UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 22, 2022 at 10:30 a.m.

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1. **21-24291-E-7** **JIWAN KAUR** **CONTINUED OBJECTION TO DEBTOR'S**
JWC-1 **Peter Cianchette** **CLAIM OF EXEMPTIONS**
5-18-22 [33]

1 thru 2

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, May 18, 2022. By the court's calculation, 71 days' notice was provided. 28 days' notice is required. An amended notice of hearing was served on Debtor, Debtor's Counsel, Chapter 7 Trustee, and Office of the United States Trustee on May 23, 2022. By the court's calculation, 66 days' notice was provided.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is xxxxxxxxx.

BMO Harris Bank N.A. ("Creditor") objects to Jiwan Kaur's ("Debtor") claimed exemptions under California law because there is serious question as to whether the exempted property is actually Debtor's homestead. California Code of Civil Procedure § 704.730 provides an "automatic" homestead

exemption for debtors, because the filing of a bankruptcy petition is the equivalent to a forced sale of a homestead. *E.g., In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016).

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Although California homestead exemption legislation should be construed liberally and in favor of the debtor (*E.g., In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018)), to qualify as a homestead a property must still be the principal dwelling of either the debtor or their spouse. California Code of Civil Procedure § 704.710(c). Debtor has claimed a $248,110.00 exemption in the property commonly known as 5918 Meeks Way, Sacramento, CA 95835 ("Property") on their Schedule C. Dckt. 1.

However, Debtor also stated at the meeting of creditors held March 1, 2022, that they hold bare legal title for the benefit of senior citizens who reside at the Property. Declaration, Dckt. 35. Debtor has further stated on their Schedule I that they are a caregiver for "In Home Supportive Services," implying that the Property may, in fact, be Debtor's place of employment rather than their homestead. Dckt. 1. Therefore, there is serious doubt as to whether the claimed homestead is, in fact, Debtor's principal dwelling.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoenaed documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.

2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.

3. Creditor has provided Rule 26 disclosures to Debtor.

4. Debtor responded to written discovery.

5. Debtor's deposition is set for July 29, 2022.

6. Debtor's Counsel is out of state August 3-12, 2022.

7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Objection to Claim of Exemptions to 10:30 a.m. on September 22, 2022.

September 13, 2022 Status Report

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor's homestead exemption. The parties propose the court set a briefing schedule and a final hearing date for oral argument.

The court sets the final hearing date to xxxxxxxxxx. If parties wish to file supplemental pleadings, those pleadings are to be filed by xxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by BMO Harris Bank N.A. ("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 hearing on the Objection to Claimed Exemptions is continued to xxxxxxxx.
>
> **IT IS FURTHER ORDERED** that supplemental pleadings, if any, are to be filed by xxxxxxxx

2. 21-24291-E-7 PLC-1 — JIWAN KAUR, Peter Cianchette — CONTINUED MOTION TO AVOID LIEN OF BMO HARRIS BANK, 2-2-22 [12]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. 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 BMO Harris Bank ("Creditor") against property of the debtor, Jiwan Kaur ("Debtor") commonly known as 5918 Meeks Way, Sacramento, California ("Property").

A judgment was entered against SSSP Trucking Inc., in favor of Creditor in the amount of $787,091.84. Exhibit 2, Dckt. 15. An abstract of judgment was recorded with Sacramento County on July 27, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $560,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $312,390.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $248,110.00 on Schedule C. Dckt. 1.

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).

CREDITOR'S OPPOSITION

On February 17, 2022, BMO Harris Bank, Creditor, filed an Opposition to Debtor's Motion to Avoid Judicial Lien. Dckt. 21. The Opposition states the court should not adjudicate the Motion without holding an evidentiary hearing after an adequate opportunity for discovery. Creditor has serious questions on whether or not the Debtor is entitled to a homestead exemption on the Property. Creditor would like an evidentiary hearing to take place to determine:

(a) whether the Property is an investment property for use in Debtor's home health care business;

(b) whether Debtor actually resides in the Property; and

(c) if Debtor currently resides in the Property, and whether Debtor has resided in the Property for the period required to give rise to a homestead exemption.

Creditor requests the court to treat the Motion as a "long cause" matter; use the March 3, 2022, hearing date as a scheduling conference; establish deadlines for discovery and the presentation of evidence; and set a date for an evidentiary hearing.

CREDITOR'S SEPARATE STATEMENT

Creditor filed a Separate Statement along with their Opposition. Dckt. 22. The Statement provides for Creditor's arguments for their allegation that the real property of 5918 Meeks Way, Sacramento, California, is actually an investment property. Creditor points to Debtor's Declaration, Dckt. 14, that Debtor states the Property is her real property and has claimed an exemption. Further, Debtor is being served with pleadings at 2248 Coroval Drive, Sacramento, California. Additionally, the Deed of Trust for the Property, Debtor indicates her residence is the Coroval Property. Lastly, Debtor's boyfriend/partner, Sukhwinder Singh Kang, has advised Creditor on at least two occasions that Debtor acquired the Property for the purpose of running an in-home elder care business for friends and relatives.

Counsel for Creditor reported that based on the information provided at the First Meeting of Creditors, there are other issues for which discovery is required. The Parties agreed to continue the hearing so that they may proceed with orderly discovery on these issues.

Creditor's Objection to Debtor's Claim of Exemptions

On May 18, 2022, Creditor filed an Objection to Debtor's Claim of Exemptions. Dckt. 33. Creditor's objections consist of essentially the same arguments as Creditor's opposition in this motion. Creditor requests that both contested matters be heard and litigated together.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoened documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.

2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.

3. Creditor has provided Rule 26 disclosures to Debtor.

4. Debtor responded to written discovery.

5. Debtor's deposition is set for July 29, 2022.

6. Debtor's Counsel is out of state August 3-12, 2022.

7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Motion to Avoid Judicial Lien to 10:30 a.m. on September 22, 2022.

September 13, 2022 Status Report

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor's homestead exemption. The parties propose the court set a briefing schedule and a final hearing date for oral argument.

The court sets the final hearing date to xxxxxxxxxx. If parties wish to file supplemental pleadings, those pleadings are to be filed by xxxxxxxxx

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 Jiwan Kaur ("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 hearing on the Motion to Avoid Judicial Lien is continued to xxxxxxxx.
>
> **IT IS FURTHER ORDERED** that supplemental pleadings, if any, are to be filed by xxxxxxxx

3. 22-21000-E-7 MHK-3 | **ROBYN JOHNSON** Douglas Jacobs | **AMENDED MOTION TO EMPLOY WFS, INC., DBA TRANZON ASSET STRATEGIES AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES**
9-9-22 [67]

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, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2022. By the court's calculation, 22 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 Sell, Employ, and Pay is xxxxxxx .

Geoffrey Richards ("Trustee") seeks to (1) sell the estate's interest in motor vehicles through auction; (2) employ WFS, Inc., dba Tranzon Asset Strategies ("Auctioneer"); (3) to pay Auctioneer commission and expenses from sale proceeds; and (4) waive the fourteen (14) day stay imposed by Federal Rules of Bankruptcy Procedure 6004(h). Pursuant to Local Bankruptcy Rule 9014-1(d)(5)(iii), these requests for relief may be joined in a single motion.

The Motion states with particularity that the sale is requested on the following grounds and the relief requested:

I. Property to be sold:

1. 2005 Freightliner M2106 Box Truck, Vin ending in 2468

2. 2013 Ram Truck 2500, Vin ending in 8023
(the court notes Trustee's Amendment to the Motion, Dckt. 67, where they corrected the Vin from 7120 to 8023)

3. 2003 Chevrolet Corvette ZO6, Vin ending in 4962

4. 2018 Dodge Ram 3500, Vin ending in 4382

5. 2019 Polaris 567CC, Vin ending in 0607

II. Encumbrances on the Property to be sold:

Vehicle	**Anticipated Auction Price**	**Obligation Secured by Liens Encumbering Vehicle**
2005 Freightliner M2106 Box Truck	$40,000 - $50,000	($199,000.00)
2018 Dodge Ram 3500, VIN ending in 4382	$26,000.00	($23,719.62)

A. The Trustee states that there are several creditors with judgment liens, but none have perfected the judgment lien on any of the vehicles as required by California Code of Civil Procedure § 697.530(d)(1) [judgment lien does not attach to vehicle required to be registered with the Department of Motor Vehicle], California Commercial Code § 9311(a)(2)(A) [filing a financing statement is not effective to perfect a security interest in a vehicle required to be registered under the Vehicle Code], and California Vehicle Code § 6300-6303 [recording and perfecting a "security interest (not a judgment lien) in a vehicle].

B. For the 2005 Freightliner, Arnett and Johnston have a consensual lien on the vehicle.

C. For the 2018 Dodge Ram 3500, TD Auto Finance has a consensual lien on the vehicle.

III. Legal Basis for the sale.

A. The Motion requests the sale be authorized pursuant to 11 U.S.C. § 363(b), which provides for the sale outside the ordinary course of business, subject to the liens and encumbrances thereon.

The sale is not requested pursuant to 11 U.S.C. § 363(f) free and clear of liens and encumbrances, with such liens and encumbrances attaching to the proceeds of the sale.

IV. In requesting the sale pursuant to 11 U.S.C. § 363(b), Movant states that most of the Vehicles are not encumbered by any liens.

A. For the 2018 Dodge Ram 350, the Trustee projects there being a minimum bid of $26,000, with the vehicle being encumbered by a lien securing an obligation in the amount of ($23,719.62).

