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Southwest Bankruptcy Conference

Consumer Pre-Bankruptcy Planning and Residential Foreclosure Issues

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The filing of a bankruptcy can be a stressful time for everyone involved even with a decent amount of lead time to prepare for the filing. The process of preparing a bankruptcy for filing can also reveal issues that will affect and change the outcome of the strategy before filing, especially when real estate issues are involved. Having adequate time to prepare the case is an important consideration when deciding to take on a matter, and the reasons for a “last-minute”/“emergency filing” are important to consider before retainment takes place.

Further, the pressures of an impending foreclosure only add to the complexity of doing our due diligence as counsel for consumers and making sure that we are prepared for all that will come after the case is filed. Therefore, it is important to have some type of mechanism/framework to follow, before filing a case, to ensure that any issues or complications that can be addressed before the case is filed, are properly discussed and analyzed with the client, and so that the client enters the bankruptcy process fully informed of the complications that could arise surrounding the placement of the client before a bankruptcy trustee and court.

Similarly, if the case involves foreclosure issues and the preservation of equity in one’s residence, these are the most important cases to prepare and file with as much “perfection” and “pre-bankruptcy planning” as possible. Otherwise, with a possible dismissal and refiling, your client may face additional legal fees in a subsequent filing, or worse, the loss of their residence.

I. Foreclosure Issues & Forbearance Agreements to Consider Before Filing

A. Should a client file a Chapter 7 with a foreclosure pending/arrears on real property?

- ❖ New trend in certain regions-
 - a. Trustees are entering into “settlement agreements” with junior lienholders to give “carve-outs” to the estate/general unsecured creditors in order to sell debtor’s residence and avoid paying the debtor’s homestead exemption (“HSE”). See attached briefing in *In re Romero* for an example of this and the issues surrounding same. Will the fact that the Debtors were behind on the mortgages, at filing, affect the court’s ruling on matters like this in the future?
 - b. Are there tax liens on the residence which would allow a Chapter 7 Trustee to avoid having to pay the client’s HSE pursuant to 11 U.S.C §724?
- ❖ Best to enter into a loan modification before filing, if possible, when preparing to file a Chapter 7.
- ❖ If a loan modification is not possible, filing a Chapter 13 should be assessed if there is enough disposable income to cure arrears in a Chapter 13 Plan.
- ❖ If a Chapter 13 is not feasible, Client should consider giving a HSE “carveout” to the Chapter 7 Trustee, to have home sold by Chapter 7 Trustee to preserve equity, if foreclosure is imminent.

B. Chapter 13 may be the client’s best mechanism to deal with a pending foreclosure/arrears on real property-

- ❖ Allows client to file quickly and include fees in the plan;
- ❖ Allows client to cure arrears over a 60-month period [11 U.S.C. §1322(b) & (c)];
- ❖ Can the client afford the plan payment?

- If not, does your division/judge allow a balloon payment in a Chapter 13 plan so that the client can make a modest payment for a period of time while they market and sell the property?
- ❖ Can the client remain current on post-petition payments?
 - If not, do you need to file a Chapter 11 for the client?
- ❖ Must be sure the plan is feasible based on client's circumstances-
 - What other debts is your client going to be required to pay through the plan, in addition to the arrears? (i.e. property taxes, priority claims, etc.)

C. Paper your file before you hit “File” and be prepared to respond to a relief from stay motion if foreclosure is pending:

1. Send out a Request for Information (“RFI”) (See attached sample) to all secured lenders on real property so that you can obtain a copy of the file the lender has;
2. With any type of foreclosure issues pending, you must have all of the following documents to properly address the issues arise after filing:
 - a. Copy of the deed of trust;
 - b. Note and any amendments;
 - c. Monthly statement or some type of accounting that shows arrears on the loan;
 - d. Copy of the Notice of Default and the Trustee Sale, if one is issued;
 - e. Evidence of valuation at or near filing;
 - f. Proof of insurance on the property (and not “force placed insurance” - make sure your client has or gets their own insurance on the residence); and
 - g. Payment history for no less than two years prior to filing.
3. Be sure you know all of the reasons the lender claims the client “defaulted” on the note, monetary **and** non-monetary, if any, and cure any non-monetary defaults before filing, if possible;
4. Review all defenses to alleged defaults and claims against lender and be sure to list such claims on Schedule A/B-
 - a. Did the lender send statements in accordance with Reg X?
 - b. Did they start a foreclosure and demand an improper cure amount?
 - c. Are they accounting for all payments the client says they sent?
 - d. Are there charges on the account that should not be there?
 - e. Check the suspense account!

II. Homestead Exemption Issues to Consider Before Filing

With the vast changes to the homestead exemption (“HSE”) statutes in many Southwest states and around the country, HSE litigation is on the rise. Until these recent HSE statute amendments were enacted, certain federal statute “cap’s” under the Code had little to no effect on the state HSE amounts. However, now a practitioner must go through very careful steps before filing a bankruptcy for an individual who desires to retain their home. Therefore, it is important to pay close attention to the possible pitfalls of 11 USC §522 before filing the client’s bankruptcy.

A. Starting the Case Off Right- Make sure to properly Schedule assets and exemptions

It is imperative that debtors properly fill out their schedules and claim appropriate exemptions. Claiming inaccurate exemptions or making misrepresentations in schedules may keep the debtor from retaining their exemption in property even if the Supreme Court has held that once the deadline to object to exemptions has passed, any further objection to an exemption is precluded. See *In re Masingale*, 2024 WL 3545666 (9th Cir. July 26, 2024) (distinguishing USSC decisions of *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) and *Schwab v. Reilly*, 560 U.S. 770 (2010), that allow individual debtors to claim an exemption in “100% of FMV” of a scheduled asset). Therefore, be sure to obtain all appropriate documents on valuation of property, encumbrances against same, and be sure to carefully review all schedules with the client before filing, to be sure that everything is accurate. See attached for a sample intake form and required document list.

B. 522(g) Checklist:

Pursuant to 11 U.S.C. 522(g), with some exceptions, the debtor may exempt property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property, if such property had not been transferred, if—

- (1) (A) such transfer was not a voluntary transfer of such property by the debtor; and
(B) the debtor did not conceal such property; or
- (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

If the client has made any transfers, even those between a non-filing spouse, evaluation of whether to undo any such transfers should take place before filing and a warning to the client about the risks of filing with any such transfer should be discussed. An example of a transfer that could arise and may be worth “undoing” before filing is when the client’s non-filing spouse has recently refinanced the family residence and the client, with not-so-fabulous-credit, had to sign a quit claim deed to their non-filing spouse, to be removed from title to the family residence, so that the family could qualify for the home loan. Similarly, if the client assisted someone else (like a friend or family member or significant other) in purchasing a residence that the client may or may not live in, it is important to determine the ramifications of the client’s filing, on the other parties, because, in most situations, the client’s objective is not to have the friend or family member’s home sold by a bankruptcy trustee/their HSE disallowed/decreased (if the client also lives in the home).

Therefore, the following are items of information/documentation that should be obtained before filing:

- 1. Has the Debtor made any transfer of property?
 - a. Transfers to a non-filing spouse?
 - b. Transfers to a parent? Anyone else?
- 2. Was it exempt at the time of the transfer?;
- 3. Did it have value/equity at the time of the transfer?; and
- 4. Was the transfer voluntary?
- 5. Disclose all transfers!

6. Be prepared to account for any transfers made in the 5 years prior to filing even though the Statement of Financial Affairs (“SOFA”) asks for transfers in the 2 years preceding the filing of the case.

C. 522(o) Checklist:

Pursuant to 522(o), the “value” of an exempt interest in a client’s residence “shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt....if on such date the debtor had held the property so disposed of.”

Again, these issues were rarely litigated, but with the increase in many HSE amounts, this statute is likely to be used more often by creditors trying to combat higher HSE amounts that make it worth bringing litigation over this issue. Most commonly, this issue is raised when the client used funds from a source that can be traced back to an unlawful taking (*i.e.* funds obtained from breaching a fiduciary duty/stealing from a trust, or embezzling funds from an employer, etc.) but can also arise in situations where the client simply made a substantial payment on the mortgage secured against their residence, using non-exempt funds, that would otherwise have been used to pay creditors at the time the payment was made. There is ample law that says exemption planning is not unlawful/fraudulent but one must be careful to not overstep the line between the two.

