconduct was located. Objector was not an employee of the residential facility.

2. Creditor alleges that the conversion occurred in December 2015, but the residential facility was closed in April 2015 due to a fire at the residential facility.

3. Neither Objector nor his entity that owed the real property never operated the residential facility located on the real property.

4. Objector provides his Declaration under penalty of perjury testifying to the above facts that counter allegations in the Complaint.

Requirement for Proof of Claim

Other than citing to Federal Rules of Bankruptcy Procedure 3001 and 3007, Objector provides no analysis of those Rule, citations to cases, or citations and analysis from third party treatises. This court begins with Federal Rule of Bankruptcy Procedure 3001, which provides in pertinent part (emphasis added):

> Rule 3001. Proof of Claim
>
> (a) Form and Content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.
>
> (b) Who May Execute. A **proof of claim shall be executed by** the creditor or **the creditor's authorized agent** except as provided in Rules 3004 [proof of claim filed by trustee, debtor in possession] and 3005 [proof of claim filed by guarantor, surety, indorser, or other codebtor].
>
> (c) **Supporting Information**.
>
> (1) C**laim Based on a Writing**. Except for a claim governed by paragraph (3) of this subdivision, **when a claim**, or an interest in property of the debtor

> securing the claim, **is based on a writing, a copy of the writing shall be filed with the proof of claim**. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.
>
> (2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:
>
> > (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.
> >
> > (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
> >
> > (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

While Objector argues that there needs to be a written statement of the grounds and evidence attached to a proof of claim, citing to Federal Rule of Bankruptcy Procedure 3001(a), that portion of the Rule clearly states:

> A **proof of claim is a written statement setting forth a creditor's claim**. A proof of claim shall conform substantially to the appropriate Official Form.

The proof of claim itself is "a written statement" which sets for the creditor's claim. Additionally, that the proof of claim that is a written statement setting forth a creditor's claim "SHALL conform to the . . . Official Form." It does not state, as alleged by Objection "Rule 3001(a) requires a "written statement setting forth a creditor's claim." This quote omits the critical language that "**a proof of claim** is a written statement setting forth a creditor's claim." It does not state that in additional to the proof of claim, there must be an additional written statement.

As this is discussed in Collier on Bankruptcy:

> [1] Content of Claim
>
> Federal Rule of Bankruptcy Procedure 3001(a) sets out the required contents of a proof of claim. The Bankruptcy Code provides no guidance concerning what a proof of claim must contain1 and, therefore, Rule 3001 is the definitive authority concerning the contents. By making reference to the appropriate official form, Rule 3001 provides a description of a proof

> of claim. The proof must be in writing; set forth the creditor's claim; be executed by the creditor or an authorized agent; attach writings on which the claim, or an interest in the debtor's property that secures the claim, is based; and attach documents evidencing perfection of any security interest.

9 Collier on Bankruptcy P 3001.01 (16th 2022)

Other than attaching documents on which the claim is based (such as a note, contract, guarantee) or security interest is perfected (such as a deed of trust or UCC-1), there is nothing such as a detailed statement complying with Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, with admissible testimony and documentary evidence to be included with the proof of claim.

Objector's assertion is a gross misstatement of Federal Rule of Bankruptcy Procedure 3001(a).

Testimony of Objector

The Objector (the Debtor) provides his testimony under penalty of perjury in support of the Objection to Claim. Declaration, Dckt. 263. The Declaration is made under penalty of perjury as required by 28 U.S.C. § 1746. With respect to objecting to Proof of Claim 14-1, Objector testifies (identified by paragraph number in the declaration, with emphasis added):

> 5. I am familiar with the Claim. Although it states in Section 8 that the basis of the claim is "Fraud/Conversion Civil Complaint" no further details are provided. **I have never obtained anything from the Claimant,** whether by fraud or by conversion or by any other means. I have no idea what I am accused of converting nor how the sum of $135,000.00 was calculated.
>
> 8. During the time period covered by the Complaint, **I was a principal of Change Enterprise, Inc., which owned the real property** where the Claimant was a resident. The Complaint alleges that the Claimant became a resident of Kiernan Village Assisted Living Facility (the "Facility") "circa June, 2011." (Complaint, ¶ 12.) The Complaint is unclear as to when the Claimant ceased to be a resident, but **the conversion of personal property is alleged to have occurred in December, 2015 (Complaint, ¶ 72.) and a fire caused the Facility to shut down in April, 2015.**
>
> 9. During the time in question, **neither I nor Change Enterprise, Inc., operated the Facility. I was not employed by any of the other defendants named in the Complaint**. The Facility was leased for many years, including the time period in issue, to RMC Homes, Inc., a completely unrelated entity. RMC Homes, Inc., operated the Facility, not me and not Change Enterprise, Inc.

Though the Declaration says little more than I didn't get anything from the Creditor, I did not work for the residence facility, and neither I nor any of my businesses operated the residence facility, it does provide factual testimony to counter the alleged conversion, Elder Abuse, unfair business practices, and negligence. It is the conversion which states the loss damages, the business relationship for the Elder Abuse negligence, and unfair business practices to recover the monies paid, and all of which are to support punitive

damages. The testimony is that Objector got nothing from Creditor and did not operate the facilities where the alleged wrongs occurred.

