UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 22, 2024 at 10:30 a.m.

1.	**24-21710-E-11** **CAE-1**	**SWANSTON OAK, LLC** **Karl Schweikert**	**MOTION TO EMPLOY COLDWELL BANKER AS REALTOR(S)** **7-24-24 [49]**

1 thru 3

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 24, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

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).

THE MOTION

Swanston Oak, LLC ("Debtor in Possession") seeks to employ Michael Onstead of Coldwell Banker ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to market and sell various items of real property, all new single family homes, that are property of the Estate. *See* Mot. 1:20-27, Docket 49.

Debtor in Possession argues that Broker's appointment and retention is necessary as this case will be a liquidation Chapter 11 case, and Broker has been the real estate agent for Debtor in Possession prepetition, so this Motion is for authorization to continue listing and selling the same parcels of real property. *Id.* at 2:5-12.

No Declaration has been filed by Broker or Debtor in connection with this Motion. With no testimony on the record, the court is unable to make a finding whether Broker represents or holds any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

At the hearing, **xxxxxxx**

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

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

~~Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Michael Onstead of Coldwell Banker as Broker for the Debtor in Possession on the terms and conditions set forth in the Exclusive Authorization and Right to Sell Listing Agreement filed as Exhibit A, Dckt. 51. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Swanston Oak, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion to Employ is granted, effective April 25, 2024, and Debtor in Possession is authorized to employ Michael Onstead of Coldwell Banker as Broker for Debtor in Possession on the terms and conditions as set forth in the Exclusive Authorization and Right to Sell Listing Agreement filed as Exhibit A, Dckt. 51.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

~~**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

~~**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.~~

2. **24-21710-E-11** **SWANSTON OAK, LLC** **MOTION TO SELL**
CAE-1 **Karl Schweikert** **7-24-24 [53]**

Final Ruling: No appearance at the August 22, 2024 hearing is required.

Swanston Oak, LLC ("Debtor in Possession") having filed a Notice of Withdrawal, Dckt. 61, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Sell (Dockets 53, 54, 55, and 56) was dismissed without prejudice, and the matter is removed from the calendar.**

3. 24-21710-E-11 CAE-1 — SWANSTON OAK, LLC — Karl Schweikert — MOTION TO EMPLOY KARL A. SCHWEIKERT AS ATTORNEY(S) 7-24-24 [44]

Final Ruling

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 24, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

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).

THE MOTION

Swanston Oak, LLC ("Debtor in Possession") seeks to employ Karl A. Schweikert ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to generally represent it through this bankruptcy proceeding.

Debtor in Possession argues that Counsel's appointment and retention is necessary as this is a corporate debtor, and a corporate debtor must be represented by an attorney. Mot. 2:16-17, Docket 44.

Michael Moser, managing member of Debtor in Possession, testifies that he desires Counsel's representation in this case. However, Mr. Moser also states he is currently looking for counsel that has more of a background in bankruptcy for representation. Decl. ¶ 5, Docket 48.

Mr. Schweikert testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl. 3:14-20, Docket 46.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Karl A. Schweikert as Counsel for the Swanston Oak, LLC on the terms and conditions set forth in the Attorney-Client Fee Agreement filed as Exhibit A, Dckt. 47. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Swanston Oak, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, effective April 23, 2024, and Debtor in Possession is authorized to employ Karl A. Schweikert ("Counsel") for Debtor in Possession on the terms and conditions as set forth in the Attorney-Client Fee Agreement filed as Exhibit A, Dckt. 47.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

4. 24-21012-E-7 DAC-1

BRIAN HORN
Michael Hays

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
7-19-24 [25]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 19, 2024. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Movant is one day late of the required notice period.

At the hearing, **xxxxxxx**

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

The Motion for Approval of Stipulation For Modification of the Automatic Stay Between Brian Phillip Horn, Geoffrey Richards, and CNH Industrial Capital America LLC is granted.

Creditor CNH Industrial Capital America LLC ("Creditor") requests that the court approve a stipulation with the debtor Brian Phillip Horn ("Debtor") and the Chapter 7 Trustee Geoffrey Richards ("Trustee") which provides that relief from the automatic stay is granted for the following items of farm equipment:

1. One Case IH Model 120C Farmall Tractor, bearing Serial Number ZHLF05644,

2. One Sutter Buttes M Lo Pro Orchard Cab, bearing serial number 522-037, and

3. One Case IH Farmall Tractor, bearing Serial Number 2HLF00825

("Collateral").

STIPULATION

Creditor, Trustee, and Debtor stipulate to an order regarding granting relief from stay as to the Collateral, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Ex. A, Dckt. 27):

A. On or about June 22, 2020, N&S North, Inc. sold to Debtor one Case IH Model 120C Farmall Tractor, bearing Serial Number ZHLF05644, and one Sutter Buttes M Lo Pro Orchard Cab, bearing serial number 522-037 for the sum of $92,321.78. Of that sum, $65,321.78 was financed by Debtor. The right to payment under the contract was subsequently assigned to Creditor. Stip. 1:24-2:6, Docket 27.

B. Creditor maintained its perfection in these items of the Collateral by timely and properly filing UCC-1 Financing Statements. *Id.* at 2:7-12.

C. Debtor has not made payments on or paid insurance for these items of Collateral. *Id.* at 2:15-23.

D. On or about July 31, 2017, N&S North, Inc. sold to Hom Family Farms 1, a Case IH Farmall Tractor, bearing Serial Number 2HLF00825 for the sum of $80,686.23. Of that sum, $64,344.57 was financed by Debtor and other partners. *Id.* at 3:10-12. This contract was also assigned to Creditor. *Id.* at 3:21-22.

E. Creditor maintained its perfection in this item of the Collateral by timely and properly filing UCC-1 Financing Statements. *Id.* at 3:23-4:4.

F. Debtor default on the regular payment and failed to insure this item of the Collateral. *Id.* at 4:5-16.

G. Therefore, relief from stay is granted as to the Collateral pursuant to 11 U.S.C. § 362(d)(1) and (2), and the fourteen-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

DISCUSSION

In this case, relief from stay as to the Collateral has been stipulated by the interested parties. The Motion to Approve the Stipulation was filed and was set for hearing pursuant to Fed. R. Bankr. P. 4001(d). A total of 34 days notice was provided with oppositions to be in writing and filed fourteen days prior to the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation had opportunity to object. No objections have been filed.

At the hearing, **XXXXXXX**

Creditor, Debtor, and Trustee have responsibly addressed these issues, allowed the parties to participate in the solution, and have presented a Stipulation that permits Debtor to move on.

The Motion is granted, and the automatic stay is vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Collateral, under its security agreement, loan documents granting it liens in the assets identified above.

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 to Approve Stipulation filed by CNH Industrial Capital America LLC ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Stipulation for Relief from the Automatic stay of 11 U.S.C. § 362(a) is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Collateral, under its security agreement, loan documents granting it liens in the assets identified as:
>
> a. One Case IH Model 120C Farmall Tractor, bearing Serial Number ZHLF05644,
>
> b. One Sutter Buttes M Lo Pro Orchard Cab, bearing serial number 522-037, and
>
> c. One Case IH Farmall Tractor, bearing Serial Number 2HLF00825
>
> ("Collateral") and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Collateral to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

5. 24-22528-E-7 GEL-1 — GEORGE BENNY, Gabriel Liberman — MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR 7-24-24 [11]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on July 24, 2024. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be set and held pursuant to LBR 1016-1(b) and Section 9014(c). . Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The court also notes that the Motion is not only a combined Notice of Death and Motion to Substitute, but also states that it is the Notice of Motion. Local Bankruptcy Rules 9004-2(c) and 9014-1(4) require that the motion, notice of hearing, each declaration, points and authorities, and exhibits (which may be combined into one exhibit document) must be filed as separate documents.

At the hearing, **xxxxxxx**

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

The Motion to Substitute is ~~granted.~~

Mary Ann Benny, deceased Debtor George Ignac Benny, Jr.'s sister, seeks an order approving the motion to substitute Mary Ann Benny for the deceased Debtor. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 9014(c) and Local Bankruptcy Rule 1016-1.

George Isaac Benny, Jr. filed for relief under Chapter 13 on June 10, 2024. On July 6, 2024, Debtor George Isaac Benny, Jr. passed away. Ex. A, Docket 12. Mary Ann Benny asserts that she is the lawful sister and heir of the deceased Debtor. Mot. 1:26-27, Docket 11; Decl. 2:1-2, Docket 13.

Pursuant to Federal Rule of Bankruptcy Procedure 1016-1, Mary Ann Benny requests authorization to be substituted in for the deceased debtor and to perform the obligations and duties of the deceased party. A Notice of Death was filed in the same Motion on July 24, 2024, as permitted by Local Bankruptcy Rule 1016-1(a). Dckt. 11. Mary Ann Benny is the sister of the deceased party and is the successor's heir and lawful representative. Mary Ann Benny requests the case continue pursuant to Local Bankruptcy Rule 1016-1. Decl. 2:5, Docket 13.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that "[d]eath or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." FED. R. BANKR. P. 1016. Because this case is a Chapter 7 case and the Rule provides that it shall continue notwithstanding the death of the Debtor.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period

> does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

(emphasis added); *see also Hawkins v. Eads*, *supra*.