Therefore, the following should be evaluated with your client before filing:

1. Did the client make any large payments on any encumbrances against their residence in the 10-year period prior to filing? (Yes, **10-years!**)
2. If so, was the asset disposed of not exempt at the time? See *Green v. Weinstein (In re Green)*, BAP No. NV-16-10 8 0-JuKuL (B.A.P. 9th Cir. Mar 10, 2017); and *Soulé v. Willcut (In re Willcut)*, 472 B.R. 88, 67 Collier Bankr.Cas.2d 1636 (B.A.P. 10th Cir. 2012) for an interesting discussion/view of how the court interprets “the phrase ‘value of an interest in ... real [] property’ as the measure of the increase in monetary value of the economic interest in real property claimed as a homestead due to a fraudulent transfer of non-exempt funds into the property, rather than a title interpretation of the word ‘interest’...”.
3. Will a court find that the disposition of the asset and the use of the funds to pay down the encumbrance on the residence was done “with the intent to hinder, delay, or defraud a creditor”? Court’s often review the badges of fraud in determining this issue

D. 522(p) Checklist:

Another statute that will likely have increased litigation surrounding it the increases in HSE amounts is 11 U.S.C. 522(p), which mandates that “a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000 (with

adjustments that presently make it approximately \$190,000) in value in” in their residence, except that “any amount of such interest does not include any interest transferred from a debtor’s previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor’s current principal residence, **if the debtor’s previous and current residences are located in the same State (emphasis added).**”

Therefore, the following should also be evaluated with your client before filing:

1. How long has the client(s) been living in their home?;
2. When did the clients acquire their residence?;
3. If the client acquired the property in the 1215-day period preceding the date of the filing of the petition and the equity exceeds the HSE cap in 522(p) then should you wait to file;
4. 522(m)- If you have a married a couple, does it make sense to file for both of them to be allowed to double the cap in 522(p)? *In re Davis*, No. 22-40279-MJH, 2022 Bankr. LEXIS 1857, at *8-9 (Bankr. W.D. Wash. July 6, 2022) and *In re Reicher*, EDCV 22-2050 JGB (C.D. Cal. Dec. 22, 2022);
1. Did the client transfer equity/value from their previous residence (which was acquired prior to the beginning of such 1215-day period) into their current residence? If so, argue that you should be able to “stack” those amounts on top of/in addition to the 522(p); and
2. *Was the previous and current residences located in the same State?* WARNING: The residence in which you rely upon for a transfer of equity from one home to another must be in the same state. See 522(p)(2)(B).

E. 522(q) Checklist:

Finally, amidst the sea of the 522 alphabet of “pitfalls” a consumer bankruptcy attorney can fall in, is §522(q), which states that “a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000 (with adjustments) if— (A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or (B) the debtor owes a debt arising from...” various different circumstances discussed in the statute. Often times, clients are embarrassed or reluctant to discuss these issues, so having something in your intake form/initial interview, at the very outset of the case, is important to catch issues like those raised in 522(q), so that they can be address early on in the matter. It is important to remember that §522 only applies to debtors in bankruptcy, therefore, so long as your client’s state does not have reciprocal statutes like the alphabet discussed above, staying out of bankruptcy completely, may allow your client to protect a larger HSE.

Therefore, the following should also be evaluated with your client before filing:

1. Has the client been convicted of a felony: AND
2. Could the filing of the case may be viewed as an abuse? [“a threshold matter, for a felony conviction to demonstrate that the filing of the case is an abuse, there must

be some nexus between the felonious conduct and the bankruptcy case..." *In re Cotton*, 647 B.R. 767 (Bankr. W.D. Wash. 2022)].

3. Does the client owe a debt arising from:
 - a. any violation of the Federal securities laws?
 - b. any State securities laws?
 - c. any regulation or order issued under Federal securities laws or State securities laws?;
 - d. fraud, deceit, or manipulation in a fiduciary capacity?;
 - e. in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933?;
 - f. any civil remedy under section 1964 of title 18?; or
 - g. any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years?

See *In re Oliver*, 649 B.R. 206 (Bankr. E.D. Cal. 2023) for a very good discussion on §522(o), (p), and (q) attached.

4. If yes to any of the above, is there an argument that the exemption is reasonable and necessary to the support of the client and their family, if any?

F. 724 Sale Checklist:

1. Does the client owe any income taxes?
2. If so, obtain a transcript from the taxing authorities AND a preliminary title report or some type of title report to see if the taxing authority holds a lien against the client's residence and if so, for how much?
3. If there is a lien, you must warn your client that there is a strong likelihood that the client's home could be sold by their Trustee in a Chapter 7:
 - a. Should they not file?
 - b. Should they pay the lien down before filing a Chapter 7? Does the client then need to wait to file 90 days from payment before filing?
 - c. Should they file a reorganization?

See *United States v. Warfield (In re Tillman)*, 53 F.4th 1160 (9th Cir. 2022) for a discussion on the "window" of time a trustee has to avoid and preserve a tax lien on a debtor's residence. ["Section 724(a) concerns the trustee's avoidance of qualifying liens attached to the property of the estate at the time of distribution. When a debtor exempts a property interest under 11 U.S.C. Section 522, the exemption withdraws that property interest from the bankruptcy estate and, thus, from the reach of the trustee for distribution to creditors. Accordingly, because exempt property is not "property of the estate" which may be "distributed," a trustee may not avoid a lien under Section 724(a) attached to exempt property which is no longer part of the estate. The panel held that it follows that a trustee is not permitted to preserve the tax lien for the benefit of the estate under Section 551, which provides for automatic preservation of certain avoided liens, including liens avoided under Section 724(a)."]

G. Subchapter V Considerations:

Does the client have an SBA loan, HELOC, or other type of loan or MCA agreement secured against their residence that has begun foreclosure/will balloon during the case and can only be modified in a Sub V? Even if the client fits into a more economic Ch 13, should the client file a Sub V for this reason? See Section III for an in depth discussion on this issue.

III. Subchapter V Considerations

A. General Background

In 2019, the Small Business Reorganization Act (“SBRA”) was passed and effective February 2020, which incorporated the Subchapter V case (“Sub V”). Sub V is designed to accelerate, simplify, and facilitate a debtor’s filing. Pursuant to 11 USC 101(51D), the Small Business is defined as a Debtor with unsecured and secured claims in amount not more than \$3,024,725 for cases filed after June 22, 2024. The Debtor is engaged in the commercial business activities except single asset real estate cases. The majority of the debts must arise from commercial or business activities of the Debtor. Debts do not include the debts owed by the affiliates or insiders.

In general, a Debtor is eligible to elect Sub V if the debtor: (1) is a “person;” (2) is engaged in “commercial or business activities;” (3) does not have aggregate debts in excess of the debt limit; and (4) at least 50 percent of the debts arise from the debtor’s commercial or business activities, subject to certain exceptions.

The Sub V case allows for the following:

- Modifies confirmation requirements;
- Provides for the participation of a trustee (the “Sub V Trustee”) while the debtor remains in possession of assets and operates the business as a debtor in possession;
- Changes several administrative and procedural rules;
- Alters the rules for the debtor’s discharge and the definition of property of the estate with regard to property an individual debtor acquires post-petition and post-petition earnings (which has implications for operation of the automatic stay of § 362(a)); and
- Only the Sub V debtor may file a plan or a modification of it.

B. Issues arising from Homestead Real Estate in Sub V

1. Homestead debt may be modified under certain circumstances

§ 506 of the Bankruptcy Code provides that secured creditors claims may be bifurcated into secured and unsecured claims. However, in a non-Sub V proceeding, a Plan may not use Section 506 bifurcation to modify debt secured by the Debtor’s principal residence. 11 USC § 1123(b)(5). A Chapter 13 has a similar antimodification provision pursuant to 1322(b)(2), which provides that the Chapter 13 may not modify a security interest in Debtor’s homestead when the security interest is only secured by the Debtor’s principal residence.

Subchapter V provides that, with respect to secured claims against Debtor's principal residence (notwithstanding the restrictions in Section 1123(b)(5)), a Debtor may modify the rights of a secured creditor of Debtor's principal residence if the new value received in connection with the granting of the security interest was (A) not used primarily to acquire the real property; and (B) used primarily in connection with the small business of the debtor. Accordingly, the SBRA may have a negative impact on lenders since it will be easier to confirm a chapter 11 plan and cram down a lien that is secured by a residence pursuant to 11 U.S.C. §1190(3).

2. Section 1111(b) and impact on Homesteads in Sub V Cases

In general, a creditor with lien rights against collateral is considered fully secured when the value of the property is greater than the amount of the creditor's claim. This is based on 11 U.S.C. § 506 which provides as follows:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest...is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property...and is an unsecured claim to the extent that the value of such creditor's interest...is less than the amount of such allowed claim.