At the June 16, 2022 Hearing,

At the hearing Creditor Michael Omeregbee appeared in *pro se*, reporting that his attorney, Charles Stoner (who filed the proof of claim in this case and who is the attorney in the State Court Action against the Debtor) has died and this Creditor has not obtained replacement counsel.

Also appearing at the hearing was attorney Alonzo Gradford, of the Gradford Law Firm, who reported that he is the attorney in the State Court Action to manage and wrap up the law practice of Charles Stoner. Mr. Gradford stated that he is responsible for contacting the clients of the late attorney Charles Stoner and assisting them in seeking replacement counsel as part of winding up Mr. Stoner's law practice.

Creditor Omeregbee stated that while his Proof of Claim was filed for $135,000, he was willing to settle for $37,000 (which he computed to be for the lost software and hardware) and forgo the other amounts sought. He explained his existing medical conditions that impaired his abilities (blindness, diabetes, loss of a limb), but that he was going forward and working on obtaining a PhD using audio translation software (which is to be replaced when he recovers the monies for the lost software).

Debtor's counsel stated that Debtor rejected the $37,000 settlement offer. Debtor, contrary to the advice of his attorney, addressed the court directly. Debtor stated that there is pending a motion to dismiss the State Court Action that is scheduled to be heard next week. Creditor Omeregbee appeared to be unaware of such motion. Attorney Gradford stated that he would be appearing at the hearing to report to the State Court Judge the administration of the late Attorney Stoner's law practice.

Debtor then expressed his belief that if the State Court Action was dismissed, then the Objection to Claim would automatically be granted. The court noted for Debtor and Debtor's Counsel that the Proof of Claim filed in this case is *prima facie* evidence of the Claim, and dismissal of the State Court Action did not necessarily result in the sustaining of the Objection. The court left it to Debtor's counsel to explain to Debtor the overlapping federal and state jurisdiction and the claims process.

In light of Creditor Omeregbee being unrepresented by counsel and there being a State Court proceeding for the winding down of the late Charles Stoner's law practice and the relocating of his clients, the court continues the hearing on the Objection to Confirmation.

August 4, 2022 Hearing

At the hearing, xxxxxxxxxxxx

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 Objection to Claim of Michael Omeregbee ("Creditor"), filed in this case by Charles Collantes Macawile, Jr., the Debtor, ("Objector") 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 Objection to Proof of Claim Number 14 of Michael Omeregbee is **xxxxxxxxxxxx**

6. **20-90115-E-7** **ALI MUTHANA** **MOTION FOR SUMMARY JUDGMENT**
21-9008 WF-3 **Gurjeet Rai** **6-23-22 [37]**

MCGRANAHAN V. SUWAID ET AL

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants and Defendants' Attorneys on June 23, 2022. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. Local Bankruptcy Rule 7056-1(a).

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

The Motion for Summary Judgment for Plaintiff Trustee Michael McGranahan and against Defendant Bader Alikassim Suwaid is granted.

Michael D. McGranahan ("Plaintiff-Trustee") filed the instant adversary proceeding on July 26, 2021, against Bader Alikassim Suwaid and GNN Real Estate and Mortgage, Inc. (collectively, "Defendants") on July 26, 2021. Dckt. 1. On July 1, 2022, Plaintiff-Trustee filed an Amended Complaint (Dckt. 33) adding Ali Muthana ("Defendant-Debtor") as a defendant.

In the Summary Judgment Motion, Plaintiff-Trustee only is seeking judgment on the claims asserted against Defendant Suwaid. The court reviews the Complaint and Answers in putting the present Motion against one defendant in context of all the claims asserted in this Adversary Proceeding.

Review of the Complaint

Plaintiff-Trustee alleges the property known as 2022 White Fall Court, Ceres, California 95307 ("Real Property") became part of the bankruptcy estate upon commencement of the bankruptcy case. After the filing of the petition, on May 25, 2021, Defendant-Debtor executed a Grant Deed ("Post-petition Deed") transferring title to the Real Property to Defendant Suwaid. The Post-petition deed was recorded on June 1, 2021, with the Stanislaus County Recorder as Document No. 2021-005088. Neither the Plaintiff-Trustee nor the Bankruptcy Court authorized the transfer. Plaintiff-Trustee alleges Defendant Suwaid had knowledge of the bankruptcy case and did not provide Debtor with present fair equivalent value for the transfer.

On May 28, 2021, Defendant Suwaid executed a deed of trust ("Postpetition Deed of Trust") encumbering the Real Property in favor of Defendant GNN Real Estate and Mortgage, Inc. ("Defendant GNN"). The Postpetition Deed of Trust was recorded with the Stanislaus County Recorder on June 1, 2021, as Instrument No. 2021-052089. Neither the Trustee nor the Bankruptcy Court authorized the transfer. Plaintiff-Trustee alleges Defendant GNN had knowledge of the bankruptcy case at the time of the transfer and did not provide Debtor or anyone with present fair equivalent value for the transfer.