Therefore, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by 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 Mary Ann Benny is substituted as the successor representative of the Deceased Debtor George Ignac Benny, Jr. and is allowed to continue in place of the Deceased Debtor in the administration of this Chapter 7 case, including seeking the entry of a discharge for the Deceased Debtor.

6. 24-22929-E-7 TERESA SONLEY
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-17-24 [13]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on July 18, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $338 due on July 3, 2024.

The Order to Show Cause is discharged without prejudice, the court by separate order having authorized the payment of the filing fee in installments.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $338.

On August 13, 2024, the Debtor filed an application for waiver of the Chapter 7 filing fee. Dckt. 24. Such a waiver is permitted pursuant to 28 U.S.C. § 1930(f)(1), allowing the court to waive the filing fee in a Chapter 7 case as follows:

> [t]he bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that **such individual has income less than 150 percent of the income official poverty line** (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

On the Application to have the filing fee waived, Debtor states that her monthly income is $3,641.61. Dckt. 24. She also states that she has no dependants. *Id*. However, on Amended Schedule J filed on August 13, 2024, Debtor lists a 17 year old child as a dependent. Dckt. 23 at 8.

For 2024, 150% of the income set for the official poverty line for a family of one person is $1,882.50. For a family of two persons, 150% of the poverty line income is $2,555.00. https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.

Debtor's income of $3,641.61 is well in excess of the $2,555.00 amount.

By separate Order the court denies the Debtor's request for a fee waiver, but authorizes that it may be paid in installments.

The court having ordered the filing fee to be paid in installments, this Order to Show Cause is discharged without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 without prejudice, the court having entered a separate order authorizing the payment of the filing fee in installments..

7. **23-23834-E-7** **ANTONETTE TIN** **MOTION FOR TURNOVER OF PROPERTY**
DNL-11 **Peter Macaluso** **8-8-24 [185]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on August 8, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Turnover is xxxxxxx .

Nikki Farris, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order compelling Attorney Kyung Finley to turnover all recorded information pertaining to Royal Green LLC, including the original file in connection with her representation of Tin and Royal Green LLC in Sacramento County Superior Court Case No. 34-2018-00239030 ("Property").

Response by Attorney Finley

On August 20, 2024, a Response was filed by attorney Kyung Finley. The response asserts that the information requested is subject to the attorney-client privilege of not only the Retreat at Royal Green, Inc., but also subject to the attorney-client privilege of Antonette Tin. Response, p. 2:1-4; Dckt. 191. It is asserted that while the Trustee may have the right to waive the attorney-client privilege as to The Retreat at Royal Green, it does not appear that the Trustee has the right to waive it as to Antonette Tin. *Id*.

Attorney Finley cites to a bankruptcy case from the Central District of California holding that a bankruptcy trustee for an individual cannot obtain communications between that debtor and that debtor's counsel. *Gottlieb v. Fayerman (In re Ginzburg)*, 517 BR. 175, 184 (Bankr. C.D. Cal. 2014). The Response

then concludes, "Thus, this Circuit's existing legal authority is in conflict with other circuits and provides that while the trustee of a debtor corporation is the holder of the privilege with the ability to assert it or waive it, where a bankruptcy involves an individual debtor, the individual debtor is the holder of the privilege and has the ability to assert it or waive it." Response, p. 3:27 -4:2; Dckt. 191.

In reviewing the *Ginzburg* decision it states that it is the federal law concerning privileges that controls in determining whether the privilege rights can be exercised by the Trustee or the individual debtor. *Gottlieb v. Fayerman (In re Ginzburg)*, 517 B.R. at 182.

The Response then provides an analysis of "common interest privilege or joint defense privilege, citing to various cases, including those by the Ninth Circuit Court of Appeals. This analysis also includes a discussion of Joint Defense Agreements.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permits a motion to obtain an order for turnover of property of the estate or relevant recorded information if the implicated party fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

The language of Federal Rule of Bankruptcy Procedure 7001(1) would seem to imply that an adversary proceeding would be necessary in order to recover this type of property of the Estate. However, 11 U.S.C. § 542(e) states:

> Subject to any applicable privilege, **after notice and a hearing**, the court may order an **attorney**, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

(emphasis added). A notice and hearing is defined as:

> (1) "after notice and a hearing", or a similar phrase—
>
> > (A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but
> >
> > (B) authorizes an act without an actual hearing if such notice is given properly and if—
> >
> > > (i) such a hearing is not requested timely by a party in interest; or
> > >
> > > (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

11 U.S.C. § 102(1). Therefore, the court finds this Motion is the appropriate method in moving the court for an order granting turn over of the type of documents requested here.

Movant has initiated this proceeding to compel Kyung Finley to deliver all recorded information pertaining to Royal Green LLC to Movant. Kyung Finley represented the consolidated Debtor from December 2, 2022 through August 10, 2023. Decl. ¶ 6, Docket 187.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor or, as in this case, a debtor's attorney.

Continued Hearing For Further Briefing

The Motion has been filed pursuant to Local Bankruptcy Rule 9014-(f)(2), the hearing is set on a shortened 14-day notice, and no written opposition is required. If at the hearing opposition is presented, the court will then set a briefing schedule.

Attorney Finley has provided a written opposition in advance of the hearing, raising specific points and legal authorities by which Attorney Finley asserts that the Trustee cannot obtain possession of the requested documents and communications without the authorization of Debtor Antonette Tin. The Trustee has not yet been afforded the opportunity to file a Reply to the Response.

The Court set the following closing briefing schedule and continued hearing date:

A. **xxxxxxx**

B. **xxxxxxx**

C. The hearing on the Motion is continued to 10:30 a.m. on **xxxxxxx**, 2024.

No opposition has been filed to this Motion by Debtor or any other party in interest.

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

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

The Motion for Turnover of Property filed by Nikki Farris, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**

8. 24-20145-E-7 EJS-1 | **DONALD DUPONT** **Eric Schwab** | **CONTINUED MOTION BY ERIC JOHN SCHWAB TO WITHDRAW AS ATTORNEY** **6-14-24 [108]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on June 14, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 20, 2024. Dckt. 112.

The court has set this matter for hearing on very short notice in light of the subject matter to allow Debtor and counsel to be promptly before the court. The court does not do this to "rush" the Debtor into a decision, but to get the Debtor and counsel before the court to see how this should proceed to a determination being made by the court.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Withdraw as Attorney is xxxxxxx.

August 22, 2024 Hearing

The court continued the hearing on this Motion as Debtor had filed opposition, and Debtor's counsel had indicated he would represent Debtor through various pending Motions that were scheduled for

early August of 2024. A review of the Docket on August 19, 2024 reveals nothing new has been filed with the court related to this Motion.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Eric John Schwab ("Movant," "Counsel"), counsel of record for Donald Fred DuPont, Jr. ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states, as summarized by the court the following:

A. Debtor is actively working to prosecute this case personally, and not with the assistance of counsel.

B. Debtor indicates that he does not believe that the assistance of counsel is necessary, and that Debtor can address these bankruptcy matters on his own. Debtor questions whether his resources would be effectively spent for such counsel in light of Debtor's ability to move this matter forward.

C. There exists between counsel and Debtor about how this Bankruptcy Case should be prosecuted by Debtor. This results in the situation where an attorney's ability to serve the client is significantly reduced.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) where Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

> (d) The client by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4).

DISCUSSION

Although Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice, Movant has made it clear Debtor does not wish to retain Counsel during this case. Debtor has expressed similar sentiments to the court in the past while Debtor was appearing in *pro se*.

At the hearing, the court address the grounds upon which the request is based. The Chapter 7 Trustee expressed concerns over the Debtor proceeding in pro se. The Debtor did not appear at the June 20, 2024 hearing.

July 2, 2024 Hearing

The court continued this hearing to afford Donald Fred DuPont, Jr. ("Debtor") an additional opportunity to appear, confirm his under standing that he will be prosecuting the Bankruptcy Case in *pro se* (without representation by an attorney).

On June 21, 2024, Debtor filed an Opposition to this Motion, responding directly to the court's summarized points under the "REVIEW OF THE MOTION" section of this ruling. Docket 115. Debtor states:

> 1. The Debtor is keenly aware this case requires qualified available legal Counsel.

2. Debtor hired Counsel following the 2:00 P.M. April 9, 2024 hearing to convert the Chapter 13 bankruptcy to a Chapter 7. If so, why did the Debtor pay Counsel $ 3,000.00 ?

3. At no time did Debtor tell Counsel his legal representation for the Chapter 7 was unnecessary. If so, why did Debtor pay Counsel $3,000.00 ?

4. At no time was there a discussion how the Bankruptcy Case should be prosecuted. The Debtor does not have knowledge to debate the process. If so, why would Debtor pay Counsel $ 3,000.00 ?

5. After Counsel received cash payments totaling $ 3,000.00, Counsel promised to provide Debtor documentation regarding receipt of payments as well a revision of the original verbal quote for service of $ 9,000 to $ 10,000 based on a rate of $ 500.00 per hour, to a total fixed rate of $ 12,000. A receipt, or engagement letter, or fee agreement was never delivered which is in violated of Business and Professional code section 6148 (a).