For instance, a creditor with a deed of trust on a home is fully secured when the value is \$500,000 and the creditor's claim is \$400,00. However, the creditor is undersecured when the value of the collateral is less than the claim. Under § 506, if by example, the home's value is \$250,000 and the claim is \$400,00 the creditor has a secured claim for \$250,000 and an unsecured claim for \$150,000.

A creditor's claim that is considered undersecured can be reduced in a Chapter 11 proceeding if the Debtor requests the Bankruptcy Court to pay the secured claim in full and the unsecured claim on a pro rata basis like other unsecured creditors. This is referred to as a cram down procedure. A debtor that elects this procedure is required to comply with other code provisions before a Bankruptcy Court will allow such treatment to the undersecured creditor.

Nevertheless, the Bankruptcy Code provides Section 1111(b) whereby a creditor can elect to be treated as fully secured notwithstanding the collateral value is less than the secured creditor's claim.

The following is a pertinent part of 1111(b):

(1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under §502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim whether or not such holder has such recourse, unless—

(i) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (2) of this subsection; or

(2) If such an election is made, then notwithstanding §506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

3. Procedure for making the 1111(b) Election

In a Chapter 11, which is not subject to Sub V, on or before the hearing of the Disclosure Statement, the undersecured creditor must make a determination as to whether it will be treated as a fully secured creditor under Section 1111(b), or have its claim bifurcated into secured and unsecured claims under the plan. To the contrary, in a Sub V case, the Court does not have a Disclosure Statement hearing, but FRBP Rule 3014 provides that election may not be made later than the court may fix the deadline. Generally, the Court will set the date or the secured party and Debtor may enter into a Stipulation regarding the election date. If the Court does not set a date, the secured creditor should request an election date. As a practical matter, most orders setting confirmation hearings will provide the Section 1111 (b) election date (usually 7 days prior to the confirmation hearing date).

Under an 1111(b) election, the undersecured can elect to have its claim treated as fully secured. The advantages of making an election in a Chapter 11 are that (a) the election may prevent the Debtor from filing a feasible Plan of Reorganization, or (b) the creditor may get its entire claim paid in full, as a secured claim.

The disadvantage of making an election under a non-Sub V 1111(b) is that the creditor loses the blocking right in the Plan. Also, the creditor may lose the opportunity to object to the plan based on an unsecured creditor, but still raise secured creditor objections. Nevertheless, this loss may be minimal when the deficiency claim is small and unlikely to make a difference in the plan voting.

Generally, the undersecured creditor should make the election under all circumstances in a Sub V case. As a result, the Debtor will attempt to object to the election and the best manner to object to the election is that the collateral has inconsequential value, usually junior lien creditors with a small amount of equity, may not use the 1111(b) election. "This restriction is designed to prevent the holder of a lien which has little or no value from obtaining disproportionate leverage under the confirmation provisions of S 1129." Bankruptcy Developments Journal, The 1111(B)(2) Election: A Primer, p. 117, (Winter 1996). The Bankruptcy Code does not define "inconsequential value".

Additionally, a secured creditor with the right to recourse may not elect 1111(b) when the property will be sold at a sale under a Chapter 11 plan of reorganization or if the lien is extinguished during the proceeding, i.e. by a non-judicial foreclosure.

There are other issues and rules regarding the 1111(b) election and the confirmation of the plan. However, the above-mentioned issues summarize the material portions of the 1111(b) election in a Sub V context.

IV. Small Business Administration 7A loan and homestead lien Issues

Generally, a small business borrower may obtain a small business loan through a lender that is guaranteed by the Small Business Administration ("SBA") which is known as a 7A SBA loan. The lender will be more likely to provide this type of loan to the borrower when the borrower might not otherwise qualify due to the nature of the business or the financial condition of the business. The interest rate is the same as the

ordinary market rate, but the borrower is required to pay a fee for the SBA 7A loan, which may make the loan cost prohibitive.

The SBA will provide a guaranty to the lender giving the lender an incentive to provide this type of loan to the borrower. The SBA guaranty to the lender allows for the lender to get paid from the SBA up to a percentage of the loan in the event the borrower defaults and fails to pay the lender in full.

The lender will require a lien on all the assets of the borrower as well as a guaranty from the owners of the borrower. To the extent the guarantors own a home, the lender will get a deed of trust or mortgage on the home. This collateral requirement arises from the SBA requirements as part of the SBA guaranty to the lender.

The borrower and guarantor (“Obligors”) may seek a modification to the extent the loan is in distress and may seek the modification of the security interest against the home. The SBA SOP 50 57 3 provides the details for the modifications and releases. In general, the Obligors will need to work with the lender and the lender will need to obtain SBA approval for the modification or releases by the Obligors. In order to obtain SBA approval, the SBA approval will require the Obligors to provide, inter alia, i) 2 years of tax returns, ii) the SBA Form 770, which is a financial statement for the Obligors, and iii) the SBA Form 1150, which is the Offer In Compromise setting forth the proposal to the lender and SBA. The lender will require SBA approval as part of any modification of the loan.

The Offer In Compromise process should probably be completed before a bankruptcy petition is filed because the process for the OIC can be time consuming and the lender will not be able to negotiate with the debtor without SBA approval. As a consequence, the lender may not be able to obtain approval by the SBA or may not be able to get a timely response to comply with the time requirements for the bankruptcy negotiations.

V. Debt Limit Considerations

A. Does it make sense to paydown debts to file a Ch 13/Sub V before filing?

1. Use nonexempt funds on hand to pay down debts- However, need to be careful of 522(o)/523(a)(2)(A) issues;
2. Use exempt funds on hand to pay down debts; and/or
3. Can the client obtain legitimate gifts from family to paydown debts?

B. Pay down high interest claims before filing if funds/time are available-

1. Consider paying down property tax arrears or HOA dues which often accrue at high interest rates;
2. Pay down non-discharge debts; and/or
3. Other debts that would otherwise incur interest, like priority income taxes or judgment liens which would arguably not be getting more than the amount they would otherwise get in through the proposed plan (avoiding possible issues relating to 522/523 type objections).

VI. Being Prepared for Chapter 13 Requirements

A. Know your Client

1. What are your client's goals? Long term and short term;
2. Is action on your part (client's part) required down the road to accomplish those goals? E.g. Motion to Sell Real Estate.
3. [Joint Title Issues] – Is bare legal title at play? Just because someone else is on the title to the home, may the Trustee assert that their interest is so di minimus that the Best Interest of Creditors is NOT reduced by their joint ownership interest. Reverse may be true as well.
4. Does your client appear on title to anyone else's property (*i.e.* Mom and Dad put debtor on title to their residence; debtor co-signed on a home loan/purchased a home for someone else);
5. Can your client propose a feasible plan and if not, do they have assistance/contribution from outside sources(s) to do so? What evidence will you need for to prove this for confirmation?; and
6. Can you value the residence or other real property and strip off any debts?

B. Know your Local Bankruptcy Rules (“LBR’s”) inside and out, as well as corresponding forms that will typically decrease costs to your client and may be “mandatory” to use in your district

Most courts have their LBR's on their website. Be sure to know these rules inside and out. Typically, there are declarations and disclosures that must be made after filing the case and before the 341(a) and confirmation as well as motions that need to be filed. Examples of such information that needs to be gathered before filing are:

1. Declaration regarding the filing of tax returns and the payment of DSO obligations;
2. Declarations regarding payment of post-petition secured debt payments;
3. Contribution declarations evidencing outside sources of income;
4. Motions to value collateral/“cram down” debts pursuant §506; and
5. Motions to avoid liens pursuant §522(f)

Additionally, the LBR's often have deadlines to file very important motions like valuation motions and avoidance motions or specific information that the Trustee and creditors are to receive before a plan can be confirmed.

C. Judge specific requirements- It is imperative to know, not just the Code's requirements and your LBR, but the requirements of your local judge(s) as well. Check the court's website for special rules/requirements for the assigned judge. For example: Your LBR's/LBR Forms may have one form but some judges have their own forms. See attached examples of LBR Form for Declaration Setting Forth Postpetition, Preconfirmation Payments On: 1) Deeds Of Trust [Or Mortgages]; 2) Leases On Personal Property; 3) Purchase Money Security Liens On Personal Property [LBR 3015-1(e) and LBR 3015-1(m)] vs. a judge specific form. Similarly, see Contribution

Declaration for specific trustee vs. a judge specific form for same. Also, check for specific deadlines to file valuation motions and lien stripping motions which will effect your plan and pending foreclosures/relief from stay issues and which may vary from LBR. Be sure to also review your assigned judge's procedures of motions to impose or continue the stay. Often time, judges will have special rules for shortening time on such motions that are extremely beneficial to short timeline you have to obtain the relief necessary to keep the automatic stay in place that is imperative when there is a foreclosure or repossession looming in the background.