Claims for Relief

> First Claim for Relief - Defendant-Debtor's transfer of the Post-petition Deed of Trust was an unauthorized transfer as Defendant Suwaid was not a good faith purchaser of the Real Property and had knowledge of the commencement of the bankruptcy case at the time of the transfer and did not give fair value for the Post-petition Deed. ¶¶ 15-17.
>
> Second Claim for Relief - Defendant Suwaid's transfer of the Postpetition Deed of Trust was an unauthorized postpetition transfer of property of the estate and Defendant GNN was not a good faith purchaser of the Real Property with respect to the Postpetition Deed of Trust as they had knowledge of the bankruptcy case at the time of the transfer and did not give present fair equivalent value for the Postpetition Deed of Trust. ¶¶ 18-20.
>
> Third Claim for Relief - The transfer of the Postpetition Deed and Postpetition Deed of Trust were unauthorized postpetition transfers of property of the estate and Plaintiff-Trustee is entitled to recover Real Property or the value of such from Defendants. ¶¶ 21-23.
>
> Fourth Claim for Relief - Defendant-Debtor had no right or authority to transfer the Real Property pursuant to the Postpetition Grant Deed. Defendant Suwaid had no

right or authority to transfer the Postpetition Deed of Trust. Plaintiff-Trustee is entitled to avoid transfers under the Postpetition Deed and Postpetition Deed of Trust and Plaintiff-Trustee is entitled to a declaration that the bankruptcy estate holds title to Real Property free and clear of the interests of Defendants. ¶¶ 24-28.

Plaintiff-Trustee requests the avoidance of the unauthorized post-petition transfers as to Defendant Suwaid and then to Defendant GNN pursuant to 11 U.S.C. §549. Plaintiff-Trustee alleges Defendants were not good faith purchasers of the Real Property, they had knowledge of the bankruptcy case, and that Defendant-Debtor did not receive present fair equivalent value for the transfer.

Plaintiff-Trustee seeks to recover the Real Property or the value of such property pursuant to 11 U.S.C. §550 because the Post-petition Deed and Post-petition Deed of Trust were unauthorized.

Lastly, Plaintiff-Trustee seeks declaratory relief stating the bankruptcy estate holds title in the Real Property free and clear of the interests of Defendant Suwaid and Defendant GNN.

Defendant Suwaid's Answer

Defendant Suwaid filed an Answer to Complaint on August 27, 2021. Suwaid Answer, Dckt. 7. Defendant Suwaid general denies each allegation and alleges he was unaware of a bankruptcy proceeding. Additionally, Defendant Suwaid alleges Defendant-Debtor was advised by their attorney the case had been closed and Defendant-Debtor was free to sell or encumber their home to avoid foreclosure. Further, Defendant Suwaid denies he was aware that the Plaintiff-Trustee and court were "required to otherwise the deed of trust" since Defendant-Debtor was told the case had been closed.

As to each claim for relief, Defendant Suwaid states:

First Claim for Relief - Defendant Suwaid denies that the transfer to Defendant Suwaid was not in good faith. Rather, Defendant Suwaid denies knowledge of the bankruptcy case and denies that he did not give present equivalent value for the Real Property. Suwaid Answer, Dckt. 7 ¶ 8.

Second Claim for Relief - Defendant Suwaid provides no answer for the second claim for relief. *Id.* at ¶ 9.

Third Claim for Relief - Defendant Suwaid generally denies each allegation. *Id.* at ¶ ¶ 10-12.

Fourth Claim for Relief - Defendant Suwaid denies he was aware of any issue as to the authority of Defendant-Debtor to transfer the Real Property, alleges he gave fair value for the Real Property, and alleges he prevented it from being foreclosed. *Id.* at ¶ 14. Defendant Suwaid generally denies all other allegations under the Fourth Claim for Relief. *Id.* at ¶ ¶ 15-17.

Additionally, Defendant Suwaid provides two affirmative defenses as to the First, Third, and Fourth Claims for Relief:

First Affirmative Defense - Defendant Suwaid claims they acted in good faith and paid the equivalent value for the Real Property which would be foreclosed if a new loan were not obtained and the existing lender were not paid in full. *Id.* at ¶ 17. Under 11 U.S.C. § 549(c), Defendant Suwaid claims the Plaintiff-Trustee is prevented from avoiding the transfer since Plaintiff-Trustee did not record a certified copy of the petition. *Id.*

Second Affirmative Defense - Defendant Suwaid claims they are entitled to a lien on the Real Property for the sums they paid and debt incurred to prevent the real property from being foreclosed, pursuant to 11 U.S.C. § 549(c). *Id.* at ¶ 18.

Plaintiff-Trustee's Amended Complaint

On June 1, 2022, Plaintiff-Trustee filed an Amended Complaint (Dckt. 33), adding Defendant-Debtor as a party and alleging the additional facts relating to the case:

(1) On or about May 28, 2021, Defendant Suwaid executed a rent free letter (" Letter") which granted Defendant-Debtor the right to occupy the Real Property rent free for ten (10) years.

(2) Plaintiff-Trustee attached the Letter as Exhibit B to the end of the Amended Complaint. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankr. R. 9004-2(c)(1).

Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny a party's request. Local Bankr. R. 1001-1(g), 9014-1(l).