1. As discussed below, the auctioneer is to be paid a commission of 20%, with 10% paid by the Movant and 10% paid by the buyer as a "buyer's premium." Assuming that the $26,000 minimum bid price is met, then there would be no sales proceeds for the Bankruptcy Estate, only 20% in commissions collected by the auctioneer:

a.	$26,000	purchase price
	($ 2,600)	10% of the commission paid by the Bankruptcy Estate
	($23,719.62)	Claim secured by the vehicle
	($ 319.62)	Net sales proceeds for the Bankruptcy Estate

B. 2005 Freightliner. Movant states that there are projected auction price to be from $40,000 to $50,000. The obligation secured by the 2005 Freightliner totals ($199,000), which is also secured by a "judgment lien" (Motion, p. 8:1-5; Dckt. 59) against real property to be sold by the Movant. While the sale will not generate any proceeds for the Bankruptcy Estate now, it will reduce the obligation that is secured by the real property, from which Movant projects receiving a net recovery after payment of all liens and expenses.

The creditor identified as having a lien on the 2005 Freightliner is identified as Randall Arnett, who has filed Proof of Claim 1-1. In Proof of Claim 1-1 Creditor Arnett asserts have a lien on real estate, motor vehicle, and personal and business accounts, which has been perfected by "judgment line/UCC-1." POC 1-1, ¶ 9.

Creditor Arnett states that the basis of his claim is a Court Judgment that was renewed October 8, 2021. *Id.*, ¶ 8.

Attachment 5 to Proof of Claim 1-1 is a Security Agreement dated January 11, 2012, for which the two vehicles listed as collateral do not include the 2005 Freightliner. This Security Agreement is signed by and the security interest is granted by a person named "Greg Johnson."

In the Motion it states that the Trustee has determined that a consensual security interest exists for Creditor Arnett based on a Security Agreement dated January 2012, and directs the court to the Trustee's Declaration, ¶ 6. Motion, p. 4:12-14.

In his Declaration, the Trustee states that with respect to the 2005 Freightliner and the asserted lien of Creditor Arnett:

> 6. I have reviewed Proof of Claim No. 1 filed in the Debtor's case by Arnett, which includes a copy of abstracts of judgment recorded in Butte County as well as the Notices of Judgment Lien described above, and also a copy of a January 2012 Security Agreement between Johnson and Arnett that, by VIN, describes one of the Vehicles, specifically a 2005 Freightliner M2106 Box Truck (the "Freightliner").

Declaration, ¶ 6.

As noted above, the Security Agreement dated January 11, 2012, attached as Attachment 5 to Proof of Claim1-1 includes the following terms:

1. The Security Agreement is between Greg Johnson and Randall Arnett. Sec. Agmt, p. 1.

2. The Collateral is described as:

   a. 2003 Ford pick-up truck, VIN listed, and

   b. 2005 commercial trust, VIN listed (which the Trustee testifies is the VIN for the 2005 Freightliner).

3. The Security Interest is granted to secure the Judgment that Creditor Arnett obtained against Greg Johnson. *Id*. 2 (Indebtedness defined as the judgment obligation).

4. Perfection of the security interest is said to be accomplished by Greg Johnson assigning the "Pink Slip" to Creditor Arnett. *Id*.

   a. No copy of the "Pink Slip" is attached to Proof of Claim 1-1, the Trustee does not testify as to there being a "Pink Slip" listing Creditor Arnett as the lien holder, and on Proof of Claim 1-1 Creditor Arnett states that his liens are perfected only by "Judgment lien/UCC-1." POC 1-1, ¶ 9.

V. State Court Judgment

Attachment 6 to Proof of Claim 1-1 is a copy of the Application for and Renewal of Judgment for the State Court Judgment upon which Creditor Arnett bases his claim. The Application is signed October 18, 2021. On the Application it states that the original Judgment was entered on November 23, 2011, which is within the 10 year renewal period for judgments under California law. The Security Agreement was executed on January 11, 2012, which is after the original Judgment was entered.

VI. Evidence of Perfection of Lien Not Provided

Neither in the Trustee's Declaration, as an exhibit to the Motion, nor attached to Proof of Claim 1-1 is a copy of a title certificate listing Creditor Arnett as having a lien on the Freightliner. In the Motion it is alleged that Creditor Arnett is listed on the title certificate as the lienholder.

Sale of Freightliner Pursuant to 11 U.S.C. § 363(b)

As noted above, the Trustee has not requested the sale be made pursuant to 11 U.S.C. § 363(f) as one free and clear of liens, with the lien attaching to the sales proceeds. In the Motion the Trustee merely states that the Freightliner will be sold and the net proceeds applied to Creditor Arnett's claim. From the Motion and Trustee's Declaration, it is not clear how the Freightliner, being subject to a lien for ($199,000) will be sold at auction.

In digging through the Exhibits, the court notes that Exhibit C is identified as being a Stipulation Regarding Sale of Vehicles Subject to Liens. Dckt. 63. The Stipulation is between the Trustee and Creditor Arnett. The agreed to terms of the Stipulation are:

a. Trustee is authorized to sell the Freightliner by auction sale. From the sales proceeds, the Auctioneer's Commission and expenses related to the sale of the Freightliner, the net proceeds shall be paid to Creditor Arnett. Stip. p. 3:16-19; Dckt. 63.

b. The Stipulation authorizes the Trustee to sell a 2003 Ford Pickup Truck, VIN ending in -9406, to the Debtor for not less than $2,000. From those proceeds the Trustee will retain $200.00 and $1,800 will be paid to Creditor Arnett. *Id*., p. 3:20-24.

This is the second vehicle listed in the Security Agreement. The Motion does not seek authorization to sell this 2003 Ford Pickup Truck.

Approval of Sale of Property

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

The Bankruptcy Code permits Trustee to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to auction the personal property commonly known as:

1. 2005 Freightliner M2106 Box Truck, Vin ending in 2468

2. 2013 Ram Truck 2500, Vin ending in 8023
(the court notes Trustee's Amendment to the Motion, Dckt. 67, where they corrected the Vin from 7120 to 8023)

3. 2003 Chevrolet Corvette ZO6, Vin ending in 4962

4. 2018 Dodge Ram 3500, Vin ending in 4382

5. 2019 Polaris 567CC, Vin ending in 0607

The Public Auction will be held on September 27, 2022 at a "major auction event", with approximately 500 bidders.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because auctioning the Property will provide a greater net return to the Estate than attempting to sell the item through a private sale.~~

Employment of Auctioneer

Trustee argues that Auctioneer's appointment and retention is necessary to sell the property because the Auctioneer has over twenty years of experience and is able to expose the Property to a large number of buyers. The terms of employment include:

A. Auctioneer will conduct an online auction on September 27, 2022.

B. Auctioneer will store the Property at an auction facility in Roseville, California.

C. Auctioneer will oversee the auction activities and will reach potential buyers through a marketing campaign incorporating direct mail, website posting, and emails.

D. Auctioneer will post an online auction website with biding for specific period.

Lonny Papp, a Vice-President of Tranzon Asset Strategies, testifies that Auctioneer has performed as the auctioneer Trustee in the past, Auctioneer is ready to conduct a live auction online, Auctioneer will receive a commission of 10% of the gross selling price of the Property and a 10% buyer's premium from each purchaser.

Lonny Papp testifies he and the company 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.

Employment of a Disinterested Professional

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.

Here, the professional sought to be hired by the Trustee is being paid 10% of the sales proceeds as a commission, and then is being paid by the purchaser (an adverse party to the Trustee) an additional 10%. The Auctioneer, being paid by the purchaser is now placed in a position of having an adverse interest to the Bankruptcy Estate – being paid by an adversary to the Bankruptcy Estate.

This stating that the commission is only 10%, and then getting paid another 10% by the purchaser is a misleading statement of the amount of the commission. (See discussion below.) More significantly, it has this professional putting money from the Trustee in his left pocket and then money from the purchaser to "do the deal" in his right pocket.

At the hearing, counsel for the Trustee addressed this conflict, stating **xxxxxxx**

~~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 Tranzon Asset Strategies as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit B, Dckt. 64.~~

Allowance of Professional Fees

The Motion seeks to allow compensation to the Auctioneer of only 10% of the gross sales price, and repayment of marketing and labor expenses not estimated to exceed $7,500.00. The Motion discloses that for conducting this sale as a professional employed by the Trustee, the Auctioneer will also be paid an additional 10% from the purchaser. In substance, this is a 20% commission.

Even back in the "olden days" when the judge in this Case was in private practice and engaging the services of an auctioneer, some auctioneers would state that they are only taking a 10% commission, giving the seller a "good deal." The auctioneer would then say that an additional 10% as a buyer's premium would be paid by the purchaser, but that didn't cost the seller anything, it was being paid by the purchaser.

After a few minutes of basic economic discussion, the auctioneers would admit that if the fair sales price of a vehicle was $20,000 (the fair market auction value) and a buyer was told that on top of the purchase price the buyer would have to pay an additional 10% (here $2,000), then the buyer would drop the purchase price to $18,000, reducing the gross sales price by the $2,000 he was having to paid directly to the auctioneer. Thus, this buyer premium "reduction" in commission actually costs the seller $2,000 in sales proceeds.

~~If the fair compensation for selling a vehicle at auction is 20% of the gross sales price, then that should be clearly stated in the employment agreement. In Bankruptcy, if the 20% is not stated as the compensation to be authorized the auctioneer, but only 10% is sought as compensation for the auctioneer, then the auctioneer cannot be paid an "extra" 10% in commission/premium not approved by the court through the back door from the buyer. Such violates federal law. 11 U.S.C. §§ 327, 328, 330.~~

At the hearing, counsel for the Trustee addressed this issue, stating **xxxxxxx**

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

While professionals are often compensated on an hourly lodestar basis, such is not an exclusive method of compensation. Real estate agents and auctioneers, for example, are compensated by a reasonable percentage commission/fee based on the sales price. As with other professionals, they can also be reimbursed for the costs and expenses, unless such are built into the percentage commission.

