

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 2, 2023 at 10:30 a.m.

1. <u>23-21407-E-11</u>	BELLA VIEW CAPITAL, LLC	MOTION TO SELL
<u>PGM-2</u>	Peter Macaluso	9-26-23 <u>[138]</u>

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2023. By the court’s calculation, 37 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Sell Property 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 Sell Property is XXXXXXX .
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The Bankruptcy Code permits Bella View Capital, LLC, the Debtor in Possession (“Movant”), to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1396 Summit Road, Berkeley, California (“Summit Property”) and 5425 Bacon Road, Oakland, California (“Bacon Property”).

The proposed purchaser of the Property is L. Bullard Group LLC, and the terms of the sale are:

For the Summit Property:

- A. The Buyer proposes to purchase the Summit Property for \$1,316,000.00. Declaration, Dckt. 141.
- B. The sale will be approved provided all liens are paid in a manner consistent with applicable rules and laws. Motion, Dckt. 138.
- C. Per the purchase agreement, the sale for the 1396 Summit Road, Berkeley, California property will be made all cash. Exhibit A, Dckt. 140.

For the Bacon Property:

- A. The Buyer proposes to purchase the Bacon Property for \$3,140,000.00. Declaration, Dckt. 141.
- B. The sale will be approved provided all liens are paid in a manner consistent with applicable rules and laws. Motion, Dckt. 138.
- C. The Debtor in Possession did not provide the purchase agreement for this property in Exhibit A, although Debtor in Possession did provide an “Estimated Master Statement” evidencing a sale of this property.

CREDITOR’S OPPOSITION

Center Street Lending VII SPE, LLC (“Creditor”) opposes the motion on the grounds that:

- (1) The proposed sale will not generate enough funds to pay off Creditor’s loans secured by those properties. The amount required to pay off the Bacon Property loan is \$3,037,181.37. Declaration, Dckt. 147. The amount required to pay off the Summit Property is \$1,336,584.11. *Id.*

Using the figures in Exhibit C, the proposed prices of each property after fees and taxes will not generate enough funds to pay of the Creditor’s loans, resulting in a \$41,216.00 deficit regarding the Bacon Property and a \$73,292.38 deficit regarding the Summit Property. Opposition, Dckt. 146. Furthermore, there will also be no equity left for the Debtor in Possession or for the bankruptcy estate if the sales were to be approved. *Id.*

- (2) In the event only one sale is allowed to proceed, the Creditor would oppose to the extent that the Debtor would seek to sell the least distressed property, leaving the Creditor with the more distressed property, that being the property with the most debt as compared to the value. Motion, Dckt. 146.

Creditor’s Claim

Creditor has directed the court to Schedule D as the basis for it asserting a secured claim in this Bankruptcy Case. Opposition, p. 2:6-8; Dckt. 146. A review of the Claims Register discloses that Creditor has not filed a proof of claim in this bankruptcy case (which case was filed on April 28, 2023).

Amended Schedule D (Dckt. 44) filed on July 10, 2023, lists the following secured claims of Creditor:

2.3 Center Street Lending Corp

Collateral.....5425 Bacon Rd, Oakland, CA
Value of Collateral.....\$3,760,000
Center Street Secured Claim.....(\$2,700,000)

Other Liens on Property

Alameda County Tax Collector.....(\$ 28,000)
City of Berkeley.....(\$ 1)
Persevere Lending.....(\$ 285,000)
POC 5-1, DOT recorded 12/29/2021

2.4 Center Street Lending Corp

Collateral.....1396 Summit Rd., Berkeley, CA
Value of Collateral.....\$2,400,000
Center Street Secured Claim.....(\$1,346,963)

Other Liens on Property

Alameda County Tax Collector.....(\$ 50,000)
City of Oakland.....(\$ 1)

Persevere Lending has also filed Proof of Claim 6-1 which asserts a claim in the amount of (\$229,444.77), which is stated to be for monies loaned. It further states that the lien is secured by a deed of trust. No copies of a note, contract, or deed of trust are filed with Proof of Claim 6-1. Proof of Claim 6-1 states that the claim is secured in the amount of (\$110,000) [stated to be the value of the property securing the claim] and unsecured in the amount of (\$119,444.77).

The Deed of Trust filed with Proof of Claim 5-1 states that it secures the obligation that is the \$500,000 Note that is filed with Proof of Claim 5-1.

In its Opposition, Creditor states that its secured claim for which the Bacon Rd. Property is (\$3,037,181.21). This is (\$300,000) greater than the amount stated in Proof of Claim 5-1 as of the April 28, 2023 filing of this Bankruptcy Case. (Proof of Claim was filed on September 20, 2023.)

The Declaration of Luis Montero, a Servicing Manager for Creditor, has been filed in which he provides testimony as to how he computes the secured claim to be (\$3,037,181.37). Exhibit 1; Dckt. 147.

Mr. Montero also includes a computation of the claim asserted to be secured by the Summit Rd. Property, which is stated to be (\$1,336,584.11). *Id.*; Exhibit 2.

It is not clear from the Opposition how Creditor's secured claim has increased by (\$300,000) in the past six months since the April 28, 2023 filing of this case.

DISCUSSION

For Creditor's Claim secured by the Bacon Rd. Property, if Creditor's computation of (\$3,037,181.37) is correct, then creditor computes there to be a (\$41,316) shortfall in paying its secured claim in full. That would be a 1.3% shortfall on a (\$3,037,181.37) debt.

Creditor does not assert in the Opposition that the value of the Bacon Rd. Property is greater than the proposed \$3,140,000.00 sales price. However, the only rational reason that a creditor in Center Street's (Creditor's) position opposing the sale would be that Creditor believes that the property is worth substantially more, that it wants to foreclose on the Bacon Rd. Property (incurring the costs and expenses relating thereto), then take possession of the Bacon Rd Property, care for the Bacon Rd. Property, pay future property taxes on the Bacon Rd. Property, insure the Bacon Rd. Property, and then pay the costs and expenses of selling the Bacon Rd. Property approximately six months in the future.