Plaintiff-Trustee's Claims for Relief under their Amended Complaint largely remain the same:

First Claim for Relief (identical to Complaint) - Defendant-Debtor's transfer of the Post-petition Deed of Trust was an unauthorized transfer as Defendant Suwaid was not a good faith purchaser of the Real Property and had knowledge of the commencement of the bankruptcy case at the time of the transfer and did not give fair value for the Post-petition Deed. Amended Complaint, Dckt. 33 ¶¶ 16-18.

Second Claim for Relief (identical to Complaint) - Defendant Suwaid's transfer of the Postpetition Deed of Trust was an unauthorized postpetition transfer of property of the estate and Defendant GNN was not a good faith purchaser of the Real Property with respect to the Postpetition Deed of Trust as they had knowledge of the bankruptcy case at the time of the transfer and did not give present fair equivalent value for the Postpetition Deed of Trust. *Id.* at ¶¶ 19-21.

Third Claim for Relief (additional claim) - Defendant Suwaid's transfer of the rights under the Letter was an unauthorized postpetition transfer of property of the estate. Defendant-Debtor was not a good faith purchaser with rights granted in the Letter.

Defendant-Debtor had knowledge of the bankruptcy case at the time of the transfer and did not give fair value for the Letter. *Id.* ¶¶ 22-24.

Fourth Claim for Relief (previously, "Third Claim for Relief" in the Complaint with additional reference to the Letter) - The transfer of the Postpetition Deed, Postpetition Deed of Trust, and Letter were unauthorized postpetition transfers of property of the estate and Plaintiff-Trustee is entitled to recover Real Property or the value of such from Defendants. *Id.* at ¶¶ 25-27.

Fifth Claim for Relief (previously, "Fourth Claim for Relief" in the Complaint with additional reference to waiving exemptions and the Letter) - Defendant-Debtor had no right or authority to transfer the Real Property pursuant to the Postpetition Grant Deed. By transferring title, Defendant-Debtor waived their claim to an exemption in the Real Property. Defendant Suwaid had no right or authority to transfer the Postpetition Deed of Trust. Plaintiff-Trustee is entitled to avoid transfers under the Postpetition Deed and Postpetition Deed of Trust and Plaintiff-Trustee is entitled to a declaration that the bankruptcy estate holds title to Real Property free and clear of the interests of Defendants. *Id.* at ¶¶ 28-33.

Defendant Suwaid did not file an answer to Plaintiff-Trustee's Amended Complaint. However, pursuant to Federal Rules of Civil Procedure 15(a)(3) as incorporated into Federal Rules of Bankruptcy Procedure 7015, an answer to an amended complaint is not required. *See also KST Data, Inc. v. DXC Tech. Co.*, 980 F.3d 709, 715 (9th Cir. 2020). Additionally, Rule 15(a)(3) does not render a prior response to a prior pleading moot and require filing a new answer. *Kst Data, Inc.* 980 F.3d at 715. Given the Amended Complaint does not "change the theory or scope of the case," and the allegations to Defendant Suwaid remain almost identical, the court includes the affirmative defenses as made in Defendant Suwaid's original Answer (Dckt. 7) in considering the Motion now before the court. *See Stanley Works v. Snydergeneral Corp.*, 781 F. Supp. 659, 665 (E.D. Cal. 1990).

REVIEW OF THE MOTION FOR SUMMARY JUDGMENT

The grounds stated with particularity, as required by Federal Rule of Civil Procedure 7(b), which is incorporated into Federal Rule of Bankruptcy Procedure 7007, consist of:

1. There is no genuine dispute of any material fact that the transfer constitutes an unauthorized post-petition transfer under 11 U.S.C. § 549(a). Motion, Dckt. 37 at 3:15-16.

2. There is no genuine dispute of any material fact as to Defendant Suwaid's first or second affirmative defense under 11 U.S.C. § 594(c). *Id.* at 3:17-18.

3. There is no genuine dispute of any material fact that Trustee is entitled to recover the Real Property pursuant to 11 U.S.C. § 550. *Id.* at 3:19-20.

4. There is no genuine dispute of any material fact that Trustee is entitled to Declaratory Relief. *Id.* at 3:21-22

Additionally, Plaintiff-Trustee provides supporting authority in the Notice, Memorandum of Points and Authorities, Request for Judicial Notice, Declaration of Plaintiff-Trustee, Declaration of Daniel L. Egan, a Separate Statement of Undisputed Facts, an Exhibit List, and "all papers filed in the case and underlying Chapter 7 Case." *Id.* at 3:24-27.

Plaintiff-Trustee requests an order granting Summary Judgment in favor of Plaintiff-Trustee and against Defendant Suwaid for the following:

1. Plaintiff-Trustee's First Claim for Relief pursuant to § 549(a)

2. Defendant Suwaid's First Affirmative Defense pursuant to § 549(c)

3. Defendant Suwaid's Second Affirmative Defense pursuant to § 549(c);

4. Plaintiff-Trustee's Fourth Claim for Relief pursuant to § 550;

5. Plaintiff-Trustee's Fifth Claim for Relief for Declaratory Relief;

6. Determining there is no just reason for delay and directing entry of final judgment in favor of Trustee pursuant to Federal Rules of Civil Procedure 54(b); and

7. Determine that if not all relief is granted, certain material facts are not in genuine dispute.

PLAINTIFF-TRUSTEE'S
MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff-Trustee filed a Memorandum of Points and Authorities in support of their Motion for Summary Judgment. Dckt. 43. The Memorandum restates the factual allegations addressed in the Complaint and Amended Complaint. Additionally, the Memorandum provides Plaintiff-Trustee's supporting legal authority, discussed further below.