6. After Counsel received and reviewed with Debtor, all required Chapter 7 documents on May 9, 2024, he promised to deliver the documents electronically once transferred into his system. On May 28, 2024 Counsel called Debtor with an urgent message that there was a conference call interview with the Trustee in less than 2 hours, at 4:00 P.M. After a 40-minutes on hold the Trustee was not able to interview the Debtor without the documents and continued the matter to noon on June 12, 2024. With Counsel's promise the documents would be sent in advance of the new interview date for Trustee review. By afternoon June 10, 2024, after more than 30 days the documents were still not sent. On June 11, 2024 the Debtor hand carried the document to the Federal Court. The Clerk would only accept a small percentage of the documents with the common knowledge that most of the document were a duplicated effort based on the earlier Chapter 13 filing. This fact made the transfer requirement of the Counsel's office significantly less work than the 76 pages delivered. In addition, Counsel and Debtor invested two hours reviewing the documents on the delivery date to avoid any inaccuracies.

At the hearing, the Debtor and counsel for the Debtor agreed to continue the hearing on this Motion in light of other proceedings concerning the Debtor that are scheduled in the next thirty days.

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 Withdraw as Attorney filed by Eric John Schwab ("Movant," "Counsel") 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 Withdraw as Attorney is **xxxxxxx**.

9. 19-22653-E-7 REECE/RODINA VENTURA MOTION FOR SANCTIONS
Peter Macaluso 6-28-24 [505]

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

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

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

INSUFFICIENT NOTICE

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 25, 2024. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The court notes that Movant failed to serve the Chapter 7 Trustee who is a party in interest in this Bankruptcy Case. At the hearing, **xxxxxxx**

The Motion for Sanctions was not properly set for hearing. Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

The Motion for Sanctions is xxxxxxx.

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

NO DOCKET CONTROL NUMBER

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

PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Declaration and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

Furthermore, the court notes Local Bankruptcy Rule 9004-2(d)(2) states: "Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document." Movant did not comply with this Rule in filing her Exhibits.

THE MOTION

This Motion for Sanctions was brought by creditor Regina Burnley ("Movant") moving this court for an order imposing sanctions on debtors Reece Ventura and Rodina Cordero Ventura ("Debtor") for not complying with this court's Order issued on June 30, 2020 ("Order"). *See* Order, Docket 328. Movant alleges:

> 1. On June 30, 2020, this Court issued an order granting motion to approve sale and assignment agreement. Mot. 3:5-6, Docket 505.
>
> 2. Debtor "essentially" sold their interest in Debtor Rodina Cordero Ventura's inheritance to Movant for $20,000. This inheritance involved real and personal property belonging to the mother of Regina and Rodina. The Trustee retained a lien and security interest in the estate including the right to receive net recovery, of the balance of the estate upon its liquidation by Regina. *Id.* at 2:8-10.

As discussed more below, this is a misstatement of this court's Order. The court's Order authorized the Chapter 7 Trustee to sell the Estate's interest in Debtor Rodina Cordero Ventura's

inheritance; it did not authorize Debtor to sell her own interest. Debtor's interest was property of the Bankruptcy Estate, which property is under the control of the Chapter 7 Trustee.

3. Debtor has intentionally interfered with the liquidation of the inheritance interest and is obstructing the sale of real estate domestically and abroad in the Philippines. *Id.* at 3:11-12.

4. After Movant purchased the inheritance interest, a Probate Matter was opened in New Jersey Superior Court, Case No. R-CEBl9-09l80. On or around November 4, 2022, Debtor Rodina began attending the Probate court hearings and wrote a letter to the judge claiming to have an interest in the estate. Debtor Rodina began asking the New Jersey Superior Court to appoint her brother Albert Cordero as the administrator of the estate in violation of this Court's order. *Id.* at 3:20-24.

5. On July 3.1, 2023, Debtor began improperly collecting rent from the Philippines real property (Opun Property) in the amount of $20,000.00. *Id.* at 3:27-28.

6. On January 19, 2024 Debtor Rodina filed in Philippines court a motion to cancel the sale of the Opun Property by Movant. This is directly interfering with Regina's purchase of the inheritance interest and directly violates this Court's order. *Id.* at 4:1-3.

7. I (Movant's attorney?) have tried to sell real property in the estate and Debtor has interfered and continues to obstruct in violation of this Court's order. *Id.* at 4:4-5.

8. Debtor has stolen the titles to properties Nos. RT-7003 (T-3565) for parcel of land Lot No. 1987 Mambahing Cebu City and No. 1.54502 for the frontage of parcel in Cebu City. This title was in their mother's safe deposit box located at 538 A N Bacalso Ave., when Albert Cordero removed it. *Id.* at 4:6-8.

9. Based on this court's Order and the court's contempt powers, and pursuant to 11 U.S.C. § 105(a), the court should impose sanctions on Debtor for interfering with the Order. Alternatively, the court should set a short cause trial as there exists good cause to grant such relief.

Movant supposedly filed her Declaration in support, improperly attached to the Exhibits. Decl., Docket 506. However, the court notes that the Declaration in support is an almost exact replica of the Motion. The only difference is the amount of attorney's fees accrued. Movant testifies she herself incurred over $30,000 in attorney's fees as a consequence of Debtor's interference (Decl. ¶ 15, Docket 506), whereas the Motion states Movant's attorney has accrued over $25,000 in attorney's fees (Mot. 4:9-10, Docket 505). Besides this discrepancy, every word of the Declaration has been copy and pasted over from the Motion. The court wonders if Declarant ever even read the Declaration under these circumstances, much less actually wrote and provided her own testimony in it.

At the hearing, **XXXXXXX**

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 6, 2024. Docket 508. Debtor states:

1. Notice of Motions require compliance with Local Rule 4001-1 and 9014-1, setting the hearing based on no written opposition. Here, the Motion does not state which basis opposition is to be presented. As such, the Debtors should be given further time to be properly served. Opp'n 2:14-19, Docket 508.

2. Debtor's attorney Mr. Macaluso informs the court in this Opposition that Mr. Macaluso has been unable to get in contact with Debtor, his client. Therefore, Mr. Macaluso seeks to withdraw as counsel. *Id.* at 2:21-3:14.

MOVANT'S RESPONSE

Movant filed a Response on August 8, 2024. Docket 512. Movant states:

1. Movant's Counsel contacted Mr. Macaluso and asked if Mr. Macaluso would accept service of th instant Motion. Mr. Macaluso stated he would do so. Resp. 2:2-6, Docket 512.

Movant submits no authenticated evidence in support of this Response. As such, the Response relies entirely on hearsay testimony. *See* Fed. R. Evid. 801. The court will not consider hearsay testimony in making its ruling.

DISCUSSION

The court issued its Order on June 30, 2020, which authorized the Chapter 7 Trustee to sell the Bankruptcy Estates interest in Debtor Rodina's inheritance interest in the estate of her mother, Rebecca Alda Cordero. The order of this court states:

> The motion of GEOFFREY RICHARDS ("Trustee"), in his capacity as the Chapter 7 Trustee for the bankruptcy estate of Reece Ventura and RODINA CORDERO VENTURA ("Rodina"), for an order approving his sale of the bankruptcy estate's interest in Rodina's inheritance interest came on for hearing at the above-captioned date, time, and place. Appearances were noted on the record, and overbidding was entertained. Upon consideration of the evidence and authorities presented, and good cause appearing therefore,
>
> 1. The motion is granted as set forth herein.
>
> 2. The Trustee is authorized to sell and assign the bankruptcy estate's interest in Rodina's inheritance interest to REGINA BURNLEY ("Burnley") pursuant to the terms and conditions set forth in the agreement attached as Exhibit A ("Agreement"), except that:

a. Burnley shall be the Buyer;

b. The purchase price shall be $20,000.00 plus a sliding scale of net recoveries received by Burnley as follows:

Collection Incremental Amount	Estate Percentage	Estate Dollar Amount	Cumulative Collection	Cumulative Estate Dollar Amount
$40,000	0%	$0	$40,000	$20,000
$40,000	100%	$40,000	$80,000	$60,000
$20,000	85%	$17,000	$100,000	$77,000
$50,000	75%	$37,500	$150,000	$114,500
$50,000	55%	$25,500	$200,000	$140,000
$100,000	35%	$35,000	$300,000	$175,000
$100,000	35%	$35,000	$400,000	$210,000
$100,000	30%	$30,000	$500,000	$240,000
$500,000	35%	$175,000	$1,000,000	$415,000
$500,000	30%	$150,000	$1,500,000	$565,000
$2,000,000	20%	$400,000	$3,500,000	$1,005,000

and;

c. The provision in paragraph 5 of the Agreement requiring subordination of certain unsecured claims is stricken;

3. The Trustee shall have a lien and security interest in all of the bankruptcy estate's rights as set forth in the Agreement, including the Trustee's right to receive the net recoveries received by Burnley on account of the inheritance interest.

4. The Trustee is authorized to execute all documents and take all actions reasonably necessary to: (1) effectuate the estate's obligations under the Agreement; and (2) protect his lien and security interest.

5. In addition to the accounting provisions of paragraphs 4 and 6 of the Agreement, Burnley is to:

a. Provide the Trustee with legal descriptions, outstanding taxes, liens and encumbrances, and competing claims of interest in all parcels of real property that are included in the inheritance interest;

b. Consult with the Trustee prior to entering into any agreement with other interested parties concerning the inheritance interest, and disclose to the Trustee all material facts of any proposed agreement with other interested parties; and

c. Once the entirety of the inheritance interest has been liquidated, Burnley shall deliver to the Trustee a final accounting in the form of a declaration under penalty of perjury providing all disbursements made to all parties on account of the properties liquidated as part of the inheritance interest. Burnley's declarations shall confirm that all cash distributions to any party on account of the land sales have been accounted for and provided to the Trustee.