- D. Trustee specific requirements-** Be sure to determine if the assigned Trustee has any specific requirements such as how to submit documents (via email or some electronic system), specific forms/declarations, specific evidentiary requirements for issues relating to contributions, valuation, etc.. See Sample of Trustee specific business reports that may be required for business cases. Your Chapter 13 Trustee and their websites can be full of wealth of knowledge and assistance. See 11 U.S.C. §1302.

If you're new to the District (or old but clearly not cutting it), CALL your Trustee. Ask them about their preferences in just addressing issues. Most Trustees would much rather discuss options (especially logistics) on the front end than having to correct errors/object later. Or, call to discuss case facts that you're not sure how to address.

- E. PRIOR FILING AND STAY ISSUES-** If your client has had prior filings, be sure to review how those prior filings will affect your client's case and property. See §362(c)(3) & (4).

*****GET YOUR MOTIONS TO IMPOSE OR CONTINUE THE STAY PREPARED BEFORE FILING THE CASE AND READY TO FILE WITH THE PETITION.*****

F. The Section 341 Meeting

1. Remember, this is likely your client's first time in a FORMAL hearing and it's done via Zoom. Make sure they know how to use Zoom or have them come to your office.
2. Documents –
 - a. IDs- DL and SS Card;
 - b. Tax Returns (know § 1308). If returns are not filed, a Trustee may continue the Meeting.
 - c. Proof of income – See FRBP 4002
 - d. Bank StatementsNot all Trustees may require all this, but know if it is. AND REVIEW IT. Look for additional income sources; additional bank accounts; additional income in the prior years and inquire because YOUR TRUSTEE WILL.
3. Know the Questions and Prepare your Client. See [Section 341\(a\) Meeting of Creditors Required Statements/Questions \(justice.gov\)](#)
4. Know if any creditors will appear (or likelihood of appearing). With Zoom, so many more appear. Is there an Ex; is there any pending state-court litigation that will transfer over to Bk Court.

G. The Plan

1. Income Sources - Make sure the Plan is indicative of your Client's goals. Are you selling real estate or other collateral to fund the plan; will any lawsuit proceeds come into the plan (make sure these are scheduled if so); will tax refunds be turned over, etc.
2. Conduit Mortgages – What is the LBR? Who is the Mortgagee? Do you know anything about their record-keeping and if it will be a valid POC or one you know you need to watch. Is it in your client's best interest to include the mortgage even if not required.
3. Tax Issues – How much tax liability is there? Can they afford to pay it all in full or will you provide to pay in part. Is all priority/unsecured or are there secured claims. Can you avoid any part of the lien.
4. DSO – Have you listed the recipient? See § 1302(b)(6). The Trustee has required letters to send to the Recipient and/or State. They will want to ensure this is listed. Is your client current? AND are they current since the filing of the case? This matters, as Trustee cannot confirm if there is a post-petition delinquency. If you're asserting it is "assigned" do you have proof if not paying in full?
5. Student Loans – Does your client have an active IDR? Can you discharge some or all? Are they in forbearance?
6. Imbedded Motions – can you do this by separate Motion or do you have to do it through your plan? I.e. Motions to Avoid Liens/Motions to Value, etc.
7. Vesting – know the approach in your District or have some idea how things work. Requirement to disclose post-petition assets/income.
8. Unknowns – Make sure your client knows they can't sale any property; they can't incur new debt; if there is a total loss, the Trustee (and maybe even the Court) must be informed; change in income/job, etc.

H. Disposable Income

1. Means Test – AMI or BMI and what does that mean in your District, i.e. strictly I/J or 122C still applies. Is there a post-petition, pre-confirmation change in circumstances (or even a change within the 6 months before the month of filing).
2. What additional expenses does your client have that may not show-up on the Means Test. Make sure you know what is included in your Standard Expenses. See also, *In re Moreno*, 656 B.R. 443 (Bankr. D. N.M. 2023) – where Debtor was able to deduct standard expense where she incurred part of the expenses that existed within that category. Specifically, housing expense and mortgage/rent expense, where Debtor did not pay any utilities other than propane tank in winter or taxes on mortgage, as non-filing finance paid mortgage payment, Debtor was permitted to deduct the full standard expense for both utilities and mortgage as she paid a portion of that standard expense.
3. Change – how does your Trustee want it shown? Know the Form 122C. Know which expenses required immediate turnover of proof even prior to the Meeting of Creditors.
4. If 100% required – do they want a smaller payment or to get out sooner? If BMI don't forget, can't go longer than 36mos unless good cause is shown.

5. Who is all in the household and have you considered their income? If elderly mother resides within home and you include her in HH size, does her SSI come in?
6. Bonuses? OTRs? Business debtors – MORs required? Commission? Mineral rights? Oil rights? Royalties?

VII. Mortgage Mediation/Modification Programs- Many courts have started mortgage mediation/modification programs which assist debtors in communicating with lenders to work out retention agreements/modification to allow them to stay in their residence. See <https://www.nvb.uscourts.gov/mortgage-modification-program/> and https://www.cacb.uscourts.gov/forms/loan_modification_forms for sample forms for active bankruptcy court loan modification programs. If your court does not have one, volunteer to start one!

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CONFIDENTIAL QUESTIONNAIRE ATTORNEY/CLIENT PRIVILEGE

You will be provided a **FREE** 60-minute consultation **IF** you have completed the attached intake sheet. If you do not want to fill out the attached forms, you may pay for a consultation at our normal hourly rate. Our time is our major product and we want to be sure to get all of the pertinent information from you so we can best advise you of your options in and out of bankruptcy, so the more prepared you are when you meet with us the better!

You may estimate numbers for now, but please answer ALL of the questions as best you can and mark anything you have a question on by putting a "?" beside it. Please try not to leave any blanks and when we ask for values, please use realistic liquidation values (not replacement values).

I. CONTACT INFORMATION:

Full name: _____ Spouse's Name: _____
Home address: _____ Mailing Address: _____
Work phone: _____ Spouse's Work phone: _____
Cell phone: _____ Email: _____
Spouse's Cell Phone: _____ Spouse's Email: _____
Marital status: _____ If divorced/divorcing, has the divorce been finalized? ☐ yes or ☐ no
When was Divorce filed: _____ When was the final judgment entered? _____
Your Date of birth: _____ Spouse's DOB: _____
Soc. Sec. No: _____ Spouse's SSN: _____
Other Tax ID numbers or Social Security numbers ever used: _____
What other personal names have you used (aka) ? _____
What business names have you used in the last 8 YEARS (dba)? _____
Are any of these businesses still operating? ☐ yes or ☐ no _____
Have you ever filed a bankruptcy? ☐ yes or ☐ no If yes, state where & when: Where: _____ Year filed: _____
Pending bankruptcies: If any immediate family member or business partner has a bankruptcy pending, state names: _____
Have you lived in this COUNTY for the last 6 months? ☐ yes or ☐ no List ALL state(s) you have lived in DURING the last 5 years? _____
Has your name appeared on title to any real property in the last 10 years? ☐ yes or ☐ no

II. DO YOU OWN REAL PROPERTY? (If yes, complete Section II. If no, go to Section III)

(Examples: Residence, Timeshare, Rental property, bare land, commercial building, life estate)

PROPERTY #1 –

PROPERTY ADDRESS: _____ WHO OWNS THE PROPERTY?: _____
YOUR OWNERSHIP SHARE (%): _____ WHEN DID YOU PURCHASE IT?: _____ WHAT WAS THE PURCHASE PRICE?: \$ _____
TODAY'S MARKET VALUE: \$ _____ SQUARE FOOTAGE OF PROPERTY: _____ YEAR BUILT: _____ # OF BDRS & BATHS: _____/_____
NAME OF YOUR CURRENT MORTGAGE LENDER: _____ When did you obtain this loan: _____
1st MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %
NAME OF YOUR 2ND MORTGAGE LENDER (IF ANY): _____ When did you obtain this loan: _____

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2nd MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %

NAME OF YOUR 3RD MORTGAGE LENDER (IF ANY): _____ When did you obtain this loan: _____

3rd MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %

ANY OTHER LIENS AGAINST THIS PROPERTY? ☐ yes or ☐ no (Example: Judgment Lien, Tax Lien, Abstract of Judgment, HOA Lien, Etc.)