Creditor Motion for Relief From Stay - Bacon Rd. Property

However, this would be contrary to the dire financial straits that Creditor faces as explained in its Motion for Relief from the Automatic Stay so that it could foreclose on the Bacon Rd. Property. Motion; Dckt. 61. The Motion states grounds/argument that include:

This Property sold on May 7, 2021, for the price of only \$2,750,000.00. (Declaration of Enyart ¶ 7 and Ex. 1 [Broker Price Opinion].) But its value has been substantially reduced since then. Indeed, the reality is that in its current dilapidated state, the Property has a market value of only \$2,199,000 "as is." (Declaration of Enyart ¶ 7 and Ex. 1 [Broker Price Opinion].) This is due to its state of disrepair; the downstairs is original, and the entire upstairs has been gutted.¹ (Declaration of Enyart ¶ 6-7 and Ex. 1 [Broker Price Opinion].) At the June 23, 2023, creditor's meeting, as verifiable by the audio recording on file with the Trustee, Debtor admitted the second floor is totally demolished, it needs new framing, flooring, kitchen, counters, cabinets, bathroom, electrical work, window replacements, roof repair and roof leaking, and more – Debtor estimates it will cost about \$1,000,000 (one million) to repair.

There is no universe where the property has appreciated by one-million dollars since last being purchased.

The property is not move-in ready. Rather, it is a fix-up for potential investors looking for a project. (Declaration of Enyart ¶ 7 and Ex. 1 [Broker Price Opinion].) The range of values in the neighborhood is between \$1,459,000 to \$2,430,000 at the upper end—this is far less than Debtor's asserted value of \$3.76mm. (Declaration of Enyart ¶ 7 and Ex. 1 [Broker Price Opinion].) Even if the Property were repaired—which it currently is not—its upper value would still not exceed \$3,100,000.00. (Declaration of Enyart ¶ 7 and Ex. 1 [Broker Price Opinion].) Yet here the Debtor is claiming, without evidence, that the Property—in such a condition of disrepair and internal demolition—has somehow appreciated in value

\$1,010,000.00 more than it sold for just over two years ago, and is now worth \$3,760,000.00, millions more than any other residence in the neighborhood. (Doc. 26, Schedule D, Part 1, Section 2.1, Column B.)

Motion for Relief, p. 5:26 - 7:23; Dckt. 61.

As to the value of the Bacon Rd. Property, Creditor has provided expert testimony of Russell Enyart, a real estate broker. Dckt. 65. Mr. Enyart provides his expert witness testimony for Movant, providing evidence for Movant that the Bacon Rd. Property has a value of only \$2,199,000. Dec., ¶7; Dckt. 65.

The sales price that the Debtor in Possession secured of \$3,140,000.00 for the Bacon Rd. Property is 142.79% higher than the value that Creditor has presented to the court with the testimony of its expert Russell Enyart. Based upon the expert testimony, but for the Debtor in Possession putting together this sale, Creditor would be facing an almost (\$1,000,000) loss, rather than the “mere” (\$41,316) with this proposed sale.

Creditor Motion for Relief - Summit Rd. Property

Creditor filed a Motion for Relief from the Stay so that it could foreclose on the Summit Rd. Property, stating similar grounds, including what terrible collateral it was due to the poor condition of the Summit Rd. Property. Motion; Dckt. 73. Again, Russell Enyart, a real estate broker, was presented and he provided his expert witness testimony that the Summit Rd. Property has a value of only \$1,050,000. Dec., ¶ 7; Dckt. 75.

The Motion states that Creditor’s claim secured by the Summit Rd. Property was (\$1,265,213.75) as of the July 21, 2023 filing of the Motion for Relief from the Stay. Motion for Relief, p. 5:13-23; Dckt. 73. Michael Marshall, an “employee and authorized representative of” Creditor provides his testimony in support of the Motion for Relief from the Stay for the Summit Rd. Property. Dckt. 76. He testifies that this (\$1,265,213.75) showing the current amounts owing through August 31, 2023. *Id.*, ¶ 11.

However, in the present opposition, Creditor asserts that since August 31, 2023, its claim secured by the Summit Rd. Property has grown to (\$1,316,000), an increase of (\$50,000), which is 3.8% for the passage of one month. It is unclear how this Claim increased by so much in one month.

For the (\$1,336,584) computed claim secured by the Summit Rd. Property, Creditor computes a (\$73,292.38) shortfall, which represents a 5.5% shortfall in payment in full as computed by Creditor.

With a sales price of \$1,316,000, rather than the \$1,050,000 expert testimony of value presented by Creditor, the Debtor in Possession has prevented Creditor from suffering a loss of more than (\$339,292), as testified to by Creditor’s expert.

Creditor has not filed proofs of claim for either claim, so at best there is Mr. Montero’s testimony of how he computes the debt and the Schedules filed by Debtor.

Amended Proof of Claim 7-2
Alameda County Tax Collector

On October 19, 2023, the Alameda County Tax Collector filed Amended Proof of Claim 7-2 which asserts a secured claim totaling (\$21,651.56). These are stated to be for taxes due on Parcel No. 60-2493-26-1 (identified as the Summit Rd. Property) and Parcel No. 48A-7053-33.

The Attachments to Amended Proof of Claim 7-2 states the amount of property taxes for each property to be:

Summit Rd. Property.....(\$14,441.40)

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: **XXXXXXXXXXXXXXXXXX**.

Terms of Sale

The Motion states that there is an offer to purchase the two properties, directing the court to see Exhibits A through C. Motion, ¶ 4; Dckt. 138. Exhibit A is an executed Purchase Agreement between Bella View Capital LLC, presumably in its legal capacity as the Debtor in Possession, and L. Bullard Group LLC. Exhibit A; Dckt. 140. This is for the sale of the 1396 Summit Road Property.

The court notes that the Debtor in Possession did not attach the purchase agreement for the 5425 Bacon Road, Oakland, California property. While an Estimated Master Agreement was provided for both properties, only one purchase agreement was provided. Exhibits, Dckt. 140.