Order, Docket 328. The actual sale and assignment agreement itself is then appended to the Order and dated May 18, 2020. *Id.*

Movant asserts that, based on the language of this Order, Debtor Rodina has interfered with the Order and this court should impose sanctions pursuant to 11 U.S.C. § 105(a) and its contempt powers. Such exercise of contempt powers of this court do not seem to be as clear as requested by Movant.

The court's order authorizes the Trustee to sell the Bankruptcy Estate's Interest to Movant. That sale has occurred and there is not an assertion that Debtor has interfered with that sale.

Rather, what is being asserted first sounds in the nature of tortious interference with the rights of Movant in property. Additionally, given the interest of the Bankruptcy Estate in the sale of the properties based on a percentage recovery from the sale proceeds, and a lien on the interests and such proceeds, it also sounds in the nature of a tortious interference with, or the exercise of control over, the rights and interests that are property of the Bankruptcy Estate.

This then leads to the question of whether there are violations of the automatic stay for interfering with, and exercising control over, property of the Bankruptcy Estate by Debtor. As is well established law, violation of the automatic stay is in the nature of violation of an order of the court, for which corrective sanctions can be issued by the Bankruptcy Court, and then corrective and punitive sanctions issued by an Article III Judge of the District Court.

However, as noted above, the court has not ordered Debtor Rodina to do anything in the Order Movant cites. The court merely authorized the Trustee and Movant to purchase the Estate's interest in the inheritance. Any interference with liquidating assets of the inheritance does not violate the cited Order as those actions would fall outside the scope of what the court authorized in the Order.

At the hearing, **xxxxxxx**

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

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

The Motion for Sanctions having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx**.

10. 24-21279-E-7 KMT-2

10 thru 11

BULLS-EYE MARKETING, INC.
Andrea Michaelsen

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BRE JUPITER C WEST CA OWNER, LP
8-1-24 [16]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on August 1, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Nikki B. Farris, the Chapter 7 Trustee, ("Movant," "Trustee") for the bankruptcy estate of Bulls-Eye Marketing, Inc. ("Debtor") requests that the court approve a compromise and settle competing claims and defenses with Debtor's landlord, BRE Jupiter C West CA Owner, LP ("Settlor," "Landlord"). Debtor is the lessee for commercial space located at 6610 Goodyear Road, Benecia, CA 94510 ("Leased Property").

The claims and disputes to be resolved by the proposed settlement involve rejecting the lease with Settlor with Settlor keeping the initial lease deposit and being authorized to file a general unsecured claim for any prepetition debt on account of the rejection.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit D in support of the Motion, Dckt. 27):

A. Rejection and Termination of Lease. The Lease shall be deemed rejected, effective August 1, 2024, pursuant to 11 U.S.C. section 365 and terminated, and the Leased Property shall be deemed surrendered to the Landlord or its designated agent no later than August 1, 2024. Stipulation Agreement, ¶ 1; Ex. D, Docket 27.

B. Lease Deposit and Administrative Expense. Subject to the terms of this Agreement, the Landlord may retain the Deposit and the Trustee shall disclaim any interest in the Deposit in the amount of $6,259.65 ("Lease Deposit"). The automatic stay shall terminate as it relates to the Deposit including the Landlord's ability to offset the Deposit against the amounts that it is owed for the administrative time period, and the Landlord agrees, as to the Debtor's bankruptcy estate only, that any administrative claim for past due rent that may be asserted for the time period of the Petition Date through August 1, 2024 shall be deemed waived and/or satisfied by the offset of the Deposit. *Id.* at ¶ 2.

The Motion to Approve Compromise (Dckt. 16) and Stipulated Agreement, ¶ B, (Exhibit D; Dckt. 27) state that the contractual monthly rent payment is $8,820.20. The Stipulated Agreement does not state an amount of what administrative expense is to be, and the court is not allowing an administrative expense pursuant to the Stipulation. It may be that the Trustee under the Stipulation is paying the $6,259.65 deposit for the administrative expense.

C. General Unsecured Claim. Notwithstanding its waiver of the administrative claim, the Landlord reserves its right and the Trustee agrees that the Landlord may file a proof of claim asserting only a general unsecured claim against the Debtor's bankruptcy estate for any prepetition debt owed and on account of the rejection of the Lease for the Leased Property. However, the Landlord is not required to make any such claim. In addition, any right of the Trustee to object to any proof of claim, if necessary, shall be preserved. *Id.* at ¶ 3.

D. Timing of Filing of Proof of Claim. Any proof of claim to be filed by the Landlord must be filed within sixty (60) days of entry of the order

approving this Stipulation to be deemed timely; notwithstanding that the general bar date in this case has been set on September 4, 2024. The intent of this agreement is to afford the Landlord additional time to file its proof of claim. *Id.* at ¶ 3.1.

E. Access to the Leased Property. The Trustee shall provide and the Landlord shall have access to the Leased Property to allow the Landlord to market the property. *Id.* at ¶ 4.

F. Removal of Estate Assets. The Trustee shall cause any bankruptcy estate property in which the estate intends on auctioning and not abandoning to be removed from the Leased Property no later than July 1, 2024. Subject to applicable law, if any bankruptcy estate property remains at the Leased Property upon the Trustee's surrender, the Landlord may discard or otherwise dispose of such property without further notice. *Id.* at ¶ 5.

For this provision, the Trustee is stating that with respect to property of the Bankruptcy Estate, the Trustee has agreed that whatever property of the Bankruptcy Estate is left on the Leased Property can be disposed of by the Landlord. Once abandoned, such property left on the Leased Property is not property of the Bankruptcy Estate. The Stipulated Agreement does not alter or limit the rights and powers of a landlord to deal with personal property left on the Leased Property after termination of the Lease. The court, in authorizing the Stipulated Agreement does not expand the powers of the Landlord post-lease termination.

G. Relief from Stay. The Landlord shall have relief from stay as against the bankruptcy estate under 11 U.S.C. section 362 as of August 1, 2024 to exercise any of its rights and remedies against the Leased Property available under state and/or bankruptcy law, including proceedings to recover possession of the Leased Property and/or to dispose of any Personal Property owned by the estate and remaining at the Leased Property upon surrender on August 1, 2024. *Id.* at ¶ 6.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant's argues this factor weighs in favor of the Agreement. The Landlord contends that it is entitled to an administrative claim on account of the Leased Property and the fact that the Personal Property was stored at the property. Likewise, the Landlord believes that it is entitled, at the very least to keep the Lease Deposit, on account of the back rent owed by the Debtor. While the Trustee could litigate the amount of and the entitlement to an administrative claim, and whether the Landlord may keep the Lease Deposit, the probability of success is ultimately unknown. Moreover, The Trustee acknowledges that the Landlord is likely entitled to some amount for an administrative claim. Mot. 4:25-5:4, Docket 16.

Difficulties in Collection

This factor is neutral as the primary dispute stems from the Landlord's entitlement to an administrative claim. *Id.* at 5:6-7.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor supports the Agreement. The estate would incur considerable expense litigating the dispute. The cost of litigation would significantly exceed any benefit the estate would receive in light of the terms of the Agreement and could limit the return to the estate from the potential assets currently available. Indeed, the estate is only relinquishing its claims to the Lease Deposit and will not have to pay any amounts to the Landlord for any administrative rent claim. *Id.* at 5:9-13.

Paramount Interest of Creditors

Movant argues this factor heavily weighs in favor of the Agreement. By entering into the \ Agreement, the Trustee is ensuring that any administrative claim the Landlord could assert for rent does not diminish the potential return to the estate from the current assets and potential assets on hand. Moreover, the Trustee is avoiding unnecessary litigation over the administrative claim and the Lease Deposit that could further reduce any return. The Agreement is in the best interest of creditors. *Id.* at 5:18-22.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Estate can avoid costly litigation, Landlord will not have an administrative claim that would hinder other creditors' return, and Landlord is fairly compensated by retaining the initial deposit. The Motion is granted.

REQUEST FOR ABANDONMENT

JOINED WITH MOTION TO APPROVE COMPROMISE

Trustee further requests in this Motion authorization to abandon certain items of personal property remaining at the Leased Property pursuant to 11 U.S.C. § 554. According to Trustee, Trustee's Auctioneer (addressed in the related matter below) has already removed valuable personal property from the Leased Property, and all items of personal property that remain are of inconsequential value to the Estate, so the Estate seeks to abandon what remains. The court notes that Local Bankruptcy Rule 9014-1(d)(5) does not permit joinder of a Motion to Approve Compromise and a Motion to Abandon. At the hearing, **xxxxxxx**

The request for abandonment is for any property left on the Leased Premises. Thus, the requested abandonment is for whatever unidentified property that is on the Leased Premises. That could result in the Trustee, as the fiduciary of the Bankruptcy Estate, unintentionally abandoning unidentified or unintended assets.

Examples of such could include a safe that the Debtor had hidden on the premises. In the safe are gold coins that the Debtor had kept/hidden there as part of its investments. For the relief requested, the Trustee would be abandoning the gold coins back to the Debtor.

It is not clear why the auctioneer for the Trustee did not prepare a list of items which the auctioneer determined to be of inconsequential value. The auctioneer was able to prepare a detailed list of the property of the Bankruptcy Estate that the auctioneer desires to sell for the Trustee.