If yes, list here: _____

HAVE YOU CHANGED TITLE TO THIS PROPERTY EVER? ☐ yes or ☐ no

PROPERTY #2 -

Do you rent this property? ☐ yes or ☐ no IF SO, HOW MUCH RENT DO YOU COLLECT EACH MONTH, IF ANY? \$ _____

PROPERTY ADDRESS: _____ WHO OWNS THE PROPERTY?: _____

YOUR OWNERSHIP SHARE (%): _____ WHEN DID YOU PURCHASE IT?: _____ WHAT WAS THE PURCHASE PRICE?: \$ _____

TODAY'S MARKET VALUE: \$ _____ SQUARE FOOTAGE OF PROPERTY: _____ YEAR BUILT: _____ # OF BDRS & BATHS: ____/____

NAME OF YOUR CURRENT MORTGAGE LENDER: _____ When did you obtain this loan: _____

1st MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %

NAME OF YOUR 2ND MORTGAGE LENDER (IF ANY): _____ When did you obtain this loan: _____

2nd MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %

NAME OF YOUR 3RD MORTGAGE LENDER (IF ANY): _____ When did you obtain this loan: _____

3rd MORTGAGE BALANCE: \$ _____ MONTHLY PAYMENT: \$ _____ INTEREST RATE: _____ %

ANY OTHER LIENS AGAINST THIS PROPERTY? ☐ yes or ☐ no (Example: Judgment Lien, Tax Lien, Abstract of Judgment, HOA Lien, Etc.)

If yes, list here: _____

HAVE YOU CHANGED TITLE TO THIS PROPERTY EVER? ☐ yes or ☐ no

(Any other real property should be listed on additional sheets of paper)

III. PERSONAL PROPERTY

1) List all automobiles, trucks, street motorcycles & other vehicles *(including non-opp vehicles)*:

Make	Model	Year	Mileage	Value
a.				\$
Loan/Lease? <input type="checkbox"/> yes or <input type="checkbox"/> no	Lender/Lessor's Name: _____	Balance owed: \$ _____	Length of Loan/Lease: _____	Cosigner? _____
Is it Insured? <input type="checkbox"/> yes or <input type="checkbox"/> no	Date of Purchase/Lease: _____	Monthly Payment: \$ _____	Interest Rate: _____	Who makes the Payments? _____
b.				\$
Loan/Lease? <input type="checkbox"/> yes or <input type="checkbox"/> no	Lender/Lessor's Name: _____	Balance owed: \$ _____	Length of Loan/Lease: _____	Cosigner? _____
Is it Insured? <input type="checkbox"/> yes or <input type="checkbox"/> no	Date of Purchase/Lease: _____	Monthly Payment: \$ _____	Interest Rate: _____	Who makes the Payments? _____

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- 2) List all boats, trailers, motors, personal watercrafts, fishing vessels, snow mobiles, motorcycle accessories:

Make	Model	Year	Mileage	Value
a.				\$
Loan/Lease? <input type="checkbox"/> yes or <input type="checkbox"/> no Is it Insured? <input type="checkbox"/> yes or <input type="checkbox"/> no	Lender/Lessor's Name: _____ Date of Purchase/Lease: _____	Balance owed: \$ _____ Monthly Payment: \$ _____	Length of Loan/Lease: _____ Interest Rate: _____	Cosigner? _____ Who makes the Payments? _____
b.				\$
Loan/Lease? <input type="checkbox"/> yes or <input type="checkbox"/> no Is it Insured? <input type="checkbox"/> yes or <input type="checkbox"/> no	Lender/Lessor's Name: _____ Date of Purchase/Lease: _____	Balance owed: \$ _____ Monthly Payment: \$ _____	Length of Loan/Lease: _____ Interest Rate: _____	Cosigner? _____ Who makes the Payments? _____

- 3) Do you have household goods, supplies, furnishings? ☐ yes or ☐ no _____ \$ _____
- 4) Electronics? ☐ yes or ☐ no _____ \$ _____
- 5) Collectibles of any kind? ☐ yes or ☐ no _____ \$ _____
- 6) Sports equipment or other hobby equipment? ☐ yes or ☐ no _____ \$ _____
- 7) Firearms? ☐ yes or ☐ no _____ \$ _____
- 8) Clothes? (*Everyone has something*) _____ \$ _____
- 9) Jewelry? ☐ yes or ☐ no _____ \$ _____
- 10) Non-farm animals? ☐ yes or ☐ no _____ \$ _____
- 11) Any other personal or household items we didn't already mention above? ☐ yes or ☐ no _____ \$ _____
- 12) Do you have cash on hand? ☐ yes or ☐ no _____ \$ _____
- 13) Checking, Savings, CD, Credit Union, Brokerage/Trading Account?

Bank Name	Type of Account	Approximate Balance	Last 4 of Acct #	Signors on Acct
		\$		
		\$		
		\$		

- 14) Have you closed any bank accounts in the last one (1) year? ☐ yes or ☐ no If yes, please list _____
- 15) Bonds, Mutual Funds, or Publicly traded stocks? ☐ yes or ☐ no _____ \$ _____
- 16) Do you own a business (DBA, Sole Proprietorship, Corp, LLC, Etc.)? ☐ yes or ☐ no If yes, please list below:

Name of Business	Type of Entity (DBA, INC,..)	% you own	Names of other owners/shareholders/partners	Date Opened & Closed	Nature of business	Value?

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- 17) Government and corp bonds? ☐ yes or ☐ no _____ \$ _____
- 18) Retirement or pension accounts? (IRA, 401k, pension, profit sharing plan) ☐ yes or ☐ no _____ \$ _____
- 19) Security Deposits? ☐ yes or ☐ no _____ \$ _____
- 20) Annuities? ☐ yes or ☐ no _____ \$ _____
- 21) Education IRA's? ☐ yes or ☐ no _____ \$ _____
- 22) Do you have a trust or are you the beneficiary of someone else's Trust? ☐ yes or ☐ no _____ \$ _____
- 23) Patents, copyrights, trademarks, trade secrets and any other intellectual property? ☐ yes or ☐ no _____ \$ _____
- 24) Licenses, franchises, and other general intangibles? ☐ yes or ☐ no _____ \$ _____
- 25) Do you typically receive a tax refund each year? ☐ yes or ☐ no If yes, have you received it for this year? ☐ yes or ☐ no
- 26) Do you RECEIVE alimony, spousal support, child support, divorce settlement payments? ☐ yes or ☐ no \$ _____
- 27) Does ANYONE owe you ANYTHING else (Personal loan, vacation pay, Shareholder Loans, etc.)? ☐ yes or ☐ no \$ _____
- 28) Interest in insurance policy? (Term Life, Whole Life, Disability) ☐ yes or ☐ no _____ \$ _____
- 29) Are you entitled to an inheritance from anyone that has passed away? ☐ yes or ☐ no _____ \$ _____
- 30) Do you think you might inherit something in the next year? ☐ yes or ☐ no _____ \$ _____
- 31) Equitable and future interests, life estates, and rights or powers? ☐ yes or ☐ no _____ \$ _____
- 32) Do you have any claims against ANYONE (Potential lawsuit, class action claim, injury you might sue over?) ☐ yes or ☐ no
- 33) Do you have any business accounts receivable? ☐ yes or ☐ no _____ \$ _____
- 34) Office equipment, furnishing, supplies, machinery, inventory? ☐ yes or ☐ no _____ \$ _____
- 35) Customer Lists or any other business related property? ☐ yes or ☐ no _____ \$ _____
- 36) Do you have any unused gift cards? ☐ yes or ☐ no _____ \$ _____
- 37) Do you expect a bonus check or commission check? ☐ yes or ☐ no _____ \$ _____
- 38) Do you own a website? ☐ yes or ☐ no _____ \$ _____
- If yes, please list the site(s) _____
- 39) Is there a chance you may receive a settlement of any kind? ☐ yes or ☐ no _____ \$ _____
- 40) Do you own Bitcoin or other forms of currency? ☐ yes or ☐ no _____ \$ _____
- 41) Do you have a GoFund Me account or similar accounts? ☐ yes or ☐ no _____ \$ _____
- 42) **Do you own/have any other property/claims that you did not list above?** ☐ yes or ☐ no _____ \$ _____