APPLICABLE LAW FOR A MOTION FOR SUMMARY JUDGMENT

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

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that

a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

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

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

LEGAL AUTHORITY FOR POST-PETITION TRANSFERS

Pursuant to 11 U.S.C. § 549(a), a trustee can avoid a transfer of estate property that occurs after the commencement of the case. 11 U.S.C. § 549(a) states:

> (a)Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—
>
> (1) that occurs after the commencement of the case; and
>
> (2)
>
> (A) that is authorized only under section 303(f) or 542(c) of this title; or
> (B) that is not authorized under this title or by the court.

A trustee's *prima facie* case requires proof of a transfer that (1) is property of the estate, (2) occurred after the commencement of the case, and (3) that was not authorized by the court. *Fursman v. Ulrich (In re First Prot., Inc.)*, 440 B.R. 821, 827-28 (B.A.P. 9th Cir. 2010).

(1) Property of the Estate

Here, in Plaintiff-Trustee's Statement of Undisputed Facts (Dckt. 53), Defendant-Debtor filed their voluntary petition on February 11, 2020. At the time, Defendant-Debtor was the owner of 2022 White Fall Court, Ceres, CA 95307 ("Real Property"). From the court's review, Defendant-Debtor's Bankruptcy

Petition confirms this information. *See* E.D. Cal Bankr. Case No. 20-90115, Dckt. 1. Therefore, pursuant to 11 U.S.C. § 541, it is clear the Real Property was property of the estate at the time the petition was filed.

In a Chapter 7 case, property remains estate property until after the estate is fully administered, the court has discharged the trustee, and the court closes the case. 11 U.S.C. § § 350, 554. At the time the case is closed, any property scheduled and not otherwise administered is abandoned to the debtor and administered for purposes of § 350. 11 U.S.C. § 554(c).

Debtor received their discharge on June 11, 2020. *Id.*, Order of Discharge, Dckt. 15. In Defendant Suwaid's Answer, they state Defendant-Debtor was "advised by his attorney the case had been closed and he was free to sell or encumber his home to avoid foreclosure." Suwaid Answer, Dckt. 7 at 2:11-13. However, upon review of the Chapter 7 case, there was no such closure. Therefore, the Real Property has remained property of the estate since February 11, 2020, the date of the petition.

(2) Occurred After Commencement of the Case

As stated above, Defendant-Debtor's voluntary petition was filed February 11, 2020. *See* E.D. Cal Bankr. Case No. 20-90115, Dckt. 1.

Plaintiff-Trustee's Exhibit List in support of this Motion states Exhibit B is the Quitclaim deed evidencing transfer. Upon review of the Exhibit provided, there is no evidence of a transfer from Defendant-Debtor to Defendant Suwaid. Rather, Plaintiff-Trustee has provided some evidence of a recorded document and the Real Property being "Exempt from fee per GC27388.1." Exhibit B, Dckt. 49 at p. 55-56. The Exhibit is not the Quitclaim Deed.

However, as evidenced by the uncontested Statement of Undisputed Facts (Dckt. 53), the statements under penalty of perjury of Debtor-Defendant, and testimony of Plaintiff-Trustee's Attorney Mr. Egan, there is adequate evidence to show the transfer occurred on or about May 25, 2021. *See* Exhibit F, Transcript of 2004 Examination, Dckt. 49 at p. 63:3-5, p. 67:21-25, p. 68:1, and p. 69:10. Therefore, the transfer clearly occurred postpetition, after the commencement of the case.

(3) Not Authorized By the Court

There is no evidence to support the postpetition transfer was authorized by the court.

Therefore, unless an exception applies, the transfer to Defendant Suwaid was a clear violation of the bankruptcy code and is still property of the estate.

Debtor's First Affirmative Defense
Good Faith Purchaser under 11 U.S.C. § 549(c)

The exceptions to § 549(a) include § 549(b), which deals with involuntary cases, and § 549(c), which is not limited to involuntary cases. Under 11 U.S.C. § 549(c) (emphasis added):

> The trustee **may not avoid** under subsection (a) of this section a **transfer** of an interest in real property **to a good faith purchaser without knowledge of the commencement of the case** and **for present fair equivalent value** . . . .

Here, Defendant Suwaid's Answer states Defendant Suwaid "was unaware of a bankruptcy proceeding." Suwaid Answer, Dckt. 7 at 2:10-11. However, Defendant Suwaid also states he denies that he had knowledge the Trustee and court were entitled to the deed of trust since Defendant-Debtor "had been advised by his attorney that the case had been closed." *Id.* at 2:15-17. This indicates some knowledge of the bankruptcy case, being in communication with Defendant-Debtor's attorney. Defendant Suwaid could not know this information without knowing of the bankruptcy case.