At the hearing, **xxxxxxx**

~~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). Trustee has shown that the remaining items of personal property on the Leased Property are burdensome or of inconsequential value to the Estate. This part of the relief is also granted.~~

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Nikki B. Farris, ("Movant," "Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and BRE Jupiter C West CA Owner, LP ("Settlor," "Landlord") is granted,.
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated, retroactively effective August 1, 2024, to allow BRE Jupiter C West CA

Owner, LP and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the real commercial property commonly known as 6610 Goodyear Road, Benecia, CA 94510 ("Leased Property"). The same relief is granted as to any items of personal property that remain on the Leased Property as of August 1, 2024.

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow BRE Jupiter C West CA Owner, LP, its agents, representatives, and successors, to apply the Lease Deposit of $6,259.65 ("Lease Deposit") to past due rent for the time period of the Petition Date of March 29, 2024 through August 1, 2024, and its prepetition claim (if any).

IT IS ORDERED that Movant is authorized to reject the lease for commercial space located at 6610 Goodyear Road, Benecia, CA 94510 ("Leased Property"), listed on Schedule G at Line 2.1 (Dckt. 1), and that such rejection is retroactively effective as of August 1, 2024, without further action of the Trustee.

~~**IT IS ORDERED** that the Joined Motion to Abandon is granted, and the property identified as any items of personal property that remain on the Leased Property as of the date of this Order is abandoned by Movant by this order, with no further act of the Trustee required. Such abandonment is to the Debtor.~~

11. 24-21279-E-7 KMT-3

BULLS-EYE MARKETING, INC.
Andrea Michaelsen

MOTION TO EMPLOY LONNY PAPP AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
8-1-24 [21]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on August 1, 2024. By the court's calculation, 21 days' notice was provided. 14 day's notice is required.

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

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

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327, 328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Bulls-Eye Marketing, Inc. ("Debtor"):

Bulls-eye Marketing Inc	
Item	**Qty**
Yale Forklift	1
Unline Pallet Jacks	2
HG 28 Lathe	1
Bewo Cold Saw	1
Dayton Sand Blasting Cabinet	1
Roper Whitney Bending Brake	1
Hobart Tig Wave 250 Welding Machine	1
12 Ton Shop Press	1
F.A. Nugier 40 Ton Shop Press	1
Makita Chop Saw	1
Milwaukee Chop Saw	1
Craftsman Dust Collector	1
Movin Cool Portable AC	1
Central Machine 13in Drill Press	1
30in Sanding Wheel	1
Metal Ace English Wheel	1
Uline Shop Fan	1
Coleman Powermate 1850 Generator	1
Duro Max Hybrid Generator	1
Rock River Vise	1
VP Racing M5 Racing Fuel, 5 gallon Cans	10

Titan Gas Engines, JF340N	10
Titan Gas Engines, JF270N	2
Titan Gas Engines, JF390N	1
Mini Moto Childrens ATV 12V	1
Mini Moto Childrens Buggy 24V	1
Gas Dune Buggy	1
ATV Wheels and Tires	4
Parts Carts	2
Welding Screens	2
Fastenal Parts Cabinets	2
Ladders	2
Black + Decker Coffee Maker (New in Box)	1

("Personal Property"). Mot. 5-6, Docket 21. The Personal Property is listed in Schedule A / B filed by Debtor on pages 14 through 22. Docket 1. Trustee argues that Auctioneer's appointment and retention is necessary to facilitate a liquidation of the Personal Property and produce the highest and best return to the estate. Mot. 4:5-12, Docket 21.

The essential terms of the Employment Agreement are as follows:

(a) A commission of twenty percent (20%) will be charged to the estate and will be deducted from the gross sale proceeds. Mot. 2:25-26, Docket 21.

(b) The Auctioneer will be entitled to reimbursement of any expenses incurred in preparing for and conducting the auction in an amount not to exceed $3,000. *Id.* at 2:27-28.

(c) Within 30 business days of the auction, the Auctioneer will remit payment to the Trustee the net sale proceeds. *Id.* at 3:1-2.

(d) All gross proceeds of the sale shall be maintained separate from the Auctioneer's personal or general funds and accounts pursuant to California Civil Code § 1812.607(j). Mot. 3:3-4, Docket 21.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction is a full-service auction company providing auctions and accelerated marketing services, as well as liquidations of business and other financial assets for corporations, financial institutions, trustees, individuals, and estates. The Auctioneer has extensive experience in assisting bankruptcy trustees similar to the Trustee. Decl. ¶ 2, Docket 23. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 7-9.

DISCUSSION
Motion to Employ and Authorization to Sell

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 28. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Auctioneer is authorized to sell the items of Personal Property listed in Schedule A attached to Mr. Papp's Declaration at Docket 23, which items are also found in Schedule A / B filed by Debtor on pages 14 through 22. Docket 1.

Motion for Authorization
of Fees and Expenses

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Here, Trustee has estimated that a twenty percent broker's commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed $3,000 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed $3,000, in connection with the auction.

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

Request for Waiver of Fourteen-Day
Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not

anticipate opposition to the Motion, and Trustee requests the sale be allowed to move forward as soon as possible. Mot. 4:13-16, Docket 21.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Nikki B. Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective April 9, 2024, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 25.
>
> **IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the following items of personal Property at the auction:

Bulls-eye Marketing Inc	
Item	**Qty**
Yale Forklift	1
Unline Pallet Jacks	2
HG 28 Lathe	1
Bewo Cold Saw	1
Dayton Sand Blasting Cabinet	1
Roper Whitney Bending Brake	1
Hobart Tig Wave 250 Welding Machine	1
12 Ton Shop Press	1
F.A. Nugier 40 Ton Shop Press	1
Makita Chop Saw	1
Milwaukee Chop Saw	1
Craftsman Dust Collector	1
Movin Cool Portable AC	1
Central Machine 13in Drill Press	1
30in Sanding Wheel	1
Metal Ace English Wheel	1
Uline Shop Fan	1
Coleman Powermate 1850 Generator	1
Duro Max Hybrid Generator	1
Rock River Vise	1
VP Racing M5 Racing Fuel, 5 gallon Cans	10

Titan Gas Engines, JF340N	10
Titan Gas Engines, JF270N	2
Titan Gas Engines, JF390N	1
Mini Moto Childrens ATV 12V	1
Mini Moto Childrens Buggy 24V	1
Gas Dune Buggy	1
ATV Wheels and Tires	4
Parts Carts	2
Welding Screens	2
Fastenal Parts Cabinets	2
Ladders	2
Black + Decker Coffee Maker (New in Box)	1

IT IS FURTHER ORDERED that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and expenses not to exceed $3,000 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

12. 23-24387-E-7 NLH-1 | **JERRY HARDEMAN** Nancy Haley | **CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 7-12-24 [98]**

Items 12 thru 14

Final Ruling

Local Rule 9014-1(f)(1) Motion—Hearing Required. The court notes that Movant attempted to set this Motion according to Local Bankruptcy Rule 9014-1(f)(1).

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court's calculation, 20 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice to appear at hearing and present opposition). Thus, when a party provides notice of a hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1), the other parties in interest must be given 21 days notice of filing the written opposition, which has to be filed at least 14 days before the hearing. This requires that at least 35 days notice of the hearing date must be provided.

At the hearing, the court continued the hearing to August 22, 2024, with Debtor to file and serve an amended notice for the continued hearing.

The Motion to Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice as moot, Debtor choosing to refile and reset the hearing under Docket Control Number NLH-4.

August 22, 2024 Hearing

At the conclusion of the previous hearing held on August 1, 2024, the court issued the following Order providing that: "On or before August 6, 2024, the Debtor shall file and service a noticed of continued hearing, which shall advise parties in interest that opposition, if any, may be stated orally at the continued hearing." Order, Docket 108. That Motion to Reconvert the case was filed under Docket Control No. NLH-1. Motion; Dckt. 98. The court only ordered debtor to file and service a notice of hearing and nothing more.

Debtor filed more than a Notice of a continued hearing for the Motion to Convert, DCN: NLH-1. Debtor has chosen to file a Second Motion to Reconvert, DCN: NLH-4, new supporting pleadings, and Noticed the Second Motion to Reconvert for hearing on August 22, 2024.

The filing of the second Motion to Reconvert (NLH-4) replaces the prior Motion to Reconvert (NLH-1), and the request for such relief shall be determined under the second Motion to Reconvert.

The Motion to Reconvert this Case, filed under DCN: NLH-1, is dismissed without prejudice, having been rendered moot by the filing of the second.

REVIEW OF THE MOTION

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

Debtor asserts that the case should be reconverted because Debtor's original Chapter 13 case was converted to a case under Chapter 7 when Debtor was appearing in *pro se* and did not realize his options. Mot. 3:11-22, Docket 98. Debtor filed the original Chapter 13 case on December 7, 2023, to obtain relief from a Special Tax Assessment placed on his property commonly known as 8962 Sedgewick court, Elk Grove, Ca 95624 ("Property") in the amount of $68,280.59 during the 2016-17 tax year. *Id.* at 1:24-27. The tax was placed on the Property by Ygrene Energy Fund ("Ygrene") in relation to the PACE home improvement loans Ygrene provided to homeowners. *Id.* at 1:26-2:2.