The court must determine that the percentage sought for the auctioneer, here 20% (the direct 10% and the back door buyer premium 10%) is reasonable compensation. 11 U.S.C. §§ 328, 330. In the Motion, Trustee does not provide the court with an estimate of the gross sales proceeds upon with the Auctioneer will be taking 20% off the top. If selling the five vehicles generated $35,000 in gross sales, then that would be $7,000 for the auctioneer. That does not appear to be unreasonable.

However, if for the same amount of work the Auctioneer easily and quickly sold the vehicles for $150,000, then the Auctioneer would be taking $30,000 off the top, and it not being clear where there was $30,000 of services provided to the Trustee.

Lonny Papp, a vice-president of the Auctioneer provides in his Declaration (Dckt. 62), incorporating Exhibit A (Dckt. 63) an estimate of the gross sales proceeds. Using his average calculation, the gross sales proceeds would be around $105,000. The 20% commission would then be $21,000.

In fulfilling the statutory obligation for compensation to professionals to be reasonable, this court has been very careful not to read that as saying the compensation should be "cheap" or that providing services to a bankruptcy trustee or a Debtor in Possession is a "see how much the fees can be beaten down." Professionals must be fairly compensated, and this court recognizes that in some situations (fortunately not appearing to be in this case) a professional hired by a trustee has to deal with a lot of debtor made "challenges."

Approving fees of $21,000 based on a commission of 20% does not strike the court as unreasonable. In these situations the court is concerned, and has the obligation arising under 11 U.S.C. § 328(a) to consider whether a pre-authorized fee amount, such as this 20% commission, turns out to be unreasonable based on later discovered facts and information.

Here, with a gross sales value of $105,000, a 20% commission of $21,000 is not unreasonable, but if the vehicles sell for substantially more, and the $105,000 projected sales price given to the court is not accurate, then a flat 20% on the gross sales proceeds may be unreasonable based up the actual sales price information.

In this type of situation, to protect both the Trustee and Auctioneer, and the court fulfill its duties arising under 11 U.S.C. § 328, the court approves the 20% commission, with the amount of such fees not to exceed a specified amount, and any remaining proceeds in excess thereof goes to the Trustee for the Bankruptcy Estate. Recognizing that the higher gross sales proceeds might require additional work or expense by the Auctioneer, the court allows the auctioneer to seek by a supplemental motion the allowance of a greater amount that the cap set in the employment and allowance order.

In this Bankruptcy Case, the court approves a 20% commission paid to the Auctioneer computed on the gross sales proceeds, with a maximum of $26,000 in commissions to be paid to Auctioneer, and all other sales proceeds, after payment of the Auctioneer's actual expenses in selling the vehicle, not to excess $7,500, shall be paid to the Trustee for the benefit of the Bankruptcy Estate.

Additionally, if the Auctioneer or Trustee believe that a higher amount than $26,000 for the commissions paid to Auctioneer for the sale of the Vehicles is appropriate, they may file a simple supplemental motion requesting an additional amount be allowed as compensation, and provide the court with a simple explanation why the higher amount is appropriate. (The simple explanation cannot "simply" be, "well, the gross sales proceeds were higher, so the commission fees allowed should be higher.)

At the hearing, counsel for the Trustee stated **xxxxxxx**

FEES AND COSTS & EXPENSES ALLOWED

Fees

Contingency Fee: Percentage of Sale

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of personal property described as:

1. 2005 Freightliner M2106 Box Truck, Vin ending in 2468

2. 2013 Ram Truck 2500, Vin ending in 8023

3. 2003 Chevrolet Corvette ZO6, Vin ending in 4962

4. 2018 Dodge Ram 3500, Vin ending in 4382

5. 2019 Polaris 567CC, Vin ending in 0607

("Property"). The Property will be sold by public auction. Auctioneer's commission for selling these vehicles is 20% of the gross sales proceeds, not to exceed $26,000.00.

The Auctioneer may not be compensated, receive any other fees or payments from any other person, including any "Buyer's Premium" for or in connection with the sale of these Vehicles.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses not to exceed $7,500.00.

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 they do not anticipate any opposition to the Motion and seek to move forward immediately upon entry of the court's order approving the sale.

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 filed by Geoffrey Richards ("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 Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) the Property commonly known as:
>
> 1. 2005 Freightliner M2106 Box Truck, Vin ending in 2468
> 2. 2013 Ram Truck 2500, Vin ending in 8023
> 3. 2003 Chevrolet Corvette ZO6, Vin ending in 4962
> 4. 2018 Dodge Ram 3500, Vin ending in 4382
> 5. 2019 Polaris 567CC, Vin ending in 0607
>
> ("Vehicles"), on the following terms:

A. The Property shall be sold by Public Auction on September 27, 2022 online.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the Auction, and after payment of the above to any creditors having perfected liens encumbering the vehicles being sold.

C. Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ Tranzon Asset Strategies as Auctioneer for Trustee ("Auctioneer") on the terms and conditions as set forth in the Auction Agreement filed as Exhibit B, Dckt. 64; as modified and allowed by this Order authorizing the following fees and expenses to be paid Auctioneer:

1. Fees in the form of a 20% commission computed on the gross sales price of the Vehicles, with the commission not to exceed $26,000.00 in the aggregate.

2. Expenses incurred by Auctioneer relating directly to the sale of the Vehicles in the amount not to exceed an aggregate total of $7,750.00,

All sales proceeds in excess of the 20% commission and expenses allowed in this Order shall be disbursed to the Trustee for the benefit of the Bankruptcy Estate in this Case.

IT IS FURTHER ORDERED that Auctioneer may not collect any fees, payments, or other amounts from any persons other than the Trustee relating to the sale of the Vehicles. Auctioneer taking any additional amounts from persons other than the Trustee shall be grounds for vacating the allowance of any compensation and payment of expenses for serving as the Auctioneer employed as a professional by the Trustee, and the allows of $0.00 in fees and expenses for Auctioneer.

IT IS FURTHER ORDERED that the Auctioneer or Trustee may request the court to allow an aggregate of more than $26,000.00 in commission from the sale of the Vehicles by a "simple" supplemental motion providing the court with sufficient information as to why the higher amount is reasonable.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the proceeds from the sale of the above vehicles without further order of the court.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

4. 21-24203-E-7 CRH-2 | **MICHAEL/SHANON BENNETT** **Richard Kwun** | **MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY** **8-31-22 [91]**

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, and Office of the United States Trustee, on August 31, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Confirm Absence of the Automatic Stay 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 Confirm Absence of the Automatic Stay is denied without prejudice.

Secured creditor, Equity Trust Company fbo Bruce A. Nelson IRA ("Movant") moves the court for an order confirming that the automatic stay terminates in its entirety pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Michael Huge Bennett and Shanon Bennett's ("Debtor") second bankruptcy case pending in the last year and that there is no motion seeking to extend the stay pursuant to 11 U.S.C. § 362(c)(3)(B).

A review of Debtor's prior bankruptcy cases reveal that one case was pending in the prior year, such that the provisions of 11 U.S.C. § 362(c)(3) apply. As addressed in this ruling, and other prior decisions in this court, the court does not find the provisions of 11 U.S.C. § 362(c)(3) to be ambiguous as to the scope of the termination of the stay. *See In re Burns*, 639 B.R. 761, 772 (Bankr. E.D. Cal. 2022); *In re Thu Thi Dao*, 616 B.R. 103, 117 (Bankr. E.D. Cal. 2020). The court finds, in reading 11 U.S.C. § 362(c)(3), the stay terminates as to the debtor only, and remains in effect as to property of the bankruptcy estate.

DISCUSSION

In 11 U.S.C. § 362(c)(3)(A), Congress provides for the termination of the automatic stay "with respect to the debtor" as follows [emphasis added]:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and **if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> > (A) the stay under subsection (a) with respect to **any action taken with respect to a debt or property securing such debt** or with respect to any lease **shall terminate** **with respect to the debtor** on the 30th day after the filing of the later case; . . . .

The plain language of this section states that the automatic stay with respect to a debt (obligation owed by a debtor) and any property securing the debt shall terminate, but only terminate with respect to the debtor after the expiration of the thirty (30) day period. From a plain reading of § 362(c)(3)(A), no termination of the automatic stay, other than with respect to the debtor, is provided after the thirty (30) day period.

Movant would have the court believe that although § 362(c)(3)(A)'s plain language terminates the automatic stay as to the Debtor, that the stay is terminated in its entirety in the bankruptcy case. The court is not persuaded.

The court's analysis for interpreting the plain language of 11 U.S.C. § 362(c)(3)(A) begins with the basic rules of statutory construction as enunciated by the United States Supreme Court.

Statutory Interpretation of
11 U.S.C. § 362(c)(3)

To construe what Congress has enacted, judges (and lawyers) always begin with the plain language of the statute. *Duncan v. Walker*, 533 U.S. 167, 172 (2001). The court must consider the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. *JPMCC 2007-C1 Grasslawn Lodging, LLC v. Transwest Resort Props.*, 881 F.3d 724, 725 (9th Cir. 2018). More specifically, courts discern the plain meaning of the statute in its entirety, rather than just the plain meaning of "isolated sentences." *Beecham v. U.S.*, 511 U.S. 368, 372 (1994).

When the language of a statute is "plain," the court cannot disregard its plain terms and must rely on the law as written. *Bostock v. Clayton Cty., Georgia*, __ U.S. ___, 140 S. Ct. 1731, 1749 (2020). Even legislative history can never defeat unambiguous statutory text. *Id*. at 1750. As stated in the plain language of the Supreme Court:

> The task of resolving the dispute over the meaning of § 506(b) begins where all such inquiries must begin: with the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, "the sole function of the courts

> is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

U.S. v. Ron Pair Enterprises., 489 U.S. 235, 242 (1989).