The evidence provided includes the transcript from the 2004 Examination of Defendant-Debtor Ali Muthana. Exhibit D; Dckt. 39. In it Defendant-Debtor explains the his relationship with Defendant Suwaid. He states that Defendant Suwaid is Defendant-Debtor's wife's son. Transcript, p. 52:2-3; Exhibit D, Dckt. 39. Further, that Defendant Suwaid also was on Defendant-Debtor's bank account. *Id*., p. 52:4-6.

Defendant-Debtor also states that when he made the post-petition transfer the house was "worth a lot of money," and that's why he sought to be given the right to continue to live in it rent free. *Id*., p. 53:14-24.

Defendant Suwaid has not countered this evidence showing a close familial connection to the Defendant-Debtor. The evidence shows that Defendant Suwaid was aware of Defendant-Debtor's (his step-father) financial distress and having to refinance the debt secured by the Property. The circumstantial evidence shows that Defendant Suwaid was aware of the financial distress and waited with the Defendant-Debtor until they wrongly thought the Defendant-Debtor's bankruptcy case was concluded to make the transfer and refinance of the secured debt.

Even if Defendant Suwaid had no knowledge of the bankruptcy case, Defendant Suwaid would still had to of paid "fair equivalent value" for the Real Property. "The use of 'present fair' indicates an intent [by Congress] that the protection of § 549(c) be limited to truly innocent purchasers who have actually paid a fair price in the transaction." *Miller v. NLVK, Ltd. Liab. Co.* (*In re Miller*), 454 F.3d 899, 902 (8th Cir. 2006) (citing *Ford v. A.C. Loftin* (*In re Ford*), 296 B.R. 537, 553 (Bankr. N.D. Ga. 2003)); *Phillips v. Whitaker (In re Phinner),* 405 B.R. 170, 178 (E.D. Va. 2009). Courts have found that "it is appropriate to require that the transferee give either fair market value, or something very close to it." *Shaw v. County of San Bernadino* (*In re Shaw*), 157 B.R. 151, 154 (B.A.P. 9th Cir. 1993) (quoting *In re Powers*, 88 B.R. 294, 297 (Bankr. D. Nev. 1988)); *see also* 5 COLLIER ON BANKRUPTCY 549.06.

The Answer states Defendant Suwaid "paid the equivalent value for the Real Property." *Id.* at 3:20-21. Separate from the allegations in Defendant Suwaid's Answer, there is no supporting evidence of any consideration exchanged or sum of money paid. Additionally, Defendant-Debtor's testimony provides Defendant Suwaid gave no money or consideration in exchange for Defendant-Debtor transferring title to him. *See* Exhibit F, Transcript of 2004 Examination, Dckt. 49 at p. 68:12-14. Defendant Suwaid provides no evidence or legal authority establishing why the borrowed money secured by a Deed of Trust on the transferred Real Property entitles Defendant Suwaid satisfying "fair equivalent value."

To bolster Plaintiff-Trustee's claims even further, Defendant Suwaid executed a rent free letter (the "Letter") which granted Defendant-Debtor a possessory interest in the Real Property for ten (10) years, rent free and no consideration due from Defendant-Debtor. Statement of Undisputed Facts, Dckt. 53 at 2 ¶ 7; Exhibit E, Dckt. 49 at 65. The language of the Letter is below:

05/27/2021

Rent Free Letter

Property Address: 2022 White Fall Court, Ceres, CA 95307

Terms: [Defendant Suwaid] will allow [Defendant-Debtor] to live in the subject property for 10 years rent free with no cost to him. If the contract is to be breached, then [Defendant Suwaid] will have to pay [Defendant-Debtor] up to 10 years of market rent. [Defendant-Debtor] deeded off to [Defendant Suwaid].

Sincerely
/s/ [Defendant Suwaid]

Witnesses:
/s/ Joel Bhatti

/s/ Karen Bhatti

Exhibit E, Dckt. 49 at 65.

The court notes, interestingly, Defendant-Debtor did not sign the Letter. Although this is not purported to be the "deed," there is language indicating the property was "deeded off." If this were the deed transferring property from Defendant-Debtor to Defendant Suwaid, the absence of Defendant-Debtor's (grantor's) signature would create a void transfer. *See* California Civil Code § 1091. Regardless, if this were truly just the "rent free" letter, the court cannot imagine a scenario where a good faith purchaser of real property who gives "fair equivalent value" consideration for that property allows a tenant to live rent free for ten (10) years. This further supports the contention that Defendant Suwaid paid no consideration for the transfer of the Real Property.

Therefore, even if Defendant Suwaid had no knowledge of the bankruptcy case, Defendant Suwaid did not pay adequate consideration to be considered a "good faith purchaser."

Debtor's Second Affirmative Defense
Entitled to Lien under 11 U.S.C. § 549(c)

Suwaid's second affirmative defense is made in the alternative to their first, arguing even if the transfer was for less than present fair equivalent value, they are still entitled to "a lien on the property transferred to the extent of any present value given." 11 U.S.C. § 549(c).