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

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

DISCUSSION

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

While there is a sharp divide whether this permits debtors to request reconversion at all, a slight majority of courts have held that debtors may still make such a motion. *Compare In re Johnson*, 116 B.R. 224 (Bankr. D. Idaho 1990) (acknowledging the court's authority to allow reconversion while denying due to failure of debtors to demonstrate facts that would persuade the court to exercise its discretion), *with In re Banks*, 252 B.R. 399, 399 (Bankr. E.D. Mich. 2000) (interpreting 11 U.S.C. § 706(a) as placing a bar on any reconversion). While there is no binding precedent on this matter in this Circuit, previous decisions of this court, as well as of the Bankruptcy Appellate Panel for the Ninth Circuit, show a trend toward adoption of the majority rule: allowing reconversion on a discretionary basis. *In re De La Salle*, No. 10-29678-E-7, 2011 Bankr. LEXIS 5621, at *26 (Bankr. E.D. Cal. Sept. 6, 2011) ("If [debtors] wish to propose a

confirmable plan, they may seek to re-convert this case to one under Chapter 13. . ."); *see Gallagher v. Dockery (In re Gallagher)*, No. CC-13-1368-TaKuPa, 2014 Bankr. LEXIS 1037 (B.A.P. 9th Cir. Mar. 17, 2014) (assessing whether a tax refund was rightfully the property of the Chapter 13 or Chapter 7 estate in a case converted to Chapter 7 then subsequently reconverted to Chapter 13).

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

PLAN FEASIBILITY

Debtor has shown he can make plan payments, especially with help from his two daughters. Keisha and Tamica Hardeman have submitted Declarations with the court showing that they will both contribute $800 each to fund their father's Plan, totaling $1,600. Decls., Exs. 6-7, Docket 100. As the court previously noted, Declarations are to be filed as separate documents and not as exhibits. L.B.R. 9004-2(c), (d). (For this Motion to Reconvert, and Only the Motion to Reconvert, the court waives the separate filing requirement in light of the circumstances.)

Debtor's attorney is asking for an extremely modest amount of fees in prosecuting this case. The Plan proposes monthly payments of $2,010 for 57 months with $8,520 having already been paid through July 2024. Ex. 1 at 9, Docket 100. The court notes that, like with Declarations, a Chapter 13 Plan must also be filed as a separate document. Furthermore, this case being in Chapter 7, it is unclear who has been paid this $8,520 or whether the Debtor is holding the monies to make an initial lump sum plan payment.

The Plan's non-standard provisions provide that the mortgagee, PHH Mortgage Services ("Creditor"), will be treated as a Class 1 creditor, with the added requirement that an order modifying the automatic stay must be obtained. Plan 9:19-20, Docket 100. Debtor will make adequate protection payments of $1,800 per month, pending a consensual loan modification agreement between PHH Mortgage Services and Debtor. Creditor has the right to refuse to enter into a loan modification. If no loan modification is reached, Creditor can move the court *Ex Parte* for relief from stay, which Debtor has the right to oppose. *Id.* at 11:17-28. The Plan seems feasible on its face, Creditor being provided with substantial adequate protection payments pending the loan modification.

The Plan further suggests if a loan modification is agreed upon that does not require curing arrearage, the claim shall be paid under Class 4. However, if a loan modification is agreed upon that requires curing arrearage, the claim will remain in Class 1. *Id.* at 10:14-22. Creditor is currently accounted for in Class 1 of the Plan.

For purposes of the Motion to Reconvert, Debtor has corrected the previous errors by setting this Motion for hearing, providing supporting evidence, and serving interested parties.

Continuance of Hearing

In light of the apparent clerical error in the noticing of this hearing, the court continues the hearing to 10:30 a.m. on August 22, 2024. Opposition, if any, may be orally stated at the hearing.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reconvert filed by Jerry Glenn Hardeman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice as moot.

13. 23-24387-E-7 NLH-4 — JERRY HARDEMAN — Nancy Haley — MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 — 8-6-24 [111]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, all creditors and parties in interest, attorneys of record who have appeared in this case, parties requesting special notice, and Office of the United States Trustee on August 5, 2024. The court ordered the hearing to be held on August 22, 2024, and ordered Debtor to file the Notice by August 6, 2024. Order, Docket 108.

The Motion to Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 ~~is granted, and the case is converted to one under Chapter 13.~~

REVIEW OF THE MOTION

Jerry Glenn Hardeman ("Debtor") seeks to convert this case, initially filed under Chapter 13 and subsequently converted to Chapter 7, back to a case under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). However, the availability of this one-time, near-

absolute right of conversion requires that "the case has not been converted under section 1112, 1208, or 1307 of this title." 11 U.S.C. § 706(a).

Debtor asserts that the case should be reconverted because Debtor's original Chapter 13 case was converted to a case under Chapter 7 when Debtor was appearing in *pro se* and did not realize his options. Mot. 3:11-22, Docket 111. Debtor filed the original Chapter 13 case on December 7, 2023, to obtain relief from a Special Tax Assessment placed on his property commonly known as 8962 Sedgewick court, Elk Grove, Ca 95624 ("Property") in the amount of $68,280.59 during the 2016-17 tax year. *Id.* at 1:24-27. The tax was placed on the Property by Ygrene Energy Fund ("Ygrene") in relation to the PACE home improvement loans Ygrene provided to homeowners. *Id.* at 1:26-2:2.

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

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

DISCUSSION

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

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

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

PLAN FEASIBILITY

Debtor has shown he can make plan payments, especially with help from his two daughters. Keisha and Tamica Hardeman have submitted Declarations with the court showing that they will both contribute $800 each to fund their father's Plan, totaling $1,600. Decls., Dockets 115, 116. As the court previously noted, Declarations are to be filed as separate documents and not as exhibits. L.B.R. 9004-2(c), (d). Movant correctly filed the Declarations as separate docket entries with this most recent Motion.

Debtor's attorney is asking for an extremely modest amount of fees, $2,500.00, in prosecuting this case. The Plan proposes monthly payments of $2,010 for 56 months with $9,210 having already been paid through July 2024. Ex. 1 at 9, Docket 114.

This being in Chapter 7, it is unclear who has been paid this $9,210 or whether the Debtor is holding the monies to make an initial lump sum plan payment. The Chapter 13 Trustee's Final Report from when this Case was converted to Chapter7 states that no Chapter 13 Plan payments had been made by the Debtor. Dckt. 56.

It appears that Movant has replicated an error from the prior draft plan,(Exhibit 1; Dckt. 100). Previously, the court expressed concern over PHH Mortgage Services ("Creditor") being in Class 3 of the Plan as Class 3 requires a surrender of the Collateral. *See* Civil Minutes at 3, Docket 95.

That error has been replicated in the new draft Amended Plan filed as Exhibit 1 (Dckt. 114) which provides that Creditor PHH Mortgage Services secured claim (Debtor's residence being the collateral) is placed in Class 3 in the Nonstandard Provisions of the new draft Amended Plan. Ex. 1 at 9:20, Docket 114. By doing so Debtor would surrender his residence to Creditor, terminate the automatic stay, and allow Creditor to immediately foreclose on the residence. See draft First Amended Plan, ¶¶ 3.09, 3.11(a).

For PHH Mortgage Services' Secured Claim, the draft Amended Plan also states in the Non-Standard Additional Provisions § 7.02, that Debtor will make adequate protection payments of $1,800 per month, pending a consensual loan modification agreement between PHH Mortgage Services and Debtor. Creditor has the right to refuse to enter into a loan modification. If no loan modification is reached, Creditor can move the court *Ex Parte* for relief from stay, which Debtor has the right to oppose. *Id.* at 10:26-3:28. Notwithstanding the errors, the Plan seems feasible on its face, Creditor being provided with substantial adequate protection payments pending the loan modification.

These provisions accurately restate what are commonly called the "Ensminger Provisions" to build a loan modification request into a Chapter 13 Plan, which provisions have been successfully used by many attorney's previously.

At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reconvert filed by Jerry Glenn Hardeman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion to Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted.~~

14. 23-24387-E-7 RHS-2 **JERRY HARDEMAN** **STATUS CONFERENCE RE: VOLUNTARY PETITION 12-7-23 [1]**

Debtor's Atty: Nancy Haley

Notes:
[RHS-2] Order Setting Status Conference and Ordering the Appearance of Dackery Hardeman at 10:30 a.m. on August 22, 2024 filed 8/2/24 [Dckt 109] - No telephonic appearance permitted.

[NLH-4] Motion to Reconvert From Chapter 7 to Chapter 13 filed 8/6/24 [Dckt 111]; set for hearing 8/22/24 at 10:30 a.m.

The Status Conference is xxxxxxx

AUGUST 22, 2024 STATUS CONFERENCE

The court determined that ordering Dackery Hardeman, the Debtor's son, to attend the August 22, 2024 Status Conference was appropriate. As stated in the Order for his appearance,

> In reviewing the Docket, the court notes that Dackery Hardeman, who is identified as the Debtor's son, has been sending emails asserting facts and possibly providing evidence with respect to the points he is asserting. See Docket 91, and two other emails sent the morning of July 31, 2024,which were sent to the judge and have been placed on the Docket. See Docket entries104 and 105.
>
> The court recognizes that the federal judicial process is not something commonly know to non-lawyers and they may not appreciate that sending communications and documents directly to the judge is not proper.