At the hearing, **XXXXXXX**

~~—————Based on the evidence before the court, the court determines that the proposed sale is not in the best interest of the Estate because the Debtor in Possession has not provided sufficient evidence to show that such a sale will benefit the estate. There is no purchase agreement indicating the terms of the Bacon Property sale, and the Debtor in Possession has not provided for an outcome where one of the two sales fails to be completed. The Creditor holding secured interests in both properties has raised valid issues concerning whether the proceeds are actually enough to pay off its liens. Declaration, Dckt. 147.~~

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 to allow the sales to proceed to closing and funding. However, the court requires further information from Debtor in Possession as to selling the Summit and Bacon Properties is in the best interest of the estate before it can consider waiving the fourteen-day stay.

At the hearing, **XXXXXXXXXX**

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 Sell Property filed by Bella View Capital, LLC, the Debtor in Possession, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 12, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees 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, -----

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The Motion to Sell Real Property is granted.

The Motion for Allowance of Professional Fees is granted.

Nikki B. Farris, the Chapter 7 Trustee ("Client"), makes a Motion for Authorization to Sell Real Property commonly known as 448-450 US Highway 395, Milford, California ("Property") and for Authorization to Pay Compensation to Reed Block Realty, the Real Estate Broker authorized (Order; Dckt. 90) to be employed by the Trustee. First and Final Request for the Allowance of Fees and Expenses in this case.

Proposed Sale of the Property

The proposed purchaser of the Property is SARKS Investment, LLC (“Buyer”), and the terms of the sale are:

1. The purchase price is \$325,000.00.
2. There is an initial down payment of \$10,000.00.
3. Close of escrow shall occur within 15 days after the filing of the court’s order approving the Property’s sale.
4. Buyer’s contingency periods begin upon execution of the Agreement.
5. Title and escrow to be with Chicago Title; Buyer and Trustee to split escrow fees evenly, 50/50.
6. Trustee shall pay for owner’s title insurance policy
7. Trustee shall pay County and City transfer tax, if applicable.
8. The sale of the Property is as is, where is, with all faults, and with no right of setoff or reduction in the purchase price.
9. The sale is without any warranties, express or implied, of any kind.
10. Items 37 and 38 of the California Vacant Land Purchase Agreement are hereby omitted. The bankruptcy court has full jurisdiction to determine and resolve all disputes between parties.
11. Sale is subject to overbidding at the hearing. If Buyer loses to an overbid, Buyer is refunded its initial deposit of \$10,000.00.
12. The Buyer’s and Trustee’s real estate brokers shall evenly split a 10% commission on the sale, equaling \$16,250.00 each.

Vacant Land Purchase Agreement, Exhibit B, Dckt. 119, ps. 15-41.

Trustee submits her own Declaration in support of this Motion. In her Declaration, she asserts she is not aware of any liens on the Property besides Randall and Glenda Azevedo’s lien valued at \$115,000.00, which will be paid with funds from the sale. Declaration, Dckt. 117. She states the sale is proposed in good faith and is in the best interest of the estate because Trustee will collect \$146,762.39 for the estate. *Id.* She asserts that the sale is the best available offer after hearing multiple offers. *Id.*

Trustee also submits Applicant’s Declaration in support of the Motion. In his Declaration, Applicant testifies to his work in selling the Property. Declaration, Dckt. 118.

DISCUSSION

Authorization 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: **xxxxxxxxxxxxxxxxxx**.

Trustee has estimated that a 10 percent broker's commission from the sale of the Property will equal approximately \$32,500.00, being split evenly between buyer's and seller's real estate brokers. As part of the sale in the best interest of the Estate, the court permits Trustee to pay the buyer's and seller's broker an amount not more than \$16,250.00 commission each.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will collect \$146,762.39 for the estate, and Buyer's offer is the highest and best available price for the Property after fielding multiple offers.

Allowance of Professional Fees For The Real Estate Broker

The order of the court approving employment of Reed Block, of Reed Block Realty was entered on March 23, 2023. Dckt. 90. In the Application to Employ Reed Block, the Trustee states that the commission fee for Mr. Block's services is 10% of the gross sales price. Motion, ¶ 9; Dckt. 78. As stated in the Motion, the amount of such professional fee is subject to subsequent bankruptcy court approval. *Id.*; 11 U.S.C. §§ 330, 331, 328. The court has not previously approved the percentage rate for the commission.

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)).

Movant computes the fees for the services provided as a percentage of the monies recovered for Client. Reed Block represented Movant in the marketing and sale of real property described as 448-450 US Highway 395, Milford, California. The Property was sold by it being marketed for sale and advertised through commonly used for Property of this type. The Court has approved the sale of the Property for \$325,000.00.

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type.

In the Application to Employ or the present Motion For Authorization to Sell Property and Allowance of Professional Fees for the Movant's Realtor, it is not explained why a 10% fee is the market rate. Commonly, this court sees real estate commissions of 6% for residential real property.

However, in the Motion For Authorization to Sell, the Movant states that this Property is 270 acres of vacant land located on Highway 395, and it is not a residential property. Thus, a real estate commission for such vacant land or non-residential property of 10% is a rate that the court commonly sees charged by Realtors for such properties.

The court allows Final Fees of \$32,500.00 pursuant to 11 U.S.C. § 330 for these services provided to Reed Block, of Reed Block Realty, to Movant. Such allowed fees, the real estate commission, shall be paid from the proceeds of the sale and may be split between Reed Block, as the seller's Realtor, and the real estate agent for Buyer as provide din the Purchase Agreement.

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 Sell Property / Motion for Allowance of Professional Fees filed by Nikki B. Farris, the Chapter 7 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 Nikki B. Farris, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to SARKS Investment, LLC ("Buyer"), the real property that is 270 acres of vacant land located at 448-450 US Highway 395, Milford, California 96121-9701 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$325,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 119, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 10 percent of the actual

purchase price upon consummation of the sale. The 10 percent commission shall be evenly split between Reed Block, broker for the Trustee, and Buyer's broker, with each earning \$16,250.00.

- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that Reed Block is allowed the following fees and expenses as a professional of the Estate:

Reed Block, of Reed Block Real Estate, the Professional employed by the Chapter 7 Trustee Fees in the amount of ten percent (10%) of the gross sales price of the Property, to be divided between Reed Block, as the Realtor for Seller Trustee, and the real estate agent/broker for Buyer.

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 (*pro se*), creditors, and Office of the United States Trustee on June 14, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is xxxx.

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Cynthia Cannon ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DISCUSSION

Debtor filed this bankruptcy case on May 19, 2023. On August 25, 2023, the court entered an Order Dismissing this Chapter 7 Bankruptcy Case pursuant to a Motion to Dismiss filed by the Chapter 7 Trustee. Order; Dckt. 18. The Debtor did not file an opposition to the Motion and the court's Docket for this Case reflected that the Debtor did not attend the continued Meeting of Creditors (341 Meeting) on August 24, 2023.

On September 5, 2023, the Debtor filed an *Ex Parte* Motion (Dckt. 21) to vacate the order dismissing this case. In the *Ex Parte* Motion, Debtor addresses some health issues, her efforts to appear at the August 11, 2023 scheduled Meeting of Creditors (and it having to be continued), and her efforts to prosecute this case in *pro se* (without an attorney).

Debtor has presented the court with “real world” reasons for the failure to get the Meeting of Creditors conducted and that vacating the dismissal is not unwarranted. However, in doing so and the Meeting of Creditors not being concluded in the five months that this Bankruptcy Case has been pending, the court determines it proper to extend the deadlines for actions to: [a] determine that Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) through (4), [b] to have a debt excepted from discharge pursuant to 11 U.S.C. § 423(a)(2) through (7), or [c] the Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(8) or (9), and each of them, is extended retroactively through and including October 16, 2023. Retroactive extension of the deadlines is proper in light of no Meeting of Creditors having yet been conducted and the Trustee’s Motion (with such extension provided for in the Notice and Motion to Dismiss; Dckt. 12). Debtor has also now paid the filing fee in full.

October 5, 2023 Hearing

On September 27, 2023, Nikki Farris, the Chapter 7 Trustee, filed a Status Report. Dckt. 28. The Chapter 7 Trustee reports that the 341 Meeting of Creditors has been rescheduled for October 26, 2023.

The court continues the hearing on the Motion to Dismiss to allow Debtor the opportunity to prosecute the Case and the rescheduled 341 Meeting of Creditors to be conducted.

November 2, 2023 Hearing

The Chapter 7 Trustee’s Report is that the Section 341 Meeting of Creditors was concluded on October 26, 2023, and that the Trustee has determined that there will be no distribution to creditors in this case. October 26, 2023 Docket Entry Report.

The Debtor has prosecuted this Bankruptcy Case and the basis for the requested dismissal have been resolved. The Motion is denied.

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

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

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”), having been presented to the court, the Debtor having now attended the continued 341 Meeting of Creditors and it having been concluded, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss for failure to Debtor to appear at the 341 Meeting of Creditors is denied.

As previously ordered by the court (Order, Dckt. 30) the deadline to file an action to: [a] determine that Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) through (4), [b] to have a debt excepted from discharge pursuant to 11 U.S.C. § 423(a)(2) through (7), or [c] the Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(8) or (9), and each of them, have been extended through and including December 1, 2023.

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, creditors, and Office of the United States Trustee on September 27, 2023. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Nikki B. Farris, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 7137 Canelo Hills Drive, Citrus Heights, California ("Property") and the following items of personal property: a 2014 Volkswagen Jetta, a 2012 Chevrolet Suburban, and a 2014 Toyota Prius ("Vehicles").

The proposed purchaser of the Property is the Debtor in this case, Florin Ioan Balaj and Ligia Balaj ("Buyer"), and the terms of the sale are:

- A. The Buyer shall purchase from the bankruptcy estate, and Movant shall sell to the Buyer, the estate's nonexempt interest in the Vehicles and the Property for a total price of \$8,116.00. The Buyer shall not claim any of the Purchase Amount exempt.
- B. The Buyer shall pay the purchase amount by delivering payments to Movant in cashier's checks made payable to "Nikki Farris, Chapter 7 Trustee, In re Balaj" as follows:

- a. \$516.00 at or before the time of signing the Agreement as the deposit;
- b. The remainder, \$7,600 by making 19 monthly payments of \$400.00 to be received by Movant no later than the close of business on the first day of the month beginning October 1, 2023, the final payment being due on or before the close of business on April 1, 2025.
- C. The Buyer will ensure that the Movant is added as an additional insured on the insurance policies for the Vehicles to indemnify the Movant against all liability until the Purchase Amount is paid in full.
- D. Until the obligations are fulfilled, the Buyer is to maintain the Vehicles in the condition they presently are, and the Buyer recognizes that this Agreement will remain in effect even in the event that the Vehicles are transferred, destroyed, or otherwise encumbered.
- E. The transaction is subject to the Bankruptcy Court's approval, and is subject to overbidding.
- F. The Agreement shall be void and the Movant will return to the Buyer any portion of the Purchase Amount if the court does not approve the sale, the court's approval is reversed on appeal, or the court orders a bid accepted that exceeds the Purchase amount.
- G. Each party to the Agreement shall sign further documents and take such further action as reasonably necessary to effectuate the terms of this agreement.

Exhibit A, Dckt. 29.

Movant submits her own Declaration in support of this Motion, mostly restating what is said in her Motion. Declaration, Dckt. 30.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate because the sale will generate \$8,116.00 for the bankruptcy estate, and the Movant is unlikely to recover more if she attempted to sell to a third party at a public auction. Declaration, Dckt. 30.