First, such a claim still requires the purchaser to be in "good faith," and to not have knowledge of the bankruptcy proceedings. *Id.* As addressed above, this is doubtfully true as no evidence has been provided by Defendant Suwaid indicating a lack of knowledge other than a general denial. Second, even if Defendant Suwaid lacked knowledge, there is no indication there was any "present value given." Defendant Suwaid claims there were sums paid and debt incurred "to prevent the Real Property from being foreclosed," but provides no such evidence. Suwaid Answer, Dckt. 7 at 4:3-5. Additionally, there is no evidence supporting why Defendant Suwaid is entitled to a lien from the 2021 loan secured by a Deed of Trust on the Real Property, and not Defendant Creditor GNN. Although the lien may have benefitted the estate by satisfying a prior lien, the Defendant Creditor GNN is the lendor, not Defendant Suwaid.

Defendant Suwaid has not met their burden in proving they are entitled to any protections as a good faith purchaser. Therefore, pursuant to 11 U.S.C. § 550(a), Plaintiff-Trustee is entitled to recover the Real Property for the benefit of the estate.

In substance the "value" purportedly given is merely the swapping of one loan and lien against the property for a new loan and lien against the property. In the Answer, Defendant Suwaid states that his "consideration" was merely paying off the existing obligation secured by the Property and putting a new lien on the Property for the obligation that paid off the then existing loan on the Property. Answer, ¶ 17; Dckt. 7. Nothing else is asserted to have been "paid" for the post-petition transfer of title to the Property by Defendant-Debtor to Defendant Suwaid.

Requested Avoidance Free and Clear of Exemption

Plaintiff-Trustee additionally requests, pursuant to 11 U.S.C. §§ 522(g), 550, that the Real Property is recovered free and clear of any claimed exemption from Debtor. 11 U.S.C. § 522(g) limits debtors from exempting property that a trustee recovers under § 550. As Plaintiff-Trustee is recovering the Real Property under § 550, it may be that no exemption can be claimed in such property. However, such relief must be adjudicated against the Defendant-Debtor, not Defendant Suwaid. Defendant-Debtor is not a party to this Motion for Summary Judgment.

The determination of whether an exemption may be claim in the property recovered by the Plaintiff-Trustee will be made in adjudication of the claims against the Defendant-Debtor.

Relief Granted by Summary Judgment

Plaintiff-Trustee is therefore entitled to summary judgment on the following:

1. Plaintiff-Trustee's First Claim for Relief pursuant to § 549(a)

    a. Defendant-Debtor's transfer of the Post-petition Deed of Trust to Defendant Suwaid was an unauthorized transfer.

2. Defendant Suwaid's First Affirmative Defense pursuant to § 549(c)

    a. Defendant Suwaid has not met their burden showing they were a good faith purchaser without knowledge of the commencement of the case and paid present fair equivalent value of the Real Property.

3. Defendant Suwaid's Second Affirmative Defense pursuant to § 549(c)

    a. Even if Defendant Suwaid had no knowledge of the bankruptcy case, Defendant Suwaid has not shown they gave any consideration to constitute "present value" that would allow them to assert a lien on the Real Property.

4. Plaintiff-Trustee's Fourth Claim for Relief pursuant to § 550

a. Plaintiff-Trustee is entitled to recover the Real Property for the benefit of the estate.

5. Plaintiff-Trustee's Fifth Claim for Relief for Declaratory Relief pursuant to 11 U.S.C. § 522(g)

a. The determination of whether an exemption may be claim in the property recovered by the Plaintiff-Trustee will be made in adjudication of the claims against the Defendant-Debtor.

Requested Entry of Separate Judgment

Plaintiff-Trustee makes an additional request that the court finds there is no reason for delay and directing entry of final judgment in favor of Trustee pursuant to Federal Rules of Civil Procedure 54(b). Plaintiff-Trustee provides limited analysis for why an entry of final judgment on these claims would be proper.

Rule 54(b) is designed to permit just such an immediate appeal on an otherwise final decision in a multi-claim or multi-party action. 10 Moore's Federal Practice - Civil § 54.21 (2022).

The court notes that Plaintiff-Trustee has not provided a statement of the grounds for why such relief pursuant to Federal Rules of Civil Procedure 54(b) is appropriate. Defendant Suwaid has opposed this Motion for Summary Judgment and has not countered the evidence presented in support of the Motion for Summary Judgment. While Defendant Suwaid has essentially consented to Judgment, Plaintiff-Trustee has not addressed how or why entering a separate judgment is appropriate .

At the hearing, **xxxxxxxxxx**

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

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

The Motion for Summary Judgment filed by Michael D. McGranahan ("Plaintiff-Trustee") against Bader Alikassim Suwaid ("Defendant Suwaid") 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 Summary Judgment is granted in favor of Plaintiff-Trustee and against Defendant Suwaid pursuant to 11 U.S.C. § 549(a) and the postpetition transfer of the real property commonly known as 2022 White Fall Court, Ceres, California 95307 ("Real Property") is avoided and property of the bankruptcy estate.