> Dackery Hardeman appears to be attempting to communicate to the court and participate in this judicial proceeding concerning some detailed matters as they relate to the Debtor, his father, and the prosecution of this case.
>
> . . .
>
> The purpose of the Status Conference is to be informative, and is not a process by which the court will be imposing any sanctions or ordering parties in interest to undertake specific acts. It is to help them understand the process, the role of the judge, and that just sending things to the court/judge is not the proper way to have matters addressed.
>
> The Debtor and his counsel have been appearing in person at the hearings in this Case. The court determines that it is necessary and proper to order Dackery Hardeman to attend the Status Conference in person, No Telephonic Appearance Permitted, to afford the court the opportunity to ensure that Dackery Hardeman understands the federal judicial process and appreciate that he needs to have matters properly filed with and presented to the court – not merely emailed to the judge.

Order, p. 1:19-29, 2:4-12; Dckt. 109.

15. 24-21193-E-7 BJZ-1 | **TLNTB LLC** | **Dana Douglas** | **MOTION TO DISMISS CASE** | **7-22-24 [21]**

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 7 Trustee, attorneys of record who have appeared in the case, all creditors and parties in interest, and Office of the United States Trustee on July 22, 2024. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor has not filed opposition. The defaults of the non-responding parties are entered. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

U.S. Bank Trust Company, National Association as Trustee for Velocity Commercial Capital Loan Trust 2023-2 ("Movant," "Creditor"), seeks dismissal of the case pursuant to 11 U.S.C. § 707(a). Movant seeks a bar to refiling pursuant to 11 U.S.C. § 349(a). Movant states:

1. Creditor holds a first priority deed of trust upon the real property and improvements located at 2106 West Street, Houston, Texas (the "Property") to secure a $1,074,000 loan (the "Loan") made to 2106 West Property Associates LLC (the "Property Owner") for the purpose of acquiring the Property. Mot. 2:1-4, Docket 21.

2. No payment has ever been made by the Property Owner or any other party with respect to the Loan, while the Property Owner has presumably been collecting the rents from the Property. *Id.* at 2:4-6.

3. This bankruptcy case represents the second time, the Debtor's insiders have filed a Chapter 7 bankruptcy petition on the verge of a foreclosure sale of the Property. *Id.* at 2:7-8.

4. On February 5, 2024, the Property Owner filed a voluntary Chapter 7 petition with this Court on the day before a scheduled foreclosure sale of the Property. The Property Owner paid a $750 fee to its counsel (Dana Douglas), and then the Debtor failed to file any schedules of assets and liabilities, which resulted in the bankruptcy case being dismissed on March 15, 2024. *Id.* at 2:11-15.

5. The foreclosure sale was then re-scheduled for May 7, 2024. Two days before the May foreclosure sale, TLNTB, LLC (the Debtor"), who is the debtor in this case, filed a voluntary Chapter 7 bankruptcy petition after also paying a $750 fee to the same attorney that filed the Property Owner's Chapter 7 case. *Id.* at 2:16-19.

6. Debtor in this case acknowledges it is "not on title" with respect to the Property. Rather, it claims a 40% equitable ownership interest in the Property pursuant to an unrecorded quit claim deed from the Property Owner. *Id.* at 2:19-21.

7. Debtor then failed on two occasions to appear at the adjourned Section 341 meetings of creditors scheduled in this case, prompting the Chapter 7 trustee in this case to move to dismiss this bankruptcy case. *Id.* at 2:25-27.

8. The Debtor's gamesmanship and manipulation of the bankruptcy system by having multiple entities file successive Chapter 7 bankruptcy petitions for the sole purpose of invoking the automatic stay to avoid foreclosure on the Property with no intent to proceed in their bankruptcy cases should not be tolerated by this Court. The Debtor's actions constitute cause to dismiss this Chapter 7 case under Bankruptcy Code § 707(a). Accordingly, the Court should dismiss this case with prejudice pursuant to Bankruptcy Code §

> 349(a) for a period of 180 days, so that the Debtor cannot be used again to improperly stay a foreclosure sale of the Property. *Id.* at 3:1-7.

Movant submits the Declaration of Gloria-Jane Meyer in support. Ms. Meyer authenticates the facts alleged in the Motion. Decl., Docket 24. However, Movant filed the Declaration and Exhibits in this matter as one document. Docket 24. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

At the hearing, **xxxxxxx**

The Chapter 7 Trustee, Geoffrey Richards ("Trustee"), filed a nonopposition on August 19, 2024.

DISCUSSION

11 U.S.C. § 707(a) authorizes the court to dismiss a Chapter 7 case, stating:

> (a)The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
>
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
>
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

Unreasonable delay that is prejudicial to creditors includes "failing to appear or file necessary schedules, or otherwise failing to take any necessary steps for the proper administration of the estate." 6 COLLIER ON BANKRUPTCY ¶ 707.03[1](a). The court finds dismissal is warranted in this case pursuant to 11 U.S.C. § 707(a)(1), Debtor failing to appear at 341 Meetings.

Creditor seeks further relief pursuant to 11 U.S.C. § 349(a), which states:

> (a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were

> dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

Creditor argues that 11 U.S.C. § 349(a) grants the court authority to dismiss a case with prejudice. Collier's treatise instructs, in regard to 11 U.S.C. § 349(a), that:

> Nor does the dismissal, in and of itself, constitute a bar to the filing of a subsequent petition by the same debtor, unless section 109(g) is applicable. Section 109(g) mandates that if an individual or family farmer debtor's case has been dismissed for failure of the debtor to obey court orders or to properly appear and prosecute the case, or if the debtor has obtained voluntary dismissal of the case following the filing of a request for relief from the automatic stay, the debtor may not commence a subsequent case within 180 days of the pendency of the prior case.

3 COLLIER ON BANKRUPTCY ¶ 349.02[1]. Creditor has made no showing that 11 U.S.C. § 109(g) applies here, Debtor in this case being neither an individual nor family farmer.

In the motion, it appears that Creditor conflates dismissal with prejudice with the court placing a bar on a debtor filing a subsequent bankruptcy case. This is shown in the prayer paragraph at the end of the Motion, which states:

> The Debtor's actions constitute cause to dismiss this Chapter 7 case under Bankruptcy Code § 707(a). Accordingly, the Court should dismiss this case with prejudice pursuant to Bankruptcy Code § 349(a) for a period of 180 days, so that the Debtor cannot be used again to improperly stay a foreclosure sale of the Property.

Motion, p. 3:4-7; Dckt. 21. As requested, it appears Creditor seeks to issue an order stating that for 180 days after the dismissal of this case the Debtor cannot get a discharge in subsequent case filed during that 180 days. This is discussed in 3 COLLIER ON BANKRUPTCY ¶ 349.02[2], which discussion includes (emphasis added):

> [2] Dismissal with Prejudice
>
> Although the general rule of section 349(a) is that dismissal of a case is without prejudice, the court is given the discretion to order otherwise for cause. Thus, when dismissal is predicated on grounds that would **justify barring the debtor from discharge** in the dismissed case or in **a subsequent case**, the court has the power **to dismiss a case with prejudice**. . . .

3 COLLIER ON BANKRUPTCY ¶ 349.02[3] (emphasis added) then continues with a discussion of the difference from a dismissal with prejudice and the court placing a bar on refiling a bankruptcy case by that debtor:

> [3] Dismissal with Injunction Against Future Filing
>
> A dismissal with prejudice **must be distinguished from** an order prohibiting the debtor from filing a bankruptcy case for some period of time in the future. **The former** [dismissal with prejudice] determines whether debts owed at the

> time of filing of the original bankruptcy petition can ever be discharged, but **does not prevent the debtor from commencing a subsequent case that would otherwise be permitted by the Code**. The latter does not affect whether particular debts can be discharged, but determines whether the debtor has access to the bankruptcy court in the future. Bankruptcy courts have, on occasion, enjoined the filing of a second petition for a period of time, usually six months, when it was clear that the debtor was trying to circumvent the attempts of creditors to modify the automatic stay in the original case. Similarly, courts have refused to permit repeated filings by a debtor for the purpose of thwarting foreclosure on real property when the stay had been lifted in the dismissed case.

Creditor acknowledges that a statutory provision exists to address this type of situation where interests in property were being transferred around and multiple bankruptcy cases were being filed by different entities to improperly seek protection by the automatic stay to defeat a foreclosure on that property. In the Points and Authorities addressing Creditor addresses the provisions of 11 U.S.C. § 362(d)(4) relief, Movant states:

> While the Bankruptcy Code's lift stay contains some provisions relating to serial filings, **these specific provisions of the Bankruptcy Code do not address the situation such as here, where the Debtor is using multiple entitles to file successive bankruptcies to retain control over their property** with the intent to engage in activities that will result in an expeditious dismissal of their bankruptcy cases.

Pts and Authorities, 8:12-15, Docket 23. Creditor then specifically addresses 11 U.S.C. § 362(d)(4) and why Creditor finds that it will not address this situation where fractional interests in property are being passed around and then a series of bankruptcy cases are being filed to delay a foreclosure sale.

> [2] While Bankruptcy Code § 362(d)(4) does provide a lender some protection against serial filings involving the same real property by providing grounds for relief from the automatic stay, such provision does not protect a lender from a case such as this where the debtor does not cooperate with the trustee, does not comply with the basic requirements of a debtor in the bankruptcy, and the debtor takes no action to pursue the liquidation of its assets in Chapter 7, all of which are designed to engender a dismissal of the bankruptcy case.