IV. DEBTS OF ANY KIND (Please list approximate amounts)

- | | | |
|------------------------------------|---|--|
| Are all of your tax returns filed? | <input type="checkbox"/> yes or <input type="checkbox"/> no | If no, what years are NOT filed? _____ |
| IRS/federal taxes due? | <input type="checkbox"/> yes or <input type="checkbox"/> no | If yes, what years are owing? _____ \$ _____ |
| State taxes due? | <input type="checkbox"/> yes or <input type="checkbox"/> no | If yes, what years are owing? _____ \$ _____ |
| Payroll taxes due? | <input type="checkbox"/> yes or <input type="checkbox"/> no | If yes, what periods are owing? _____ \$ _____ |

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Sales taxes due? ☐ yes or ☐ no If yes, what years are owing _____ \$ _____

Unpaid property tax ☐ yes or ☐ no \$ _____

Back Alimony/Child Support ☐ yes or ☐ no \$ _____

Student loans ☐ yes or ☐ no Yours or someone else's? \$ _____

Court fines/restitution ☐ yes or ☐ no Reason: _____ \$ _____

How many creditors due you owe approximately? _____

Approximately how much do you owe and/or have guaranteed on they following types of debts:

Credit Cards-	\$	Disputed Claims-	\$
Unsecured Loans-	\$	401k Loans-	\$
Medical Debts-	\$	Employer Advances-	\$
Court Judgments-	\$	Business Vendor/MCA Loans-	\$
Collections-	\$	Commercial Leases-	\$
Repossession Debt-	\$	Unpaid Utilities-	\$
Gambling Debt-	\$	Unpaid Memberships-	\$
Unexpired Leases of any kind-	\$	Loans from friends or family-	\$

Did you sign personal guarantees for any debts of anyone else? ☐ yes or ☐ no

Did anyone guarantee your debts or co-sign for you on any of your debts? ☐ yes or ☐ no

V. YOUR HOUSEHOLD, INCOME AND EXPENSES

How many members are in your household, other than yourself? # _____ (Children or others whom you can claim on your taxes):

age: _____	age: _____	age: _____
Relationship: _____	Relationship: _____	Relationship: _____
age: _____	age: _____	age: _____
Relationship: _____	Relationship: _____	Relationship: _____

Your Employment Status: *(Please provide your most recent pay stub or a year-to-date P&L)*

Where are you employed? _____ Title/Occupation: _____ Hire Date: _____

☐ employed/receives a paycheck ☐ self-employed/receives a 1099 ☐ unemployed ☐ retired ☐ homemaker ☐ disabled ☐ workers' comp
Hourly rate: \$ _____ or Salary rate: \$ _____ Paid: ☐ weekly ☐ bi-weekly ☐ semi/mo ☐ monthly

Do you receive regular tips or commissions? ☐ yes ☐ no How often? _____ How much? \$ _____

Do you receive any bonuses? ☐ yes ☐ no If yes, how often: _____ **What was your total income last year?** _____

Business Income-	\$	Interest or Dividend Income-	\$
Alimony-	\$	Child Support-	\$
Unemployment-	\$	Social Security-	\$
Royalties-	\$	VA Benefits-	\$
State Disability-	\$	Pension-	\$
Retirement distributions-	\$	Worker's compensation-	\$
Life Insurance Payments-	\$	Annuity Payments-	\$
Real Property Income-	\$	Trust Income-	\$

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Your Spouse's Employment Status: *(Please provide your most recent pay stub or a year-to-date P&L)*

Where are you employed? _____ Title/Occupation: _____ Hire Date: _____

☐ employed/receives a paycheck ☐ self-employed/receives a 1099 ☐ unemployed ☐ retired ☐ homemaker ☐ disabled ☐ workers' comp

Hourly rate: \$ _____ or Salary rate: \$ _____ Paid: ☐ weekly ☐ bi-weekly ☐ semi/mo ☐ monthly

How many hours do you work in a normal/average week? _____ hrs. How long have you been employed here? _____

Do you receive regular tips or commissions? ☐ yes ☐ no How often? _____ How much? \$ _____

Do you receive any bonuses? ☐ yes ☐ no If yes, how often: _____ What was your total income last year? _____

Business Income-	\$ _____	Interest or Dividend Income-	\$ _____
Alimony-	\$ _____	Child Support-	\$ _____
Unemployment-	\$ _____	Social Security-	\$ _____
Royalties-	\$ _____	VA Benefits-	\$ _____
State Disability-	\$ _____	Pension-	\$ _____
Retirement distributions-	\$ _____	Worker's compensation-	\$ _____
Life Insurance Payments-	\$ _____	Annuity Payments-	\$ _____
Real Property Income-	\$ _____	Trust Income-	\$ _____

MONTHLY EXPENSES

EXPENSE CATEGORY	MONTHLY AMOUNT	FOR OFFICE USE ONLY
RENT		
MORTGAGE PAYMENTS (LIST SEPARATELY)	1ST \$ _____ 2ND \$ _____	
PROPERTY TAXES & INS INCLUDED IN MORTGAGE? <input type="checkbox"/> yes or <input type="checkbox"/> no: If NO, LIST-	Taxes \$ _____ Insurance \$ _____	
HOME MAINTENANCE/UPKEEP/GARDENER/POOL		
CONDO/HOA DUES? <input type="checkbox"/> yes or <input type="checkbox"/> no: If YES, LIST-		
ELECTRICITY		
NATURAL GAS/PROPANE		
WATER		
TRASH		
TELEPHONE/CELL PHONE(S) (HOW MANY? _____)		
CABLE/SATELLITE/INTERNET		
ALARM MONITORING		
FOOD (GROCERY BILL AND EATING OUT PER WEEK)		
HOUSEKEEPING SUPPLIES		
CHILD CARE AND/OR CHILDREN'S EDUCATION EXPENSES		
CLOTHING/SHOES/LAUNDRY/DRY CLEANING		
PERSONAL CARE (HAIRCUTS, ETC.)		
MEDICAL EXPENSES	Rx: _____/mo Co-Pays _____/mo Glasses/Contacts _____/mo Med. Supplies _____/mo Hearing Aids _____/mo Counseling _____/mo Recovery Treatment _____/mo	Total: _____
GASOLINE EXPENSES OR PUBLIC TRANSPORTATION: MILES TO/FROM WORK PER DAY: *** IF YOU COMMUTE, WE NEED TO KNOW .		
RECREATION, CLUBS, SUBSCRIPTIONS		
CHARITABLE CONTRIBUTIONS (CHURCH, SCHOOL)		
WHOLE LIFE INSURANCE PREMIUM (HAS CASH VALUE)		

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TERM LIFE INSURANCE (NO CASH VALUE)		
HEALTH INSURANCE PAID BY YOU & NOT DEDUCTED FROM YOUR PAYCHECK		
AUTO INSURANCE		
DISABILITY INSURANCE		
HEALTH SAVINGS ACCOUNT CONTRIBUTIONS		
AFFORDABLE HEALTH CARE ACT PREMIUMS HTTPS://WWW.COVEREDCA.COM/SHOPANDCOMPARE/		**Must estimate premium or penalty unless already covered
INSTALLMENT PAYMENTS ON TAXES – SPECIFY (IRS, STATE)		
ESTIMATED TAX PAYMENTS – SPECIFY WHY (QUARTERLY PAYMENTS, OWED LAST YEAR, UNDERWITHOLDING)		
AUTO LOANS/LEASE PAYMENTS	1. _____	
AUTO LOANS/LEASE PAYMENTS	2. _____	
STUDENT LOAN	3. _____	
ALIMONY/SPOUSAL SUPPORT, CHILD SUPPORT		Must List in E (even IF current)
401K OR RETIREMENT LOANS NOT DEDUCTED FROM PAY		
COURT FINES/RESTITUTION		
PET EXPENSES		
OTHER MONTHLY EXPENSES		
TOTAL EXPENSES:		

- Do you anticipate an INCREASE in your income ☐ yes or ☐ no
- Do you anticipate a DECREASE in your income? ☐ yes or ☐ no
- Is there a court order requiring you to pay child support or alimony? ☐ yes or ☐ no
- If yes, how much monthly? _____ are you current? ☐ yes or ☐ no
- Does your family have any special medical problems? ☐ yes or ☐ no