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 Sell Property filed by Nikki B. Farris, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Nikki B. Farris, the Chapter 7 Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) to Florin Ioan Balaj and Ligia Balaj or nominee (“Buyer”), the Property commonly known as 7137 Canelo Hills Drive, Citrus Heights, California (“Property”) and a 2014 Volkswagen Jetta, a 2012 Chevrolet Suburban, and a 2014 Toyota Prius (“Vehicles”), on the following terms:

- A. The Property shall be sold to Buyer for \$8,116.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 29, and as further provided in this Order.
- B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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 October 12, 2023. By the court's calculation, 21 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, -----.

<p>The Motion for Turnover is granted.</p>

Geoffrey Richards, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover regarding the inheritance interest Rodina Corder Ventura ("Debtor") received from her mother's estate, decedent Rebecca Alda Cordero ("Decedent"). Pursuant to Decedent's will, Debtor is to inherit 50% of Decedent's estate after Decedent's granddaughter received \$50,000.00 and the Decedent's nieces and nephews received a total of 2,000,000.00 Philippine pesos, approximately \$39,580.10. Order, Dckt. 328, p. 5, ¶ G.

Debtor's inheritance includes an interest in certain properties in the Philippines as outlined in this court's order issued on June 29, 2020 ("DNL-14 Order"). Order, Dckt. 328, p. 5-6, ¶ J. These properties were collectively determined to have a value ranging from \$577,926.65 to \$2,439,694.59. *Id.* at ¶ M. Movant petitions this court to compel Debtor to re-execute, before a new notary the Trustee knows, a Waiver and Assignment pertaining to all rights deemed assignable authorized by this court in the DNL-14 Order. Motion, Dckt. 490. Movant further petitions this court to compel Debtor to refrain from interference with the DNL-14 Order. *Id.*

Movant submits the Declaration of Debtor's sister, Regina Burnley, in support. Dckt. 493. Ms. Burnley informs the court that she is approved by Order DNL-14 to purchase Debtor's inheritance interest, including the properties in the Philippines. *Id.* Ms. Burnley further testifies that Debtor is interfering with the inheritance interest by "diverting rents from real property, about \$100,000.00 in New Jersey and about \$20,000.00 in the Philippines." *Id.*

Movant also submits its own Declaration in support. Dckt. 494. In its Declaration, Movant testifies that DNL-14 Order provides for a purchase price of a \$20,000.00 down payment, plus a sliding scale of recoveries ranging from \$20,000.00 to \$1,005,000.00. *Id.* Movant testifies that on October 11, 2022, it withdrew a motion to obtain cooperation from the Debtor in furtherance of the DNL-14 Order because it received a participation waiver related to legal proceedings in the Philippines and New Jersey executed by Debtor. *Id.* The State of California rejected the waiver of Apostille, a certification needed for use in the Philippines, due to a defect in the notary signature. *Id.*

DISCUSSION

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.

In this case, Movant has initiated this proceeding to compel Debtor to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

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.

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

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

Counsel for the Trustee shall prepare and lodge with the court a proposed order consistent with the above Ruling.

6. [22-23379-E-7](#)
[RLL-6](#)

ABDUL MUNIF
Gabriel Liberman

MOTION TO ABANDON
10-2-23 [82]

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, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on October 2, 2023. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

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

The Motion (Dckt. 82) filed by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") requests that the court authorize him to abandon two pieces of residential real property commonly known as 620A-620B Maple Street, West Sacramento, Yolo County, California, bearing APNs 008-131-050 and 008-131-

151 (“Property”). The Property is encumbered by the liens of two creditors, creditor Rushmore Loan Management Services and creditor Select Portfolio Services. Rushmore Loan Management Services holds a deed of trust against 620A in the amount of approximately \$180,000.00. Select Portfolio Services holds a deed of trust against 620B in the amount of approximately \$131,000.00. There are also various liens attached to the Property for delinquent utilities. Abdul Munif (“Debtor”) listed 620A in his Schedule A/B as having a value of \$500,000.00, and Debtor listed 620B as having a value of \$350,000.00. Schedule A/B, Dckt. 15, ps. 1-2. However, Trustee has determined that those values are far too high, and the aggregate sales price for both properties would likely not exceed \$400,000.00.

The Declaration of Trustee has been filed in support of the Motion and provides testimony that the value of the Property is far lower than Debtor’s estimation. Declaration, Dckt. 85. Trustee testifies that he has seen photographs of the interior and exterior of the Property. The Property’s interior and exterior was “strewn with refuse and abandoned personal property,” including inoperable motor vehicle parts. *Id.* at ¶ 4. There are other issues clouding title to the Property, such as Debtor’s wife jointly owning the Property, and the various liens for delinquent utilities. Such title problems raise the issue of not being able to receive any title insurance upon a sale. There is also a low tax basis in the Property, meaning a sale of the Property would realize a high taxable gain. Therefore, in its current condition, Trustee estimates he would likely only realize \$400,000.00 for a sale of the Property.

Trustee requests the court take Judicial Notice of Debtor’s Schedules A/B and D. Dckt. 84.

The court finds that the Property would generate negative financial consequences for the Estate if it retains the Property. Trustee has not collected any unpaid rents and is not running the rental business, nor does he desire to do so. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by the Chapter 7 Trustee 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 Motion to Compel Abandonment is granted, and the Property identified as two pieces of residential real property commonly known as 620A-620B Maple Street, West Sacramento, Yolo County, California, bearing APNs 008-131-050 and 008-131-151 (“Property”) is abandoned to Abdul Munif by this order, with no further act of the Chapter 7 Trustee required.

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 12 Trustee, attorneys of record who have appeared in the case, and Office of the United States Trustee on September 27, 2023. By the court's calculation, 36 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 12 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 Objection to Proof of Claim Number 13-2 of GEH Farms is xxxxxxx.