Courts interpret undefined terms in the statutory text using the term's "ordinary or common meaning." *Smith v. United States*, 508 U.S. 223, 228 (1993). When Congress provides an express definition for a term in the statutory text, courts follow that express definition even if such definition differs from the term's ordinary meaning. *Stenberg v. Carheart*, 530 U.S. 914, 942 (2000). A court looks to other interpretive tools to determine a statute's meaning "[o]nly where the statutory text is ambiguous. . . ." *Transwest Resort Props.*, 881 F.3d at 725.

This court notes that, historically, first looking to the plain language to interpret a statute is the practice of the judiciary regardless of ideological leaning. Justices are in agreement that if the plain language and statutory definitions are clear, that is how the statute should be applied. See below.

> As with any other question of statutory interpretation, **we begin with the text of the [Act], the most 'probative evidence'** . . ."

Nebraska v. Parker, 577 U.S. 481, 488 (2016) (emphasis added) (unanimous Supreme Court decision written by Associate Justice Clarence Thomas ("Thomas")).

> As in any case of statutory construction**, our analysis begins with "the language of the statute."** *Estate of Cowart v. Nicklos Drilling* Co., 505 U.S. 469, 475 (1992). **And where the statutory language provides a clear answer, it ends there as well.** *See Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992).

Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438, 119 S. Ct. 755, 760 (1999) (unanimous Supreme Court decision written by Thomas).

> **[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.** . . . "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

Bates v. United States, 522 U.S. 23, 29 (1997) (emphasis added)(quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972))) (unanimous Supreme Court decision written by Former Associate Justice Ruth Bader Ginsburg ("Ginsburg")) (citing *Russello v. United States*, 464 U.S. 16, 23 (1983) .

> This argument runs up against **two well-settled principles of statutory interpretation**. First, "**Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another**." *Department of Homeland Security v. MacLean*, 135 S. Ct. 913, 190 (2015). Because Congress included the "reasonably calculated to give actual notice" language only in §1608(b), and not in §1608(a), we resist the suggestion to read that language into §1608(a). Second, **"we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law."**

Republic of Sudan v. Harrison, 139 S. Ct. 1048, 1058 (2019) (emphasis added) (citing *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 837 (1988) (an 8-1 Supreme Court decisions written by Associate Justice Samuel Alito ("Alito"), and joined by Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, Elena Kagan, Neil Gorsuch, Brett Kavanaugh).

In interpreting whether 11 U.S.C. § 362(c)(3)(A) terminates the stay as to just the debtor, or in the entirety, the court starts with 11 U.S.C. § 362(a), which provides a series of automatic stay provisions which give rights and protections to multiple entities: the debtor, bankruptcy trustee, bankruptcy estate, and interests of creditors with unsecured claims or junior lien secured claims. The provision of 11 U.S.C. § 362(a) provide for specific and extensive statutory injunctive relief, stating (different emphasis added for "debtor" and "property of the estate"):

> [a] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—
> (1) the commencement or continuation, of judicial, administrative, or other action or proceeding *against the debtor* which was or could have been commenced prior to commencement of the bankruptcy case or recover a claim that arose prior to the commencement of the bankruptcy case;
>
> (2) enforcement *against the debtor* **or** property of the estate a judgment obtained before the commencement of the bankruptcy case;
>
> (3) act to obtain possession of property of the bankruptcy estate, from the bankruptcy estate, or exercise control over property of the bankruptcy estate;
>
> (4) act to create, perfect, or enforce any lien against property of the bankruptcy estate;
>
> (5) act to create, perfect, or enforce against property of the debtor any lien that secured a claim that arose before the commencement of the bankruptcy case;
>
> (6) act to collect, assess, or recover a claim against the debtor that arose before the commencement of the bankruptcy case;
>
> (7) setoff any debt owing to the debtor that arose before the commencement of the case against any claim against the debtor;

11 U.S.C. § 362(a)(1)-(7).

It is clear that Congress has created automatic stays which arise to benefit and protect several different entities: (1) **the debtor** and (2) the bankruptcy estate, trustee, and creditors with unsecured claims to be paid from the bankruptcy estate. In the plain language above, there is an automatic stay created in paragraph (4) to protect property of the bankruptcy estate from the creation, perfection, or enforcement of liens (which necessarily had to secure a pre-petition debt of the debtor or a post-petition debt secured by a lien authorized by the bankruptcy court). Then, in paragraph (5) there is an automatic stay to protect **property of the debtor** from the creation, perfection, or enforcement of a lien for a pre-petition debt. These paragraphs create two separate automatic stays protecting two different sets of property. If **property of the Debtor** was to include property of the bankruptcy estate, these provisions would be redundant of the other.

Reviewing 11 U.S.C. § 362(a), Congress has clearly created four provisions that expressly apply to "the debtor" and three that expressly apply to property of the bankruptcy estate, and others that can apply to both. Congress clearly distinguishes between the "debtor" and the "property of the bankruptcy estate" when imposing the automatic stay for multiple purposes.

As Congress has carved out specific provisions for the debtor and the bankruptcy estate, separately, in other subsections of § 362, in interpreting § 362(c)(3)(A), the court finds Congress acted intentionally when it included "as to the debtor" and omitted any reference to the bankruptcy estate. In line with Supreme Court precedent on statutory construction, the court resists reading property of the bankruptcy estate into the language of § 362(c)(3)(A).

This court's interpretation does not stand alone, as the Fifth Circuit Court of Appeal in *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 230-231 (5th Cir. 2019), *cert. denied* 141 S.Ct. 158 (2020), concluded that the plain language of the statute plainly provide for termination of the stay as to the debtor and not the bankruptcy estate (emphasis added):

> We believe the language in § 362(c)(3)(A) is clear. As an initial matter, we note that § 362(c)(3)(A) cannot be read in isolation; it must be read in conjunction with § 362(a), which defines the scope of the automatic stay. **As the First Circuit aptly noted in *In re Smith*, § 362(a) "operates as a stay of certain actions in three categories: against the debtor, the debtor's property, and property of the bankruptcy estate."** For example, § 362(a)(1) stays actions "against the debtor"; § 362(a)(2) stays "enforcement of a judgment against the debtor or against property of the estate"; and § 362(a)(3) stays "any act to obtain possession of property of the estate or of property from the estate."18 After recognizing that § 362(a) operates as a stay as to certain actions in three separate categories, the language in § 362(c)(3)(A) becomes clear. In § 362(c)(3)(A), Congress stated that "the stay under [§ 362(a)] . . . shall terminate with respect to the debtor." There is no mention of the bankruptcy estate, and we decline to read in such language.
>
> **Moreover, "Congress knew how to terminate the entire stay, and in fact did so in the very next section of the statute." Section 362(c)(4)(A)(i)**—which discusses debtors who have had two or more cases pending in the prior year—does not include the limiting language in § 362(c)(3)(A). It merely states that "the stay under subsection (a) shall not go into effect upon the filing of the later case." Accordingly, for debtors falling under § 362(c)(4)(A)(i), the automatic stay is terminated in its entirety. **In contrast, Congress chose to use a qualifier in § 362(c)(3)(A). This can only be interpreted as "impl[ying] a limitation upon the scope of the termination of the automatic stay."**
>
> **Importantly, we are not convinced that this plain meaning interpretation substantially harms creditors.** As one court in this circuit aptly noted, creditors may file a motion for relief under § 362(d) if a debtor is abusing the automatic stay. The motion must be heard within 30 days, and it will be granted unless the debtor can offer the creditor adequate protection. Therefore, even if the automatic stay remains in effect with respect to the bankruptcy estate—as is the case under our interpretation

> of § 362(c)(3)(A)—creditors can still obtain judicial relief under § 362(d) if circumstances demand it.
>
> We recognize that several courts have found § 362(c)(3)(A) somewhat ambiguous. **But when read in conjunction with § 362(a) and the other language in § 362(c), we believe the meaning of the provision is clear.** Moreover, we are not unsympathetic to other courts' conclusions that a contrary interpretation may better serve the BAPCPA's policy goals. **But in a statutory construction case such as this, we begin with the plain language of the statute. When that language is clear, that is where our inquiry ends.** Such is the case here.

This conclusion by the Fifth Circuit is opposition of the conclusion by the First Circuit Court of Appeals in *Smith v. Me. Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576, 590-591 (2st Cir. 2018), that since Congress used language from prior posed legislation to address debtor abuses, then it would have specified that the language "as to the Debtor" does not also mean "as to the bankruptcy estate." This conclusion appears to be a judicial "correction" to the statute for which there is a statutorily defined term, "debtor," to modify that term for purposes of 11 U.S.C. § 362(c)(3)(A) to mean "debtor and the bankruptcy estate." That appears to be contrary to the plain language written by Congress and the statutory definition of "debtor" established by Congress.

Statutory Definitions and Related Law Concerning the Debtor, the Bankruptcy Estate, and Property of the Bankruptcy Estate

In addressing the contention that "as to the debtor" means as to the "estate and all other parties in interest," Congress has not left the courts, attorneys, and parties to scavenge the vast desert of "common meanings" to discern what is meant by "debtor," "bankruptcy estate," or "property of the bankruptcy estate."

Definition of Debtor

First, Congress does not leave who or what is a "debtor" for argument of parties and to be divined by the court, but defines "debtor" in 11 U.S.C. § 101(13) to be:

> (13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

It is the "person" for whom the bankruptcy case has been commenced.

Definition of Person

Congress then makes sure there is no dispute as to who or what constitutes a "person" providing the statutory definition in 11 U.S.C. § 101(41), as:

> (41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that– . . . .

Then, in 11 U.S.C. § 301, 302, and 303, voluntary, joint, and involuntary bankruptcy cases are commenced by or for the "debtor" in that bankruptcy case.

Thus, the "debtor" is the person who has put him/her/itself voluntarily into bankruptcy or has been placed into bankruptcy involuntarily by creditors. Such a person is not "property."