VI. MISCELLANEOUS INFORMATION WE NEED TO KNOW

- Have you paid any family members or friends back in the last one year? ☐ yes or ☐ no
- Have you been sued by anyone in the last year or is there a lawsuit pending against you now? ☐ yes or ☐ no
- Has anyone EVER sued you for **fraud** or threatened to sue you for **fraud**? ☐ yes or ☐ no
- Any repo's or foreclosures in the last one year? ☐ yes or ☐ no
- Have you transferred, sold, or given away any property in the last FIVE (5) years?** ☐ yes or ☐ no
- Do you have a storage unit or have you had one that you closed in the last year? ☐ yes or ☐ no
- Do you have a safe deposit box or have you had one that you closed in the last year? ☐ yes or ☐ no
- Do you have any property that is owned by someone else? ☐ yes or ☐ no
- Have you been served with a Notice to Appear at a Debtor's Exam? ☐ yes or ☐ no
- Have you received any Notice of Liens (Taxes, judgments, etc.)? ☐ yes or ☐ no
- Have you paid anyone else for bankruptcy advice/representation? ☐ yes or ☐ no
- Have your wages/property been levied/garnished in the last year? ☐ yes or ☐ no
- Have you made any gifts or charitable contributions in the last 2 years of more than \$600? ☐ yes or ☐ no
- Have you had any losses related to gambling, theft, or an accident of some type in the last year? ☐ yes or ☐ no
- Have you paid anyone else for bankruptcy advice/representation ☐ yes or ☐ no

Please explain any concerns you may have? _____

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The following is a list of *some* of the documents you will need to file your case. Please feel free to bring these document to your appointment if they are readily available:

<input type="checkbox"/> 12 months proof of income (from all sources) (paystubs, monthly P&L's, annual statement from SSA, VA, etc.)	<input type="checkbox"/> Copy of auto loan/lease contracts (Typically long yellow contract) if making payments/leasing
<input type="checkbox"/> Valid Social Security Card & Identification Card or Driver's License	<input type="checkbox"/> Full Tax Return Copies for the last 3 years (<i>Personal & Corporate/Business</i>)
<input type="checkbox"/> Copy of any and all Lawsuits, Wage Garnishments or Bank Levies	<input type="checkbox"/> Final Divorce Decree or Judgment (<i>IF within the last 4 years</i>)
<input type="checkbox"/> All Bills, Credit Card Statements, Medical Bills, Collection letters, etc.	<input type="checkbox"/> Secured Debt Statements- Auto Loan/Lease Statements, Mortgage(s), Line of Credits, Merchant Cash Advances, SBA loans, HOA's, etc.
<input type="checkbox"/> Registration for all Cars, boats, Recreational Vehicles	<input type="checkbox"/> Retirement Fund Statements (IRA's, 401k's, 457b's, etc.)
<input type="checkbox"/> 6-12 months of Bank Statements (<i>Personal & Corporate/Business</i>)	<input type="checkbox"/> If you own a business, bring Balance Sheet and Profit & Loss Statement for last year and this year-to-date
<input type="checkbox"/> Copy of any Trusts you have created/are the settlor or of which you are a beneficiary	<input type="checkbox"/> Closing statements/HUD-1's for any sales or refinances of real property in the last 4 years
<input type="checkbox"/> Documents for transfers of any assets in the last 4 years	<input type="checkbox"/> Statements and policies for any life insurance, annuities, or other investment accounts
<input type="checkbox"/> Grant deeds, Trust Deeds, and copies of liens for all real estate you own	<input type="checkbox"/> Documentation of any claims you own or loans others owe you

By signing below, you acknowledge that the information provided in this consultation packet and during your interview with the attorney, is true and correct to the best of your knowledge, and that you have received the Notice to Client Who Contemplates Filing Bankruptcy, the Statement Mandated by Section 527(b) of the U.S. Bankruptcy Code, and the Required Document List.

DATE: _____

POTENTIAL CLIENT

DATE: _____

POTENTIAL JOINT-CLIENT

***WE LOOK FORWARD TO SPEAKING WITH YOU, DISCUSSING YOUR OPTIONS, TAKING THE
UNCERTAINTY OUT OF AN OFTEN CONFUSING AND UNCERTAIN TIME, AND
FINDING SOLUTIONS FOR YOU!***



SERVING ALL OF SOUTHERN CALIFORNIA

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 Fax: (760) 687-2800
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REQUIRED DOCUMENT LIST

Our office must receive *ALL* of the following documents (at a bare minimum), applicable to your case, when filing for bankruptcy protection. After review of the below documents by your attorney, our office will then let you know if we need anything further. You can send these documents to us by electronic means (i.e. email, drop box, google doc's, thumbdrive, etc.) OR you can give us originals and we will scan them for you (no need to make copies of the documents) and we will return to the originals to you at the time of filing your case:

- ☐ Valid *California* Identification Card or Driver's License or Military I.D. **AND** Social Security Card (*If you do not have a copy of your SS Card please contact your local SSA office to obtain a new copy. We must provide a copy to your bankruptcy trustee*)
- ☐ Proof of **Monthly** income for the last 6 months [i.e. Wage Paystubs, Unemployment benefits summarized by week/month, Pension, Disability, or Social Security Income Statement showing monthly benefit, Summary of distributions from any business from which you derive income, monthly P&L's for rental/business income (see below), interest income statement, etc.]
- ☐ Last 12 months of Bank Statements for individuals and 24-36 months of Bank Statements for individuals with businesses or corporations/LLC/partnerships. This includes all financial accounts including trade accounts, investment accounts, Venmo, Paypal, Bitcoin, Reloadable ATM cards, etc. (*Most banks/financial institutions allow you to download your statements online. If so, simply email them to our Case Administrator: at jb@shaw.law by Dropbox, Box, etc.*)
- ☐ Copy of any and all Lawsuits, Wage Garnishments or Bank Levies, Any Legal Papers Received (Must have, at least, Complaint and any judgments, if entered, as well as abstracts of judgment, if any)
- ☐ Car Registration(s) for all vehicles owned and/or non-operational
- ☐ Loan/Lease Statements for Secured Debt [i.e. Car loans/leases (usually the long yellow contract), solar loans, furniture loans, jewelry, residential lease agreements, loans/leases you have guaranteed for a business, etc.] *Chapter 13 Only* – Get a print-out from your lenders for last 2 yrs. of payment history
- ☐ Proof of Auto Insurance & Homeowner/Renter's Insurance (**"Declarations Page" of Policy Only. Insurance cards not accepted**)
- ☐ 401k Loan Information/Statement [*Need to document when was the loan borrowed, amount of loan and what the repayment terms are (amount per month/per pay period)*]
- ☐ Retirement Fund Statements, of any kind (*401K, Pension, IRA, etc.*) **AND** Is it inherited? _____
- ☐ Full Tax Return Copies for the last 3 years with back up documents
- ☐ Final Divorce Decree or Judgment including a copy of any marital settlement agreement ("MSA") (*if within the last 5 years*)
- ☐ All Bills, Credit Card Statements, Medical Bills, Collection Accounts, etc. (If you do not have a bill to provide please use the additional pages provided to list them and include name of creditor, their address, your account number, the amount owed, type of debt, and approximate time of charges)
- ☐ Timeshare contract(s) **and** statement(s) including HOA/Yearly Maintenance Fee Statements
- ☐ **Business Owners:** Provide all of the following for each business you own-
 - a. A current Balance Sheet OR list of assets the company owns;
 - b. **Monthly** Profit & Loss Statements for the all months in the previous year and current year **plus** a year end Profit & Loss Statements for the current year and prior year if the tax return is not yet complete for last year;
 - c. Shareholder Loan ledger (for loans to or from a shareholder or other insider to the company); and
 - d. Last 3 years of business tax returns
- ☐ Purchase/Sale Agreement **and** Escrow closing documents, if any Real Property has been sold in the last 5 years
- ☐ Documents evidencing the sale/TRANSFER of any asset valued over \$500 in the last 4 years (*Examples: Sale or transfer of a car, land, boat, etc.; giving away of something; sale of jewelry; obtaining a 2nd Trust Deed on your home; or giving of security on something else*)

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- ☐ List of ALL payments/gifts to any friends, family, or partners for the last one (1) year AND/OR any Charitable Contributions of \$600 or more in the last one (1) year
- ☐ Other: _____

Real Property Owners:

- ☐ All Mortgage Statement(s); Home Equity Loans/Lines of Credit with summary of withdrawals in the last 4 years
- ☐ HOA statement(s)
- ☐ Copies of all Loan Modification Document
- ☐ *Chapter 13 Only* – Get a print-out from your mortgage lenders for last 2yrs. of payment history
- ☐ Copy of Most Recent Appraisal (*if within the last 2 years*)
- ☐ Grant Deeds for any property you own, showing how title is currently held, and if any title change has occurred since purchase please provide copies of those deeds as well



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January 22, 2024

SENT VIA EMAIL AND US PRIORITY MAIL

("Lender/Servicer")

Via email

Tracking No

**RE: Request for Information Pursuant to 12 C.F.R. § 1024.36 of Regulation X
Borrower(s):
Property Address ("Property"):**

**Mortgage Loan No. ("Loan"):
Trustee Sale No. ("TSN") (If applicable):**

Dear :

This is a Request for Information ("RFI") related to your servicing of the mortgage loan/Loan of the above-named Borrower(s) who I presently represent. This RFI is sent pursuant to the Real Estate Settlement Procedures Act ("RESPA"), subject to the response period set out in Regulation X, 12 C.F.R. § 1024.36(d)(2)(i)(A), and a request under § 1641(f)(2) of the Truth in Lending Act ("TILA"). All references herein are to Regulation X of the Mortgage Servicing Act as amended by the Consumer Financial Protection Bureau pursuant to the Dodd Frank Act.