Jakob and Gladys Weststeyn, the Debtor in Possession ("Objector," "Debtor in Possession") requests that the court disallow the claim of Claim of GEH Farms, dba Hawes Ranch and Farm Supply, ("Creditor") Proof of Claim 13-2. There is a parallel Objection to Proof of Claim 13-2 filed by Greg Hawes in this case. The Claim of Creditor is asserted to be entirely unsecured in the amount of \$31,180.55. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:
 - a. Debtors formed JG Weststeyn Dairy, LP ("Dairy LP") to conduct the dairy operations.
 - i. Identity of General Partner

- (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.
 - (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.
- ii. Identity of limited partner
 - (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.
 - (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.
2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.
 - a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.
3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.
4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes (“Hawes”) and GEH Farms, dba Hawes Ranch and Farm Supply.
 - a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.
 - i. The invoices issued by Hawes and GEH Farms were to “JG Weststeyn Dairy.”
 - ii. No invoices were issued in the names of either of the two Debtors.
5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.
6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.
7. The basis for the Objection to the Claim

- a. The obligation is owed by Dairy LP, and not either of the two Debtors.
 - b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.
 - c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.
 - d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms' Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.
8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 120.

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 122. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

§ 2201. Formal requirements; Statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars (\$500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

(4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil

Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms “Merchant” and “Between Merchants” are statutorily defined in California Commercial Code § 2104(1) and (3) as:

§ 2104. Definitions: “Merchant”; “Between merchants”; “Financing agency”

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

...

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector argues that the Claim premised on the “person” named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A “merchant” is defined as a “person who deals in goods of the kind.” California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman’s Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the “person” is named on those invoices.

Review of Proof of Claim 13-2

Creditor states in ¶ 7 of Amended Proof of Claim 13-2 that the claim is in the amount of \$31,180.55 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on “feed delivered.”

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

A. Invoice 702343

1. Invoice date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$9,458.55
5. Invoice total due by 09/28/2022.

B. Invoice 702345

1. Invoice date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$9,615.65
5. Invoice total due by 09/28/2022.

C. Invoice 702349

1. Invoice Date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$4,783.85
5. Invoice total due by 09/28/2022.

D. Invoice 702351

1. Invoice Date 09/28/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$4,804.20
5. Invoice total due by 09/28/2022.

E. Invoice 702948

1. Invoice Date 10/11/2022
2. Hawes Ranch & Farm listed at the top of the Invoice.
3. JG Weststeyn Dairy listed as to whom the product was sold to.
4. Total is stated to be \$9,615.00
5. Invoice total due by 10/11/2022.

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession's Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 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 Objection to Claim of GEH Farms ("Creditor"), Proof of Claim 13-2, filed in this case by Jakob and Gladys Weststeyn, the Debtor in Possession, ("Objector," "Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 13-2 of Creditor is **XXXXXXX**.

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on attorneys of record who have appeared in the Bankruptcy Case, Chapter 12 Trustee, and Office of the United States Trustee on September 27, 2023. By the court’s calculation, 36 days’ notice was provided. 30 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 12 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, -----.

<p>The Objection to Proof of Claim Number 12-2 of Greg Hawes is xxxxxxx.</p>
--

Jakob and Gladys Weststeyn, the Debtor in Possession (“Objector,” “Debtor in Possession”) requests that the court disallow the claim of Greg Hawes (“Creditor”), Proof of Claim No. 12-2 (“Claim”) in this case. There is a parallel Objection to Proof of Claim 13-2 filed by GEH Farms, dba Hawes Ranch and Farm Supply. The Claim is asserted to be unsecured in the amount of \$30,417.65. Objector asserts that:

1. Beginning in 2014 and culminating in 2015 the two Debtors created the current structure of their dairy and farming business. This is stated as:
 - a. Debtors formed JG Weststeyn Dairy, LP (“Dairy LP”) to conduct the dairy operations.
 - i. Identity of General Partner
 - (1) The original general partner of Dairy LP was JG Weststeyn Dairy, Inc.

- (2) At some later date, JG Weststeyn, LLC was substituted in as the general partner.
- ii. Identity of limited partner
 - (1) The limited partnership interests, totaling 99% of the partnership interests of Dairy LP, are held in the 2015 Weststeyn Revocable Trust.
 - (a) The 2015 Weststeyn Revocable Trust was created by the Debtors for estate planning purposes.
- 2. Beginning in 2016, Dairy LP farmed approximately 2,200 acres of farm land producing feed for its dairy cattle, in addition to operating the dairy.
 - a. This dairy operation was managed by Debtor Jakob Weststeyn. Other family members worked on the dairy business, including Debtor Gladys Weststeyn.
- 3. The Debtors never operated the dairy in their own names, but it was operated by Dairy LP.
- 4. During the last half of 2022, Dairy LP purchased feed for its dairy cattle from Greg Hawes (“Hawes”) and GEH Farms, dba Hawes Ranch and Farm Supply.
 - a. It is asserted that Hawes and GEH Farms were contracting with Dairy LP.
 - i. The invoices issued by Hawes and GEH Farms were to “JG Weststeyn Dairy.”
 - ii. No invoices were issued in the names of either of the two Debtors.
- 5. At the end of 2022, Dairy LP liquidated its assets and the obligations owed to Hawes and GEH Farms went unpaid.
- 6. It is alleged that Hawes or GEH Farms, or their employees, took improper actions to try and induce payment of the obligations for the feed.
- 7. The basis for the Objection to the Claim
 - a. The obligation is owed by Dairy LP, and not either of the two Debtors.

- b. The California Commercial Code, § 2201, requires that a contract be in writing for the sale of goods, such as the feed that is the subject of the invoices upon which Hawes and GEH Farms assert their claims.
 - c. The goods at issue were not received by the Debtors personally, but by Dairy LP. Thus, as provided in California Commercial Code § 2202(2)(c), the obligation cannot be owed by Debtors.
 - d. Debtor in Possession never operated the dairy farm under its own name, and GEH Farms' Claim is actually with the dairy farm. Rather, the dairy farm always operated under JG Weststeyn Dairy, LP (Dairy LP), with JG Weststeyn, LLC acting as the general partner and the 2015 Weststeyn Revocable Trust acting as the limited partner of the Dairy LP. Therefore, GEH Farms has filed its Claim against the wrong party.
8. The statute of frauds under California Commercial Code § 2201 bars recovery. There is no contract in writing signed by the Debtor in Possession for the sale of the goods alleged in the Claim, and the goods were not received by the Debtor in Possession, but were received by the Dairy LP.