Points and Authorities, footnote 2; Dckt. 23.

It is unclear to this court what the Creditor is asserting as a right to "protection" from a "debtor does not cooperate with the trustee, does not comply with the basic requirements of a debtor in the bankruptcy, and the debtor takes no action to pursue the liquidation of its assets in Chapter 7." A "debtor" does not liquidate property of a bankruptcy estate. It is unclear how a debtor not cooperating with a trustee is addressed with a request to bar this Debtor from refiling another case for 180 days.

While dismissive of 11 U.S.C. § 362(d)(4) as not being relief that would be sought by a creditor who is suffering from purported fractional interest holders filing a series of bankruptcy cases, the court reads the plain language of the statute to the contrary, and finds that it is the statutory "correction" to the situation facing Creditor.

Congress provides creditors with a method for ensuring that property which secures a debt will not be subject to a series of automatic stays by multiple filings of bankruptcy cases by alleged fractional interest holders of that property, stating in 11 U.S.C. § 362(d)(4) [emphasis added]:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
> . . .
>
> > (4) with respect to a **stay of an act against real property** under subsection (a), by a **creditor whose claim is secured by an interest in such real property**, if the court finds that the **filing of the petition was part of a scheme to delay, hinder, or defraud creditors** that involved either—
> >
> > > (A) **transfer of all or part ownership of**, **or other interest in, such real property** without the consent of the secured creditor or court approval; or
> > >
> > > (B) **multiple bankruptcy filings affecting such real property**.
> > >
> > > If recorded in compliance with applicable State laws governing notices of interests or liens in real property, **an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court**, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Creditor's "beef" concerning the Texas Property is that fractional interests are purported to be placed in multiple entities (two identified to date) and then multiple bankruptcy cases are filed to stop the foreclosure sale. 11 U.S.C. § 362(d)(4) appears to be exactly the statutory relief for a situation where fractional interests are carved from the full herd of ownership interests and then purported to be owned by a different entity.

Creditor has not provided the court with a basis for dismissal with prejudice pursuant to 11 U.S.C. § 349(a), there merely being a single bankruptcy case filed by this Debtor. Even if the court were to bar this Debtor from refiling a bankruptcy case for 180 days, that would not preclude fractional interests to be purportedly transferred to another entity that would then file bankruptcy.

It is unclear why Creditor is ignoring the plain language of the statutory relief is stated by Congress in 11 U.S.C. § 362(d)(4), especially in light of the relief requested by Creditor not being relief that would protect it from future similar conduct by other fractional interest holder debtors.,

At the hearing, **XXXXXXX**

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by U.S. Bank Trust Company, National Association as Trustee for Velocity Commercial Capital Loan Trust 2023-2 ("Movant," "Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

16. 24-22093-E-7 MOH-1 | **MICHAEL SILVA** / **Michael Hays** | **MOTION TO AVOID LIEN OF THE SAGRES COMPANY** **7-25-24 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on July 25, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is xxxxxxx.

This Motion requests an order avoiding the judicial lien of Collect Access, LLC, assignee of the Sagres Company's judgment ("Creditor") against property of the debtor, Michael A. Silva ("Debtor") commonly known as 25180 Taft Street, Los Molinos, Ca 96055 ("Property").

A judgment was originally entered against Debtor in favor of Creditor on June 8, 2004 in the amount of $7,103.33. Exhibit A, Dckt. 27. That abstract of judgment was recorded with Tehama County on August 5, 2004, that encumbers the Property. *Id*.

On June 17, 2013, the judgment was renewed in the amount of $35,031.55. Exhibit 2, Docket 27. On April 5, 2024, Creditor mailed out a Notice of Levy under a Writ of Execution to levy and sell the Property. Ex. 3, Docket 27. Creditor asserts the total amount due on the Notice of Levy as $83,247.50. *Id.*

The Declaration of Debtor is provided in support of the Motion, in which he testifies that it is his opinion as the owner of the Property that the Property has a value of $325,000. Decl., p. 2:5-8; Dckt. 26. Debtor also provides a description of the Property, stating that for heating and cooling it has a wood stove and a swamp cooler. *Id*.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 8, 2024. Docket 36. Creditor states:

1. Debtor has failed to meet his burden of proof to show that the value of his real property is allegedly only $325,000.00. Opp'n 2:26-28, Docket 36.

2. Creditor believes that the value of the property is closer to $400,000.00 rather than the amount stated by the Debtor. *Id.* at 3:6-7.

3. Debtor fails to set forth any valid appraisal of the Property. *Id.* at 4:10.

4. Creditor consulted a California licensed appraiser to obtain his professional opinion based on his knowledge of the area and past comparable sales, the Appraiser values the property at least at approximately $400,000.00. *Id.* at 4:17-20.

5. Debtor also fails to set forth any legal or factual basis which could reasonably establish Debtor or his counsel as qualified individuals to accurately and without bias, appraise the value of the Subject Property or that there was sufficient evidence to constitute personal knowledge for either party to make such statements. *Id.* at 4:21-25.

6. Considering a price of $400,000, that would leave equity of $66,682 for Creditor's lien after subtracting Debtor's exemption and all voluntary liens, so this amount of the lien cannot be avoided. *Id.* at 7:13-17.

Creditor filed the Declaration and Exhibits in this matter as one document. Docket 37. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR.

R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

Furthermore, the court notes Local Bankruptcy Rule 9004-2(d)(2) states: "Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document." Movant did not comply with this Rule in filing her Exhibits.

At the hearing, **xxxxxxx**

Creditor's attorney, Tappan Zee, submits his Declaration in support. Mr. Zee states he disputes the $325,000 value Debtor has alleged. Decl. ¶ 4, Docket 37. Mr. Zee contacted an Appraiser, Brian Spear, who has provided an Appraisal of the Property in the amount of $400,000. *Id.* at ¶ 6. Mr. Spear's Appraisal, on page 6 of the attached Exhibits, states the appraisal is actually $415,000. *Id.*

While questioning the Debtor, as the owner of the Property, to provide his opinion as to the value thereof, [Fn.1.] Creditor does not provide the Declaration of the Appraiser to provide the court with expert testimony (evidence) concerning the value of the Property.

FN. 1. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor has attached the copy of an unauthenticated Appraisal Report, in which Attorney Zee states that the Appraisal Report attached as Exhibit A is a true and accurate copy of the Appraisal Report that the Appraiser gave to Attorney Zee. This does not provide credible evidence or testimony of the Appraiser.

Attorney Zee then testifies in Paragraph 7 that his client, Creditor, has told Attorney Zee that the Property has a value of at least $400,000. In addition to this being hearsay, it may that Attorney Zee has waived the attorney-client privilege with respect to attorney-client communications concerning the value of the Property.

Creditor has not presented the court with competent, credible, authenticated evidence of value of the Property.

DEBTOR'S RESPONSE

Debtor filed a Response on August 15, 2024. Docket 39. Debtor states:

1. The Declaration and Exhibits Creditor has filed should not be considered as evidence for failing to comply with the Local Rules in numbering Exhibits and filing them separately. Resp. 1:26-31, Docket 39.

2. Mr. Spear's Appraisal is a "desktop evaluation of the subject property," and no physical inspection was performed. However, the home is in disrepair as Debtor is elderly, severely disabled, and has been unable to upkeep the home. *Id.* at 3:22-30.

3. The discrepancy between Mr. Zee's Declaration that the Property is worth $400,000 and Mr. Spear's Appraisal that the Property is worth $415,000 casts doubt on whether Mr. Zee testified accurately under penalty of perjury. *Id.* at 2:19-22.

4. Debtor has included in his Schedules an informal appraisal from a real estate agent Don Delaney, Jr. where he states the value of the Property is between $320,000 or $325,000. *Id.* at 4:9-15.

5. The comparable properties Mr. Spear relied on are not helpful as the condition of those properties is better than the condition of Debtor's Property. *Id.* at 5:1-16.

6. The opposition should be overruled.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $325,000 as of the petition date. Schedule A/B 3:1.1, Docket 22. There is an addendum to Schedule A/B at page 9 where a Donald Delaney Jr. gives an estimate that the Property is worth $320,000 to $325,000. Debtor also provides his testimony, as the owner of the Property, that it has a value of $325,000. Dec., p. 2:9-11; Dckt. 26.

Creditor has not provided the court with properly authenticated, credible evidence or expert testimony as to the value of the Property.

The unavoidable consensual liens that total $7,152 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D 12:2.1, Docket 22. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $326,166 on Schedule C. Schedule C 10:2, Docket 22.

At the hearing, **XXXXXXX**

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).~~

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Michael A. Silva ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxx**, and the judgment lien of Collect Access, LLC, assignee of the Sagres Company's judgment, California Superior Court for Tehama County Case No. 11899, recorded on August 5, 2004, Book 2543 and Page 219, with the Tehama County Recorder, against the real property commonly known as 25180 Taft Street, Los Molinos, Ca 96055, is **xxxxxxx**.

FINAL RULINGS

17. 24-22846-E-11 **ISMOIL KASIMOV**
David Foyil

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-2-24 [32]

Final Ruling: No appearance at the August 22, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on August 2, 2024. The court computes that 20 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: $436 due on July 29, 2024.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.