Definition of Property of the Bankruptcy Estate

For what constitutes a "property of the bankruptcy estate," Congress provides the federal law by which the bankruptcy estate is create and what it is comprised of in 11 U.S.C. § 541.

In 11 U.S.C. § 541(a)(1)-(7), the property of the bankruptcy estate is the property which the debtor had as of the commencement of the bankruptcy case, proceeds of that property of the estate, specified interests in property acquired within 180 days of the commencement of the bankruptcy case (such as inheritance, life insurance benefit, or property settlement), avoidable pre-petition transfers, and any interest in property that the bankruptcy estate acquires post-petition.

However, as seen below, certain property is excluded for the bankruptcy estate and certain property can be regained by a debtor, thus taking it out of the bankruptcy estate.

Exclusion of Property From Bankruptcy Estate

In 11 U.S.C. § 541(b)(1) - (10), Congress excludes from property of the bankruptcy estate:

> (1) property for which the debtor can exercise power only for the benefit of a person other than the debtor (i.e. power of attorney, administrator, authorized signatory on another person's account);
>
> (2) a pre-petition terminated nonresidential lease;
>
> (3) higher education assistance program funding;
>
> (4) specified oil and gas interests;
>
> (5) specified education individual retirement accounts;
>
> (6) specified funds in a tuition account in accordance with 26 U.S.C. § 529(b)(1);
>
> (7) specified employer withholding specified retirement, insurance, and deferred plans;
>
> (8) property transferred in exchange for loans or advances for which debtor has no obligation to repay or redeem the property (i.e. pawnbroker);
>
> (9) specified money orders; and
>
> (10) qualifying state ABLE program contributions.

Congress goes further, excluding from property of the bankruptcy estate any property in which the debtor holds bare legal title and no equitable interest in the property. 11 U.S.C. § 541(d). These include being trustee of a trust, a constructive or resulting trust, and statutory trusts.

It is clear under the Bankruptcy Code that there can be property which a debtor has as of the commencement of the bankruptcy case, which does not become property of the bankruptcy estate, that remains property of the debtor, and will be protected by the automatic stay provisions of 11 U.S.C. § 362(a) that protects the debtor and property of the debtor (which never becomes property of the bankruptcy estate).

Recovery of Property from the Bankruptcy Estate by the Debtor

Though property of a debtor becomes property of the bankruptcy estate, that does not mean that the debtor cannot regain ownership of such property from the bankruptcy estate. One way for the property of the bankruptcy estate is for it to be abandoned by the bankruptcy estate to the debtor. 11 U.S.C. § 554(a) provides that the bankruptcy trustee (or the debtor in possession, Chapter 12 debtor, or Chapter 13 debtor exercising the rights, powers, and duties of a bankruptcy trustee as the fiduciary administering property of the bankruptcy estate) may abandon property of the bankruptcy estate "that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In such situations, the bankruptcy trustee obtains an order abandoning the property back to the debtor, and the debtor, not the bankruptcy estate, becomes the owner of such property post-petition.

Additionally, a debtor may purchase the property from the bankruptcy estate (pursuant to an order of the court, 11 U.S.C. § 363) to avoid the bankruptcy trustee selling it and giving the debtor only a portion of the proceeds from a sale of the property to a third party. The property subject to the debtor's exemption may be of greater value to the debtor than the exemption proceeds. In such situations the debtor will pay the bankruptcy estate for the value that would have been received by the bankruptcy estate if the property had been sold.

As demonstrated above, there can be a plethora of property which is not property of the bankruptcy estate, but is property of the debtor or someone else who can be protected by the automatic stay given to the debtor and property of the debtor (11 U.S.C. § 362(a)(1), (2), (5), (6), and 11 U.S.C. § 1201, § 1301 co-debtor stays). It is not illogical for Congress to provide relief from the stay with respect to the debtor to allow creditors who have rights that can be enforced post-petition against a debtor to do so when there is a repeat filing that is not in good faith. Merely because a bad faith debtor is not to be protected does not mean that Congress conflated debtor and property of the debtor with property of the bankruptcy estate, stripping the bankruptcy estate, and its creditors, of the automatic stay protecting property of the bankruptcy estate.

COLLIER ON BANKRUPTCY provides the following discussion and citations supporting its analysis that the termination of the automatic stay "with respect to debtor" as provided in 11 U.S.C. § 362(c)(3)(A) is not termination of the stay as to "property of the bankruptcy estate," including:

> [a] Scope of Stay Limitation
>
> There are certain limitations arising from the express wording of subsection (c)(3). First, the **stay terminates under this provision only "with respect to the debtor.**" As in other provisions in section 362, Congress sought in subsection (c)(3) to **distinguish between actions taken against property of the debtor and property of the estate**.[18] This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)[19] for a debtor who has had two dismissed cases within the prior year, particularly since

both provisions were enacted at the same time as part of the 2005 amendments.[20] Thus, if there has been a stay termination based on the operation of subsection (c)(3) in a case filed within a year of a prior dismissal, the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate, but not as to actions against the debtor or property of the debtor that is not property of the estate.[21]

18 *See, e.g.*, 11 U.S.C. § 362(a)(1) ("against the debtor"), 362(a)(2) ("against the debtor or against property of the estate"), 362(a)(3) ("property of the estate or of property from the estate"), 362(a)(4) ("against property of the estate"), 362(a)(5) ("against property of the debtor"), 362(a)(6) ("against the debtor").
1911 U.S.C. § 362(c)(4)(I); see ¶ 362.06[4] infra.

20 *See Jumpp v. Chase Home Fin., LLC (In re Jumpp)*, 356 B.R. 789 (B.A.P. 1st Cir. 2006); *In re Moon*, 339 B.R. 668, 671 (Bankr. N.D. Ohio 2006) ("Had the drafters of this provision intended that the whole of the automatic stay would terminate, they could have easily just referenced § 362(a) as they did in § 362(c)(4)(A) ('the stay under subsection (a) shall not go into effect upon the filing of the later case').").

21 Rose v. Select Portfolio Servicing, Inc., 945 F.3d 226 (5th Cir. 2019), [*cert. denied* 141 S.Ct. 158 (2020)]; *In re Holcomb*, 380 B.R. 813 (B.A.P. 10th Cir. 2008); *In re McGrath*, 621 B.R. 260 (Bankr. D.N.M. 2020); *In re Thu Thi Dao*, 616 B.R. 103 (Bankr. E.D. Cal. 2020); *In re Roach*, 555 B.R. 840 (Bankr. M.D. Ala. 2016); *In re Hale*, 535 B.R. 520 (Bankr. E.D.N.Y. 2015); *In re Scott-Hood*, 473 B.R. 133 (Bankr. W.D. Tex. 2012); *In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006); *In re Johnson*, 335 B.R. 805 (Bankr. W.D. Tenn.2006). *But see Smith v. Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018); *In re Reswick*, 446 B.R. 362 (B.A.P. 9th Cir. 2011); *Vitalich v. Bank of N.Y. Mellon*, 569 B.R. 502 (N.D. Cal. 2016); *St. Anne's Credit Union v. Ackell*, 490 B.R. 141 (D. Mass. 2013); *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. 2009); *In re Jupiter*, 344 B.R. 754 (Bankr. D.S.C. 2006).

3 COLLIER ON BANKRUPTCY P 362.06 (16th 2021) (emphasis added).

In 11 U.S.C. § 362(c)(3)(A), Congress recognizes a debtor filing a second case may be improperly attempting to use a second bankruptcy case filed shortly after the dismissal of a prior case as a front for having an automatic stay to shield the debtor personally and not for any good faith prosecution of such debtor's bankruptcy rights and administration of property of the bankruptcy estate. When reading the plain language, this court does not find Congress intends for such bad faith by the debtor to cause the "property of the bankruptcy estate baby" being thrown out with the "bad faith debtor bath water."

Legal Authority Cited By Movant

Movant provides two case citations as the legal basis in its Memorandum of Points and Authorities in Support of Motion (Dckt. 94) for the proposition that Congress, stating in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates with respect to the debtor**, actually means that the

automatic stay terminates **with respect to the debtor** and with respect to the bankruptcy estate and property of the bankruptcy estate (which is a separate legal entity from the Debtor).

The first case provided by Movant is *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 368, (B.A.P. 9th 2011). In *Reswick* the Bankruptcy Appellate Panel addressed what it found to be confusing language in 11 U.S.C. § 362(c)(3) – concluding that the minority view of interpreting this language to mean that the term "terminates with respect to the debtor" actually means that it "terminates the automatic stay in its entirety" in the bankruptcy case, resulting in there being no automatic stay for property of the bankruptcy estate. At the core of the Bankruptcy Appellate Panel concluding that there was not "plain language" to be read in 11 U.S.C. § 362(c)(3)(A), the panel in *Reswick* stated:

> If the phrase "with respect to the debtor" meant that the automatic stay only terminated as to the debtor personally and as to non-estate property, the opening clause of section 362(c)(3)(A) would be surplusage. There would be no reason for section 362(c)(3)(A) to reference actions "with respect to a debtor or property securing debt or with respect to any lease" if the interpretation of the Debtor and the majority were correct.

Reswick v. Reswick (In re Reswick), 446 B.R. 362, 368, (B.A.P. 9th 2011).

The Bankruptcy Appellate Panel's conclusion that the reference to "property" must refer to property of the bankruptcy estate, appears to assume that all property of a debtor or "property securing a debt of a debtor" must be and can only be "property of the bankruptcy estate."

It appears that the Bankruptcy Appellate Panel in *Reswick* did not consider that a debtor, who was protected by the automatic stay, might have an obligation that was secured by property owned by other persons (father, mother, business associate, or friend). And that for such obligation, the creditor could be stayed by the statutory injunction granted for the debtor in 11 U.S.C. § 362(a)(6) of any "act to collect, assess, or recover a claim against the debtor that arose before the commencement of the bankruptcy case."