Objection, Dckt. 115

The Declaration of Debtor in Possession Gladys Weststeyn is provided in support of the Objection to Claim. Dckt. 117. Her testimony is almost word for word the grounds as stated by counsel for the Debtor in Possession in the Objection. Some key points noted by the court includes the following (identified by paragraph number in the Declaration):

8. She testifies that Hawes and GEH Farms contracted with Dairy LP, and did not deliver any feed to the Debtors individually. She includes her legal opinion that there is no contract or agreement that is enforceable against the Debtors and that an objection to claim is proper pursuant to 11 U.S.C. § 502(b)(1).

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

California Commercial Code § 2201

The State Law cited to by the Debtor in Possession is the California Commercial Code, specifically § 2201 which currently provides:

§ 2201. Formal requirements; Statute of frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars (\$500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

(4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed

to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

The terms “Merchant” and “Between Merchants” are statutorily defined in California Commercial Code § 2104(1) and (3) as:

§ 2104. Definitions: “Merchant”; “Between merchants”; “Financing agency”

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

...

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Objector’s argument that the Claim is premised on the “person” named on the invoice is not one or both of the Debtors. As provided in California Commercial Code § 2201(2), the statute of frauds is satisfied as:

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

California Commercial Code § 2201(2). A “merchant” is defined as a “person who deals in goods of the kind.” California Commercial Code § 2104(1). California courts hold that an invoice will bring a contract outside the statute of frauds as between merchants for purposes of § 2201(2). *See Dairyman’s Cooperative Creamery Association v. Leipold*, 34 Cal. App. 3d 184, 187 (Cal. Ct. App. 1973) (holding an invoice that confirmed the terms and conditions of the sale satisfied the statute of frauds where the purchaser did not object within ten days).

The question arises as to who the “person” is named on those invoices.

Review of Proof of Claim 12-2

Creditor states in ¶ 7 of Amended Proof of Claim 12-2 that the claim is in the amount of \$30,417.65 and that a statement itemizing the interest, fees, or other charges is attached. In ¶ 8 of Amended Proof of Claim 13-2, it is stated that the claim is based on “feed delivered.”

Attached to Amended Proof of Claim 13-2 are several Invoices which provide the following information, as identified by each Invoice:

a. Invoice 523

- i. Invoice date 09/20/2022
 - ii. Greg Hawes listed at the top of the Invoice.
 - iii. JG Weststeyn Dairy listed as “Bill To.”
 - iv. Total is stated to be \$11,863.36. (The invoice amounts are of questionable legibility.)
- b. Invoice 525
- i. Invoice date 09/28/2022
 - ii. Greg Hawes listed at the top of the Invoice.
 - iii. JG Weststeyn Dairy listed as to “Bill To.”
 - iv. Total is stated to be \$18,534.40. (The invoice amounts are of questionable legibility.)

Notice of Opposition by Hawes and GEH Farms

On October 25, 2023, Hawes and GEH Farms filed a Response to an Application by Debtor in Possession to continue the Scheduling Conference for an Evidentiary Hearing for the Debtor in Possession’s Motion to Confirm the Chapter 12 Plan. Response; Dckt. 313. In it Hawes and GEH Farms make it clear that they will contest the two claims objections. Hawes and GEH Farms anticipate discovery in connection with the confirmation process, and it appears these claims objections.

NOVEMBER 2, 2023 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 Objection to Claim of Greg Hawes (“Creditor”), Proof of Claim 12-2, filed in this case by Jakob and Gladys Weststeyn, the Debtor in Possession, (“Objector,” “Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12-2 of Creditor is **XXXXXXX**

FINAL RULINGS

9. [23-21667-E-11](#) SOLANO COUNTY BLACK MOTION TO CONVERT CASE FROM
[UST-1](#) CHAMBER OF COMMERCE, INC. CHAPTER 11 TO CHAPTER 7,
Le’Roy Roberson MOTION TO DISMISS CASE
9-18-23 [\[61\]](#)

ITEMS 9 & 10

Final Ruling: No appearance at the November 2, 2023 Hearing is required.

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, Subchapter V Trustee, creditors, and parties requesting special notice, on September 28, 2023. By the court’s calculation, 35 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert or Dismiss this Subchapter V Case is granted and this Case is Dismissed.

The United States Trustee, Tracy Hope Davis, (“Trustee”) filed this Motion seeking conversion or dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(J).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The Debtor in Possession commenced this case on May 23, 2023.
2. On its petition, the Debtor in Possession elected to proceed under Subchapter V of Chapter 11 of the code.
3. The Debtor in Possession is a small business under 11 U.S.C. §§ 1182(2) and 1184.

4. The Debtor in Possession has not filed a Plan. The deadline to file a Plan expired on or about August 21, 2023.
5. Cause exists under 11 U.S.C. § 1112(b)(1) to convert or dismiss this case. As defined in 11 U.S.C. § 1112(b)(4)(J), cause includes a debtor's failure to file a Plan within the time fixed by the code.

Motion, Dckt. 61.

Trustee filed the Declaration of Laurie Brugger, Trustee's Paralegal Specialist, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 63.

Debtor has not filed an Opposition.

Subchapter V Trustee, Lisa A. Holder, filed a Non-Opposition on September 21, 2023. Dckt. 65.

DISCUSSION

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).

Here, Trustee asserts that cause exists to convert or dismiss under 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(J) because Debtor in Possession has missed its deadline to file a Plan. A review of the docket on October 25, 2023 shows Debtor in Possession has still not filed a Plan. Trustee recommends dismissal rather than conversion because there appears to be only one unsecured claim in this case according to Schedule E/F. Motion, Dckt. 61. Furthermore, because the Debtor in Possession indicated that it is a tax-exempt entity, conversion may require the Debtor in Possession's consent pursuant to 11 U.S.C. § 1112(c). *Id.*

The Schedules filed in this case show little assets to be administered. Dckt. 37. Debtor lists no interests in any real property and the following personal property: (1) Deposit accounts with a value of \$12,500, (2) investments totaling \$200, and (3) Office equipment with a value of \$20,000. *Id.* at 1-4. The only creditor listed is the landlord, with appearing that this case was filed to stave off an eviction.