IT IS FURTHER ORDERED pursuant to 11 U.S.C. § 550, Plaintiff-Trustee is entitled to recover the Real Property for the benefit of Debtor Ali Muthana's ("Defendant-Debtor") bankruptcy estate, E.D. Cal Case No. 20-90115.

IT IS FURTHER ORDERED the determination of whether an exemption may be claim in the property recovered by the Plaintiff-Trustee will be made in adjudication of the claims against the Defendant-Debtor.

~~**IT IS FURTHER ORDERED** pursuant to Federal Rules of Civil Procedure 54(b), a separate final judgment is entered for Plaintiff-Trustee and against Defendant Suwaid, with the court to enter separate judgment for the other claims against the other Defendants in this Adversary Proceeding.~~

FINAL RULINGS

7. **22-90177-E-7** **DAN/SARAH YOUKHANA** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Brain Haddix **7-5-22 [27]**

Final Ruling: No appearance at the August 4, 2022 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditors, and Chapter 7 Trustee as stated on the Certificate of Service on July 6, 2022 and July 7, 2022. The court computes that 28 and 29 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: $32.00 due on June 21, 2022.

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 subjection 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.

8. **22-90079-E-7** **MONIQUE DIGGES** **MOTION TO VACATE DISCHARGE OF**
BSH-1 **Brain Haddix** **DEBTOR(S)**
7-6-22 [21]

Final Ruling: No appearance at the August 4, 2022 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 Chapter 7 Trustee, and Office of the United States Trustee on July 6, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Vacate has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Vacate is granted, and the Order Discharging Debtor (Dckt. 20) is vacated.

Monique Rachele Digges ("Debtor") filed the instant case on March 14, 2022. Dckt. 1. An Order Discharging Debtor was entered on July 5, 2022. Dckt. 20.

On July 6, 2022, Debtor filed this instant Motion to Vacate, claiming she notified counsel Brian S. Haddix ("Debtor's Counsel"), that she desired and intended to enter into a reaffirmation agreement for her only motor vehicle which she disclosed in her schedules. Debtor's Counsel did not timely file the reaffirmation due to family medical issues. Debtor may suffer hardship if the Order is not vacated in that her car may be repossessed, she may not have access to the creditor's website to make her payments, and those payments will not be reported to credit reporting agencies.

Debtor seeks to have the Order Discharging the Debtor vacated, per Federal Rule of Civil Procedure 60(b).

APPLICABLE LAW

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

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

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

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

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

DISCUSSION

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

Debtor states she seeks to vacate the Order Discharging Debtor to enter into a reaffirmation agreement for her motor vehicle. Courts have been divided on whether a discharge can or should be vacated in order to reaffirm debt. *In re Roderick*, 425 B.R. 556, 568 (Bankr. E.D. Cal. 2010); *Compare In re Edwards,* 1999 BNH 25, 236 B.R. 124, 128, *In re Solomon*, 15 B.R. 105, 106 (Bankr. E.D. Pa. 1981), *In re Long*, 22 B.R. 152, 154 (Bankr. D. Me. 1982), *with Rigal v. Fleet Mortg. Corp.* (*In re Rigal*), 254 B.R. 145, 148 (Bankr. S.D. Tex. 2000), In re Judson, 586 B.R. 771, 773 (Bankr. C.D. Cal. 2018) (improper to vacate discharge to approve reaffirmation agreement six years after discharge was entered). Courts permitting vacating discharge to reaffirm debt allow so, so long as it complies with the Rule 60(b)(1) analysis.

This court agrees with courts exercising equitable powers to vacate discharge to allow entry of a reaffirmation agreement.

Debtor's Motion was filed on July 6, 2022, one day after receiving their discharge on July 5, 2022. Order, Dckt. 20. No party has objected to Debtor's Motion. Additionally, Debtor suggests they will suffer hardship, recognizing their vehicle may be vulnerable to repossession. Declaration, Dckt. 24 at 2 ¶ 4. Debtor additionally states their access to creditor's website for purpose of making payments or obtaining relevant information is limited. *Id.* Also, payments will not be reported to credit reporting agencies which is important for Debtor. *Id.*

Vacating the Debtor's discharge will result in no prejudice to the Creditor, but would seriously prejudice Debtor. Both Creditor and Debtor would likely prefer Debtor's discharge be vacated to enter a reaffirmation agreement. Additionally, vacating the discharge will allow Debtor to reaffirm the debt and keep their vehicle, which is important for Debtor's "fresh start." Also, it was not the culpable conduct of Debtor which led to the entry of discharge. Rather, Debtor and Debtor's Attorney's indicates excusable neglect on behalf of Debtor's Attorney, due to a family member contracting COVID-19.

Therefore, in light of the foregoing, the Motion is granted, and the Order Discharging Debtor (Dckt. 20) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Monique Rachele Digges ("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 the order Discharging Debtor (Dckt. 20) is vacated.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Court shall re-enter the discharge for this Debtor on or after September 15, 2022.

9. **22-90208-E-7** **EMI ARNETT**
Arete Kostopoulos

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-12-22 [14]

Final Ruling: No appearance at the August 4, 2022 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 July 14, 2022. The court computes that 21 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: $338.00 due on June 28, 2022.

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

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 subjection 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.