Additionally, it does not appear that the Panel considered that there could be property of a debtor that is claimed as exempt which is initially included in the bankruptcy estate, with no value in the property after the liens on the property and exemption claimed by the debtor. In such situations, it is common for a trustee to quickly abandon such property back to the debtor during the pendency of the bankruptcy case because such property is burdensome (cost of insurance and other expenses to preserve the value of the property as property of the bankruptcy estate, or subject the bankruptcy estate to significant tax consequences if a foreclosure sale occurs while it is property of the bankruptcy estate) or of inconsequential value to the bankruptcy estate. 11 U.S.C. § 554(a). When abandoned to the debtor, the termination of the stay with respect to the debtor would allow the creditor to proceed against such property.

Finally, as discussed above, there is a wide range of property that while owned by the debtor as of the commencement of the case, never becomes property of the bankruptcy estate (and thus not protected by the automatic stay as it applies to property of the bankruptcy estate). These exclusions are found in 11 U.S.C. § 541(b)(1)-(10) and (d). For such property, the termination of the stay as to the debtor would be effective for a creditor having a lien to enforce against such property.

The second case provided by Movant is *In re Jupiter*, 344 B.R. 754 (Bankr. D.S.C. 2006). The *Jupiter* court concludes that although the language used by Congress in § 362(c)(3)(A) is different from the

language in § 362(a), the court believes the statutory scheme of § 362(c) is intended to terminate the automatic stay in the entirety. *Jupiter*, 344 B.R. at 759.

The *Jupiter* court found that the language "with respect to the debtor" is meant to define which debtor is effected by the provisions of § 362(c)(3), rather than limiting the termination of the stay to just the debtor and not the property of the bankruptcy estate. *Id.* In a joint case, the *Jupiter* court finds, the phrasing would allow one debtor to keep full protections of the automatic stay if they did not have one case dismissed within the year prior to the petition date. *Id.* The *Jupiter* court found § 362(c)(3) ambiguous, and asserts that contrary interpretations would be at odds with the legislative intent of Congress. *Id.* at 761-62.

This court is unpersuaded by *Jupiter*. First, as detailed further below, the court does not find the statute ambiguous. Second, 11 U.S.C. § 362(c)(4), which establishes no stay goes in effect if two or more cases were pending in the previous year prior to the petition date, makes no such defining language to a specific debtor. If Congress seeks to limit the stay terminating to provisions to one debtor in § 364(c)(3), it would make logical statutory sense for Congress to do the same in (c)(4).

The court further notes, if there is split in judicial authority in interpreting a statute, a division in judicial authority does not render a statute ambiguous. *Reno v. Koray*, 515 U.S. 50, 65 (1995). Further, if a court is more persuaded by the policy implications of one judicial authority that "the law should have been written to say something other than the plan language of the statue," the court must apply the unambiguous law as it is written. *United States v. Rodgers*, 466 U.S. 475, 484 (1984). If the plain language of the statute is being applied differently than Congress's intent, "It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think, perhaps along with some Member of Congress, is the preferred result." *United States v. Granderson*, 511 U.S. 39, 68, (1994) (Justice Anthony M. Kennedy concurring opinion). For the reasons stated prior, this court does not find 11 U.S.C. § 362(c)(3)(A) ambiguous. Therefore, even if this court were more persuaded by one of the cases above, the court is confined to applying the plain language of the statute, which terminates the stay as to the debtor only.

Finally, it is important to note that the process of formulating the modern Bankruptcy Code took Congress nearly a decade to complete, and its evolution through amendments continues to this day. The modern Code has significantly changed both substantively and procedurally. *U.S. v. Ron Pair Enters.*, 489 U.S. at 240. Considering the transformative overhaul of the bankruptcy system, "it is not appropriate or realistic to expect Congress to have explained with particularity each step it took." *Id.* So long as the statutory scheme is "coherent and consistent," courts need not inquire beyond the plain language of the statutory text. *Id.*

RULING

As the court has addressed above, the provisions of 11 U.S.C. § 362(c)(3)(A) provide for the termination of the automatic stay with respect to the debtor thirty (30) days after a second bankruptcy case is filed by an individual within one year of a prior case having been pending and dismissed, unless the court extends the stay. The term "with respect to the debtor" has legal significance, is not ambiguous, is not mere surplusage, and the legal effect thereof is not uncertain. The construct of the Bankruptcy Code, what constitutes property of the bankruptcy estate, what pre-petition assets of a debtor are excluded from the bankruptcy estate, the express provisions of 11 U.S.C. § 362(a) which distinctly reference separately "the

debtor" and "property of the bankruptcy estate" clearly show that different rights and interests of various parties in interest and the bankruptcy estate are protected.

Movant's assertion that termination of the automatic stay "with respect to the debtor" actually terminates the automatic stay in the bankruptcy case and all of the property of the bankruptcy estate is "free for the pickings" is not correct. The court denies the requested relief for an order saying that the termination of the automatic stay "with respect to the debtor" also is a termination of the automatic stay with respect to property of the bankruptcy estate.

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 Confirm Absence of the Automatic Stay filed by Equity Trust Company fbo Bruce A. Nelson IRA ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm Absence of the Automatic Stay is denied without prejudice.

5. 21-20225-E-7 MOH-2 | **DONALD JOHNSON** **Michael O'Dowd Hays** | **CONTINUED OBJECTION TO CLAIM OF CARALY JOHNSON, CLAIM NUMBER 2 9-2-21 [65]**

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

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on September 2, 2021. By the court's calculation, 60 days' notice was provided. 44 days' notice is required. Fed. R. Bankr. P. 3007(a) (requiring thirty days' notice); Local Bankr. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Claim is xxxxxxx .

Donald B. Johnson, Debtor, ("Objector") requests that the court disallow the claim of Caraly Johnson ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $228,125.72. Objector asserts that:

Item A: Debtor contests he should not be required to pay rent to live on a property that he has a legal interest in.

Item B: Creditor has not provided copies of any documents supporting the claim of hazardous material and trash removal from Paradise property and it is Debtor's understanding that FEMA paid for the cleanup.

Item C: The $30,000.00 for Creditor's prepayment of expected insurance proceeds to be reimbursed by Debtor will be distributed in the divorce proceeding, not this bankruptcy case.

Item D: A judgment in California Superior Court was entered against Creditor for fraudulent transfer of Debtor's home into her name. Debtor contends Creditor should have cross complained him if she did not believe she was responsible.

Item E: Creditor has not provided proof of the destruction of the trailer. Additionally, it was Debtor's belief that she gave him the trailer as a portion of his share of their community property because she signed the title releasing her interest in the property.

DISCUSSION

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

PARTIES STIPULATION

On December 1, 2021, Debtor filed a Stipulation to continue the hearing. Dckt. 87. The Stipulation was signed by all parties and states the hearing shall be continued again to February 10, 2022 at 10:30 a.m. Parties state a settlement is still contemplated with regard to the Proof of Claim and Objection. If the matter is not settled creditor shall have until January 27, 2022 to file any responsive pleading.

ORDER GRANTING STIPULATION

On December 3, 2021, the court entered an order pursuant to the Stipulation and Joint Motion to continue the hearing. Dckt. 88. Pursuant to the order, the hearing on the Objection to Proof of Claim Number 2-1 of Creditor is continued to February 10, 2022 at 10:30 a.m. in Courtroom 33.

MATTER STATUS

The court notes no status update has been filed with the court regarding Debtor's Objection to Creditor's Proof of Claim. There is no indication that the parties settled. Additionally, Creditor has yet to file a responsive pleading, which was due by January 27, 2022. Stipulation, Dckt. 87.

ORDER CONTINUING MATTER

On February 4, 2022, the court entered an order continuing the hearing for Debtor's Objection to Proof of Claim pursuant to the Joint ***Ex Parte*** Motion and Stipulation for Additional Continuance. Dckts. 108, 106. The hearing is continued to April 28, 2022 at 10:30 am.

APRIL 28, 2022 HEARING

On April 21, 2022, another Joint *Ex Parte* Motion to further continue the hearing on this Objection to Claim was filed. In light of the multiple continuances, the court did not continue the hearing, but conducted it so the Parties could advise the court of their ongoing, good faith, efforts to resolve this matter and the underlying issues. This Objection to Claim was filed on August 31, 2021, which is eight months prior to the April 28, 2022 hearing.

At the hearing counsel for Creditor stated that they are working to proceed with a sale, which will not be contested by either party. Additionally, the proceeds will be used to pay the judgment lien claim, the only secured claim, off the top. The Parties will use the State Court Dissolution Action to determine their respective interests in the net proceeds, as well as other property.

Besides Creditor, who agrees that the property division and determine of their rights can occur in the State Court Proceeding, is the Internal Revenue Service, having filed a claim for $13,688,80, identified as being for taxes assessed for Tax Years 2017, 2018, and 2019. POC 3-1. Debtor's counsel stated that he was not aware of the claim and will promptly address it, whether is something the parties agree gets "paid off the top" or as otherwise agreed, or if the allocation of the payment is applied to the net proceeds to one party or the other.

The court continues the hearing to allow the Parties to reach their stipulation for the sale of the property by the Trustee, how those proceeds are agreed to be distributed, and to modify the stay so they can proceed with the State Court Dissolution Proceeding to determine how the net assets, after the payment of the bankruptcy claims and administrative expenses, are to be distributed.

STIPULATION FILED

On August 30, 2022, the parties filed a stipulation, signed by counsel for Debtor and counsel for Creditor. Stipulation, Dckt. 117. The Stipulation states that the marriage dissolution and related property issues are still pending in Butte County Superior Court, Case No. 19FL00413.