In the Trustee's report for the August 31, 2023, 341 Meeting of Creditors, the U.S. Trustee reports that neither the Debtor/Debtor in Possession nor counsel for the Debtor/Debtor in Possession appeared. August 31, 2023 Docket Entry Report. The 341 Meeting was concluded by the U.S. Trustee. The Debtor/Debtor in Possession and counsel for the Debtor in Possession failed to attend the prior 341 Meeting of Creditor. August 21, 2023 Docket Entry Report. The Debtor/Debtor in Possession and its counsel appeared at prior 341 Meetings of Creditors.

Trustee's arguments are well taken. No party in interest has opposed the Motion. Cause exists to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b), and dismissal is the more appropriate remedy. The court concurs with the U.S. Trustee that dismissal of this case is in the best interests of creditors.

The Motion is granted, and the case is dismissed.

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

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

The Motion To Convert or Dismiss this Subchapter V Case filed by the United States Trustee Tracy Hope Davis ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is dismissed.

Debtor's Atty: Le'Roy Roberson

Notes:
Continued from 9/21/23

Final Ruling: No appearance at the November 2, 2023 Status Conference is required.

<p>The Status Conference is concluded and the Status Conference is removed from the Calendar.</p>
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NOVEMBER 2, 2023 STATUS CONFERENCE

Since the September 21, 2023 Status Conference, nothing further has been filed by the Debtor/Debtor in Possession in this Bankruptcy Case. No opposition has been filed in response to the U.S. Trustee's Motion to Dismiss this Bankruptcy Case.

The court granting the Motion to Dismiss this Case, the Status Conference, is concluded and removed from the Calendar.

SEPTEMBER 21, 2023 STATUS CONFERENCE

A review of the court's Docket for this Bankruptcy Case reveals the following:

1. 341 Meeting of Creditors.
 - a. The Debtor and Counsel for the Debtor did not appear at the continued 341 Meeting of Creditors conducted on August 31, 2023.
 - b. The Debtor and Counsel for the Debtor did not appear at the continued 341 Meeting of Creditors conducted on August 21, 2023.
 - c. The Debtor and Counsel for the Debtor did appear at the continued 341 Meeting of Creditors conducted on August 7, 2023.
 - d. The Debtor did not appear at the continued 341 Meeting of Creditors conducted on July 18, 2023.

- e. The Debtor and Counsel for the Debtor did appear at the continued 341 Meeting of Creditors conducted on July 11, 2023.
- 2. Monthly Operating Reports
 - a. The Monthly Operating Report for May 2023 was filed on August 17, 2023. Dckt. 60.
 - (1) The Summary of Cash Activities shows that \$69,578 in cash was received in July 2023 and there were (\$75,052.82). MOR, § 2; Dckt. 60. This results in the Debtor in Possession having a negative (\$5,474) cash flow in July 2023. However, the Debtor in Possession states on the Monthly Operating Report having a positive \$5,474 cash flow for July 2023.
 - b. The Monthly Operating Report for June 2023 was filed on August 17, 2023. Dckt. 59. It shows that the cash receipts and cash disbursements were about equal for the month of June 2023.
 - c. The Monthly Operating Report for July was filed on August 17, 2023. Dckt. 59. It shows a positive \$1,052 in cash flow for the month of July 2023.
- 3. US Trustee Motion to Dismiss. Dckt. 61.
 - a. On September 18, 2023, the US Trustee filed a Motion to Convert or Dismiss this Bankruptcy Case.
 - b. The US Trustee states that the Debtor/Debtor in Possession has not filed a proposed plan in this Subchapter V Case and the ninety (90) day period following the commencement of this case set forth in 11 U.S.C. § 1189(b) has expired.
 - c. The hearing on the US Trustee's Motion to Convert or Dismiss is set for November 2, 2023.

July 17, 2023 Filed Status Report

On July 17, 2023, the Debtor/Debtor in Possession filed a Status Report. The court was not able to review it prior to the July 19, 2023 Status Conference. The Debtor/Debtor in Possession provides a detailed review of the events leading up to the filing of this Bankruptcy Case, a dispute concerning the default on a lease, the payment of post-petition rent, and ongoing efforts to resolve the dispute concerning the asserted default in rent payments.

JULY 19, 2023 STATUS CONFERENCE

The Debtor in Possession has not filed a Status Report for the July 19, 2023 Status Conference. The First Meeting of Creditors was continued to July 17, 2023. July 11, 2023 Docket Entry Report.

This Bankruptcy Case was filed on May 23, 2023.

At the Status Conference, counsel for the Debtor/Debtor in Possession will be filing an application for employment in the next couple of days. The Debtor/Debtor in Possession is working on getting the Debtor in Possession account set up. Counsel for the US Trustee reports that there are two monthly operating reports that have not been filed.

The Subchapter V Trustee reported that they are awaiting substantial documents and other documentation from the Debtor/Debtor in Possession. The Subchapter V Trustee reported that while counsel for the Debtor/Debtor in Possession has been diligent in communicating with the Subchapter V Trustee, the representative of the Debtor/Debtor in Possession has not been equally diligent.

Counsel for the landlord reported that they are not showing rent payment having been received from the Debtor/Debtor in Possession.

At the July 21, 2023 Status Conference, the principal of the Debtor in Possession reported that new counsel Craig Brown will be substituting in.

The SubChapter V Trustee reported that she has communicated with the Debtor in Possession and its counsel, identifying the causes for difficulty in communication. Also, that the Monthly Operating Reports are incomplete.

The US Trustee has a motion to dismiss being filed, the grounds being the failure to file a plan within the 90 day period required for a Subchapter V case.