Creditor's claim regarding Ms. Caraly Johnson and Debtor's related objection is an issue of apportionment of community, as opposed to separate, assets and debts, to be decided by the Superior Court. Therefore, the dissolution proceedings will resolve Parties' issues regarding this Objection.

Parties are requesting the court orders Debtor and Ms. Johnson bring their objections in the superior court case with family law attorneys. If the court order such, Debtor and Creditor stipulate to this objection being removed from calendar.

In reviewing the Stipulation, the court has several questions that come to mind. These questions are set forth below and were addressed at the hearing

A. Proof of Claim 2-1 filed by asserts an unsecured claim for $228,125.72.

1. Proof of Claim 2-1 states that the unsecured claim is not entitled to priority under 11 U.S.C. § 507(a). POC 2-1, ¶ 12.

2. The Basis of the Claim is stated to be:

> rental obligation, trash removal from rental, insurance, fraudulent transfer obligation, and destruction of trailer.

Id., ¶ 8.

This stated obligation does not appear to be a community property determination, but a contractual and tort obligation.

At the hearing, **xxxxxxx**

3. There are pre-petition defaults in the amount of $50,000 on the obligation.

4. The Attachment to Proof of Claim 2-1 includes the following:

   a. A Schedule of Claim showing the monetary portions of the asserted Claim:

      (1) Paradise rental obligation @ $2,000 per month from January 25, 2021 filing of this case, totaling $50,000.

      (2) Hazardous material and trash removal, estimated to be $25,000.

      (3) Contribution obligation on fraudulent transfer obligation totaling $95,221.47.

      (4) Destruction of Trailer $28,013.25.

   b. Copy of a check dated December 30, 2018, made payable to Don Johnson in the amount of $30,000. On the "For" line, it states that it is for "Ins. Payout."

   c. Assignment of the judgment in the *Gina White vs. Donald Johnson*, *et al* in California State Court for Los Angeles County Case No. 19AVCV00539.Action. The Judgment is assigned to Creative Judgment Solutions. The Assignment states that it sets aside the fraudulent transfer of real property identified as 35501 Brinville Road, Acton, California, and awarding a monetary judgment of $95,112.47 against Caraly Johnson.

   d. A copy of an unrecorded Abstract of Judgment.

   e. A certificate of title for a 2019 vehicle.

f. A $28,013.25 cashier's check made payable to Folsom Lake RV. It also states "Camp Fire Disaster Shelter."

None of these documents appear to relate to the determination of marital dissolution matters, but "normal" obligations that a creditor asserts in a bankruptcy case.

The Stipulation states that there are property issues and the apportionment of community property and debts, including determination of whether an asset is community property. It also states that the Superior Court is "uniquely qualified" to hear and resolve these disputes.

This court notes that the issues do not relate to custody, support, or other obligations. As provided in 11 U.S.C. § 541(a)(2), all community property is included in the bankruptcy estate. Additionally, if there are separate debts of the debtor separated ex-spouse, then the non-debtor separated/ex-spouse can require that separate property assets of a debtor be marshaled to pay the separate debts of the debtor separated/ex-spouse. 11 U.S.C. § 727(c).

The U.S. Supreme Court has been quite clear in admonishing federal trial judge to not abstain from their duties and proper exercise of federal court jurisdiction merely because the parties utter the word "dissolution."

> We nevertheless emphasized in *Ankenbrandt* that **HN3** the exception covers only **"a narrow range of domestic relations issues**." *Id.*, at 701, 112 S. Ct. 2206, 119 L. Ed. 2d 468. The *Barber* Court itself, we reminded, "sanctioned the exercise of federal jurisdiction over the enforcement of an alimony decree that had been properly obtained in a state court of competent jurisdiction." 504 U.S., at 702, 112 S. Ct. 2206, 119 L. Ed. 2d 468. Noting that some lower federal courts had applied the domestic relations exception "well beyond the circumscribed situations posed by Barber and its progeny," id., at 701, 112 S. Ct. 2206, 119 L. Ed. 2d 468, **we clarified that only "divorce, alimony, and child custody decrees" remain outside federal jurisdictional bounds, *id.***, at 703, 704, 112 S. Ct. 2206, 119 L. Ed. 2d 468.

Marshall v. Marshall, 547 U.S. 293 307-308 (2006) (emphasis added).

Recently the Ninth Circuit Court of Appeals addressed the issue when a federal trial court properly abstains because there are issues relating to domestic relations, stating:

> A decade later, the Supreme Court emphasized that the exception **"covers only 'a narrow range of domestic relations issues**.'" *Marshall v. Marshall*, 547 U.S. 293, 307, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006) (quoting *Ankenbrandt*, 504 U.S. at 701). Rather than applying broadly to cases implicating "the subject of domestic relations," the exception applies only to cases implicating "particular status-related functions that fall within state power and competence." 13E Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3609.1 (3d ed. & Supp. 2020). The exception preserves jurisdiction for cases within the competency of federal courts while, at the same time, preventing a party from making an end-run around a

state-court status determination. *See, e.g., McLaughlin v. Cotner*, 193 F.3d 410, 414 (6th Cir. 1999).

. . .

For example, in *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 798 (6th Cir. 2015), the Sixth Circuit held that the **domestic relations exception did not apply because the plaintiff was asking for "repayment for past-due loans and a legal interest" in a property**, rather than the issuance or alteration of a divorce decree. Indeed, in *Chevalier*, no divorce decree had even issued. Further, in *Matusow*, 545 F.3d at 245-46, the Third Circuit held that the exception did not apply to a quiet title claim brought against a third party, with respect to property subject to a divorce decree, because the plaintiff sought neither to alter, nor to contest the validity of, her divorce decree.

. . .

Heeding the Supreme Court's admonition in *Ankenbrandt* and *Marshall* that the domestic relations exception is narrow, we decline to adopt the broad version of the exception embraced by some of our sister circuits. In *Friedlander v. Friedlander*, 149 F.3d 739, 740 (7th Cir. 1998), the Seventh Circuit held that the exception divests jurisdiction not only from cases implicating "distinctive forms of relief" such as the decrees in *Ankenbrandt*, but also from a "penumbra" of cases implicating "ancillary proceedings . . . that state law would require be litigated as a tail to the original domestic relations proceeding." In *Wallace v. Wallace*, 736 F.3d 764, 767 (8th Cir. 2013), the Eighth Circuit held, even more expansively, that the domestic relations exception divested jurisdiction over a state-law identity theft claim between ex-spouses because the claim would require considering the same underlying conduct that had been considered by the divorce court. Because the judgment might order one ex-spouse to pay assets to the other on the basis of the same conduct, the Eighth Circuit held that the case was "inextricably intertwined" with the state proceeding. *Id.* (quoting *Kahn v. Kahn*, 21 F.3d 859, 861-62 (8th Cir. 1994)).

Bailey v. Macfarland, 5 F.4th 1092, 1095 - 1097 (9th Cir. 2021) (emphasis added).

Here, based on Proof of Claim 2-1, there are not any "divorce, alimony, and child custody decrees" ruling sought from this court, but only contract and tort claims, and possibly determining what is community property in the bankruptcy estate and what is separate property that is not property of the bankruptcy estate. Congress provides in 28 U.S.C. § 1334 that the federal courts have exclusive jurisdiction over property of the bankruptcy estate, which includes determining what is property of the bankruptcy estate. This is discussed in 1 Collier on Bankruptcy (Sixteenth Edition) ¶ 3.01[4], which states:

> Second, the exclusive jurisdiction granted in section 1334(e)(1) extends not only to property of the debtor as of the commencement of the case, but also to property of the estate. During the course of title 11 cases in general and of chapter 11 cases in particular, the estate acquires property in addition to or different from the property of the debtor as it existed as of the commencement of the title 11 case. Section 1334(e) makes it clear that both kinds of property are subject to its provisions. Jurisdiction is lost once the property is no longer property of the estate. Likewise, the district court has exclusive jurisdiction to determine whether property is property of the estate to begin with.

At the hearing, **xxxxxxx**

Additionally, the Stipulation states that the Objection to Claim "may be removed from the Court's calendar." Stipulation, ¶ 4; Dckt. 117. It is unclear whether this is to be a dismissal without prejudice, or only remove the matter from being heard for the time being, and then set to be revised at a later date.

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 Objection to Claim of Caraly Johnson ("Creditor"), filed in this case by Donald B. Johnson, Chapter 7 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is **xxxxxxx**.
>
> **IT IS FURTHER ORDERED** that **xxxxxxx** .

6. 19-22653-E-7 DNL-20 | REECE/RODINA VENTURA Peter Macaluso | MOTION FOR TURNOVER OF PROPERTY 8-30-22 [449]

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, and Office of the United States Trustee on August 30, 2022. By the court's calculation, 23 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 xxxxxxxxxxx.

On August 30, 2022, Geoffrey Richard, the Chapter 7 Trustee filed a Motion for an order requiring Reece Ventura and Rodina Ventura, the two debtors in this Bankruptcy Case, ("Debtors") to turnover property of the Bankruptcy Estate by:

> (1) Executing a Waiver and Assignment of all rights sold and transferred as ordered by this court (Dckt. 328) of the Inheritance Interest of Debtors.
>
> (2) Debtors refraining from interfering with the purchaser enforcing the purchaser's and the Bankruptcy Estate's interest in the Inheritance Interest.

Motion, Dckt. 449.

The grounds stated with particularity in the Motion include the following:

> 4. The DNL-14 Order authorized the Trustee to sell and assign to Regina [the purchaser] the bankruptcy estate's interest in Rodina's rights of inheritance from the Decedent ("Inheritance"), including, without limitation, specifically identified real property located in Cebu City, LapuLapu City and Carmen City in the Republic of the Philippines.
>
> 5. The DNL-14 Order provided for a purchase price of $20,000 ("Down Payment") plus a sliding scale of recoveries received by Regina ranging from $20,000 to $1,005,000 ("Contingency"). To secure the Trustee's right to the Contingency, the DNL-14 Order provided for a lien and security interest against the Inheritance.
>
> 6. Despite the foregoing, Rodina has appeared in the Cebu City Probate Case and is presently asserting an interest in the Inheritance.

Id.; ¶¶ 4, 5, 6.

By the court's Order (Dckt. 328), the Trustee sold to Regina Burney (referenced in the Motion as "Regina" and in this Order as "Purchaser") the Bankruptcy Estate's interest in Rodina Ventura's Inheritance Interest in the estate of Rebecca Alda Cordero, Rodina's mother. The Purchaser is identified as debtor Rodina Ventura's sister and daughter of the late Rebecca Alda Cordero. Purchaser's Declaration, ¶ 1; Dckt. 325.

The probate proceedings were pending in the Superior Court of New Jersey, and included property located in the Philippines. A detailed discussion of the interests transferred to Regina are in the Civil Minutes from the hearing on the Motion to Sell this property of the Bankruptcy Estate. Dckt. 327.

The Trustee has provided his Declaration in support of the present Motion, in which his testimony includes:

> 7. I am informed by Alberto Montefalcon, counsel for Regina, that Rodina has appeared in the Cebu City Probate Case and is presently asserting an interest in the Inheritance by way of: (a) a Special Power of Attorney ("POA"), dated May 24, 2022, in favor of QUISAN MAKALINTAL BAROT TORRES IBARRA SISON & DAMASO ("Law Firm"); and (b) an Entry of Appearance ("Pleading") by the Law Firm, dated June 2, 2022. Copies of the POA and Pleading are filed herewith as Exhibit C.

Dec., ¶ 7; Dckt. 451.

This allegation of debtor Rodina Ventura interfering with the Inheritance Interest that was property of the Bankruptcy Estate (and the Bankruptcy Estate's current interest therein by virtue of the Bankruptcy Estate's Security interest in the Inheritance Interest sold by the Trustee), is not the first time such has raised its head in this case.

In connection with the Motion to Sell the Inheritance interest to the Purchaser the two Debtors states their opposition and instead allow the Debtors to administer that Inheritance Interest. The court found Debtor's arguments, as well as testimony under penalty of perjury to contain a "threat" of working to impede

the Trustee administering this property of the Bankruptcy Estate and recovering for the Bankruptcy Estate its value. In the Civil Minutes from the Hearing on the Motion to approve the sale to Purchaser, the court's finding and conclusions include the following:

> Debtor touts Debtor as the better person for the Trustee to get into financial bed with because:
>
> > There are two reasons why the debtors are better equipped to liquidate this asset than the Bidder is the taxes for nonresidents and cooperation for Brother and Father. **It is with this bid being accepted that the cooperation of my Brother and Father must be attended and not fought in the Philippines.** As my Brother and Father hold controlling shares and the properties are in their name, not my deceased mother and transfers, and the law there requires all the parties to the property to agree, and partitioning the land is very difficult.
> >
> > In this instance, the Debtors would be the best candidate to liquidate the properties in a timely manner. **Here, Rodina** (one of the debtors) **has traveled to the area, probate counsel there has been retained, and the Court is proceeding**. After that is completed there is a matter of inheritance taxes, and taxes for non-residents. Given Rodina's status, the taxes to the estate will be significantly different.

Opposition, p. 4:18-26, 5:1-7; Dckt. 315 (emphasis added).

The above argument can be read two ways. First, the Debtor and family will work together, cooperate, and maximize the recovery for the bankruptcy estate. Or, that if the Trustee does not find what Debtor presents as an "offer that he cannot refuse," then the Debtor's father and brother will work to sabotage the efforts to recover the value for the bankruptcy estate. If interpreted the first way, then it will work for either buyer. If interpreted the latter, it would appear to be a continuing problem/threat/challenge for the Trustee.

In the Declaration, this "threat" is made clear, with debtor Rodina Ventura stating under penalty of perjury:

> 5. In the Philippines, the real estate law is whoever has majority shares will control the decisions of what will occur of the property.
>
> 6. My father and brother will only agree to sell any properties if available if I have control of my own share.

Declaration, Dckt. 316. While the court appreciates this debtor's candor, it does not weigh in Debtor's favor. The debtors stating that they will work with their family members to sabotage the Trustee liquidating and recovering the value of the property of the bankruptcy estate is not only inconsistent with their duties and obligations in

> having sought the extraordinary relief under the Bankruptcy Code, but other legal and financial problems they may face.

Civil Minutes, p. 6-7; Dckt. 328.

At this juncture, the court does not know what is, or is not, happening in connection with the proceedings relating to the Inheritance Interest sold by the Trustee to debtor Rodina Ventura's sister and in which the Bankruptcy Estate continues to have an interest (protected by the automatic stay) pursuant to its Security Interest. The court does not know what valid interests that debtor Rodina Ventura has executed a Special Power of Attorney for attorney Arecio R. Rendor, Jr., to adjudicate debtor Rodina Ventura's interest in the Inheritance Interest that was property of this Bankruptcy Estate and for which exclusive federal court jurisdiction is granted to this court (28 U.S.C. § 1334(e)). Exhibit C; Dckt. 452.

It may be there is a gross misunderstanding, and debtor Rodina Ventura's appearance in the action in the Phillippines is completely unrelated to the Inheritance Interest that was Property of the Bankruptcy Estate in this case ordered to be sold to Purchaser and the Bankruptcy Estate's Interest (which continues to be property of this Bankruptcy Estate) in the Inheritance Interest.

Applicable Law for Turnover Proceedings

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor 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 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. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While styled as a Motion for Turnover, it is unclear what "property" the two Debtors are being ordered to "turnover." Additionally, it appears that the Motion is also seeking some form of injunctive relief telling Debtors to refrain from interfering with the Philippine Court proceedings.

September 22, 2022 Hearing

At the hearing, **xxxxxxx**

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

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

The Motion for Turnover of Property filed by Geoffrey Richard, 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 for Turnover of Property is **xxxxxxx**

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FINAL RULINGS

7.	**22-20108-E-11** **UST-1**	**KAMCARE, LLC** **Gabriel Liberman**	**MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE** **8-16-22 [56]**

Final Ruling: No appearance at the September 22, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, and parties requesting special notice on August 16, 2022. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

This Motion to Convert the Chapter 11 bankruptcy case of Kamcare, LLC ("Debtor in Possession") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor in Possession has failed to timely file with the court its monthly operating reports;

B. Debtor in Possession has failed to pay required quarterly fees; and

C. Debtor in Possession has failed to expeditiously prosecute this case.

Movant states in their Memorandum of Points and Authorities (Dckt. 58) that Conversion is in the best interest of creditors because:

A. Debtor in Possession has certified that funds will be available for distribution to unsecured creditors, *Id.* at ¶ 37; and

B. There is significant equity in Debtor in Possession's Real Property which can be distributed to creditors. *Id.*

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

U.S. Trustee's concerns are well taken. Debtor in Possession has failed to timely file five months of monthly operating reports. Memorandum of Points and Authorities, Dckt. 58 at ¶ 23. Additionally, U.S. Trustee contends the filed monthly operating reports are inaccurate when compared to Debtor in Possession's Petition, Schedules, and Opposition to Motion to Relief. *Id.* at ¶ 13.

Cause also exists as Debtor in Possession has not paid a quarterly fee $250.02 for the last quarterly report. This is cause under 11 U.S.C. § 1112(b)(4)(K).

Additionally, Debtor in Possession has failed to actively prosecute the case. Debtor in Possession filed the bankruptcy case on January 18, 2022. Dckt. 1. Since then, Debtor in Possession has filed a Motion to Employ their current counsel, which was approved on February 14, 2022. Dckts. 13, 18. Additionally, Debtor in Possession opposed the Motion for Relief From Stay of U.S. Bank Trust National Association. Dckts. 19, 37. Also, Debtor in Possession has amended their Petition and Disclosure of Attorney Compensation. Dckts. 30, 31. No other acts seem to have been taken by Debtor in Possession in prosecuting this case. It has been roughly eight (8) months since the filing of the Plan and Debtor in Possession has not filed a disclosure statement nor plan.

U.S. Trustee argues conversion is in the best interest of creditors. The court agrees. Based on Debtor in Possession's Amended Petition, Debtor in Possession states under penalty of perjury that "[f]unds will be available for distribution to unsecured creditors." Dckt. 30 at 3 ¶ 13. Additionally, Debtor in Possession states in their Summary of Assets that the total value of all property is roughly $778,023.00. Of this amount, Debtor in Possession has an interest in the real property commonly known as 323 Fifth Street, Eureka, California ("Real Property"). On Debtor in Possession's Schedule A/B, Debtor in Possession states the "Current value of debtor's interest" is $752,000.00. Debtor in Possession lists only one secured claim, of SN Servicing Corporation, in the amount of $377,662.39. Schedule D, Dckt. 1. Debtor in Possession has not claimed the Real Property as exempt. Additionally, there appears no secured claim on Debtor in Possession's personal property, and Debtor in Possession does not claim an exemption in such property. Therefore, there appears to be significant equity for unsecured claims.

Debtor in Possession's Schedule E/F, filed on January 18, 2022, lists $18,584.49 in priority and nonpriority debt. Dckt. 16, at 22. A review of the Proofs of Claims filed as of September 14, 2022 shows that 3 unsecured claims have been filed totaling $5,567.76, where no secured claims have been filed

Debtor in Possession does not oppose the conversion, nor does any other party in interest.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis ("the U.S. Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

8. 22-21864-E-11 DAVID FOYIL
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-1-22 [23]

Final Ruling: No appearance at the September 22, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 11 Trustee as stated on the Certificate of Service on September 3, 2022. The court computes that 19 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: $436.00 due on August 29, 2022.

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

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

The court shall issue a 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.