The written authority of the Borrower(s) to my law firm for this RFI is attached hereto and incorporated herein by this reference. *See* attached Power of Attorney ("POA") signed by the Borrower(s).

Please produce a complete copy of the mortgage servicing file relating to the above Loan. For the purposes of this RFI, the term "Mortgage Servicing File" means all loan documents and information (including all document images) received or obtained through and as a result of your servicing of this mortgage loan, which may be maintained in writing or by other electronic means. To the extent available, each "Mortgage Servicing File" should include the following:

- a. The original Note;
- b. All documentation relating to the original Note and Mortgage or Deed of Trust;
- c. Any indorsements and transfers of the Note and Assignments of the Mortgage or Deed of Trust;
- d. Any correspondence by letter, email or telephonic means (including transcripts of telephone calls) between any servicer of the Loan and Borrower(s);
- e. A complete life of loan history that includes all transactions regarding this Loan (payments, advances, fees, charges, inspections, etc.);
- f. Copies of invoices and other proof of advances, costs, inspections, etc., paid to a third party;
- g. Collection letters and notices to the Borrower(s);
- h. All foreclosure correspondence or form notices to the Borrower(s);

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- i. All collection notes related to the servicing of the mortgage loan;
- j. All Loan Modification and Loss Mitigation Options made available to/communicated to the Borrower(s) including the qualification criteria for each such program;
- k. A current itemized payoff statement for the Loan;
- l. The full name and address and contact information *including email address* for the current owner of the Note; and
- m. Any and all estimates of value for the mortgaged real estate/Property produced by you or any third-party within the past 18 months.

Pursuant to 12 C.F.R. § 1024.36(c) of Regulation X, **you must within five (5) days** (excluding legal public holidays, Saturdays and Sundays) provide our office with a response to this RFI acknowledging receipt of this information request. Pursuant to 12 C.F.R. § 1026.36(c)(3), you “must provide an accurate statement of the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date” **within a reasonable time** after receipt of this request, yet under no circumstances are you to fail to provide the requested payoff statement **within seven (7) business days of receipt** of this request.

Pursuant to 12 C.F.R. § 1024.36(d)(ii)(2)(A), **not later than ten (10) days** (excluding public holidays, Saturdays and Sundays) after you receive this RFI you must provide us with the identify of, and address or other relevant contact information for the owner of the mortgage loan identified herein.

For all of the other information requested herein and pursuant to 12 C.F.R. § 1024.36(d)(ii)(2)(B), **you must respond not later than thirty (30) days** (excluding legal public holidays, Saturdays and Sundays) after you receive this RFI.

Thank you for your immediate time and attention to this matter.

Sincerely,
SHAW & HANOVER, PC

Summer Shaw, Esq.

Cc: Client
SMS/x

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 Natalie Victoria Romero*

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:

 MARCUS ALBERT ROMERO and
 NATALIE VICTORIA ROMERO,

 Debtors.

Chapter: 7

 Case No: 6:22-bk-12942-WJ

 Appeal No.: 5:23-cv-01907-FLA

 Related Appeal No.: 5:23-cv-01010-FLA

MARCUS ALBERT ROMERO and
 NATALIE VICTORIA ROMERO,

 Appellants,

**OPENING BRIEF BY APPELLANTS
 MARCUS ALBERT ROMERO AND
 NATALIE VICTORIA ROMERO**

vs

 TODD A FREALLY, CHAPTER 7
 TRUSTEE,

 Appellee.



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1 **I. STATEMENT OF THE CASE.**

2 **A. Factual and Procedural Background**

3 Debtors Marcus and Natalie Romero (the “Debtors”/“Appellants”) filed a
 4 chapter 7 bankruptcy petition on August 4, 2022.¹ Among the assets on their
 5 “Schedule A/B” (real and personal property) was their residence at 45119
 6 Riverstone Court, Temecula, California (the “Residence”) with a value of
 7 \$1,254,300.00.² Their family of five lived in the Residence.³ They claimed a
 8 homestead exemption on the Residence in “Schedule C” (exemptions) under Cal.
 9 Code Civ. Proc. § 704.730 in the amount of \$53,464.403 but they amended
 10 Schedule C on February 17, 2023 to increase the claimed exemption to \$558,000.00
 11 (Debtors’ homestead exemption).⁴ The Debtors’ “Schedule D” (secured creditors)
 12 showed first trust deed holder Chase Bank was owed \$521,585.60; second trust deed
 13 holder Cenlar Mortgage was owed \$258,223.00; third trust deed holder Financial
 14 Casualty and Surety was owed \$250,000.00 (“3rd deed of trust”); and Riverside
 15 County Tax Collector was owed \$6,625.25.⁵ In addition, the United States of
 16 America filed two tax liens against the Residence on April 5, 2022, with an
 17 approximate balance due of \$171,000 (“Tax Liens”).⁶ These liens totaled
 18 approximately \$1,207,433, which, based on the Debtors’ valuation of the Residence,
 19 left no realizable equity in the property even without taking into consideration the
 20 Debtors’ homestead exemption.⁷ The Debtors expected the fully encumbered
 21 Residence to pass through the chapter 7 proceeding and that they would deal with
 22 //

23 _____
 24 ¹ Excerpts of Record (“EOR”) 00013-00087. The EOR is consecutively paginated
 25 for ease of reference.

26 ² EOR 00022.

27 ³ EOR 00031.

28 ⁴ EOR 00297.

⁵ EOR 00033-00037.

⁶ EOR 00035 & 00093.

⁷ EOR 00593 [Transcript of the March hearing] at page 20, lines 1-2.

1 the secured debt outside of bankruptcy to keep their home for their family.⁸

2 The chapter 7 trustee, Todd Frealy (the “Trustee”) had other ideas. On
3 February 10, 2023, he filed Trustee’s Motion to Approve Compromise under Rule
4 9019 (the “Compromise Motion”), and simultaneously filed Trustee’s Objection to
5 Debtors’ Claim of Exemptions (the “Homestead Exemption Motion”) (Compromise
6 Motion and Homestead Exemption Motion collectively the “Motions”).⁹

7 Underlying these Motions was a deal that the Trustee had brokered with the
8 3rd deed of trust holder, Financial Casualty & Surety (“FCS”) whereby FCS would
9 consent to a sale of the Residence on the condition that it receive 60% of the net
10 proceeds due on the FCS trust deed from such sale after the first and second trust
11 deed holders were paid, and after the costs of sale and the real property taxes were
12 paid, with the remaining 40% due under the trust deed deemed a carveout for the
13 benefit of the bankruptcy estate. Under the Trustee’s calculations, if the property
14 sold for \$1,125,000, the sale would result in FCS receiving about \$150,000 and the
15 estate receiving about \$100,000.¹⁰

16 The Compromise Motion (which compromised absolutely nothing, as
17 discussed in Argument below) also asserted that the Trustee could ignore the
18 Debtors’ homestead exemption because it could not attach to the carveout. The
19 homestead exemption Motion expanded that argument, objecting to any homestead
20 exemption asserted by the Debtors and in particular arguing that the exemption
21 could not attach to the carveout, citing no precedential authority for that assertion.
22 The Debtors responded by filing a Motion to Compel Trustee to Abandon Property
23 of the Estate (the “Abandonment Motion”) on February 14, 2023.¹¹ They argued
24
25

26 ⁸ EOR 00221.

27 ⁹ EOR 00088-00155.

28 ¹⁰ EOR 00166.

¹¹ EOR 00218-00294.



1 that the fully encumbered Residence was burdensome to the estate based on the
2 ongoing mortgage and tax payments and was of inconsequential value and benefit to
3 the estate under section 554.

4 A flurry of briefing followed the filing of these motions, with the Debtors
5 opposing the Trustee's Motions, the Trustee opposing the Debtors' Motion to
6 Compel Abandonment, and replies filed all around.¹² The bankruptcy court heard
7 the motions on March 7, 2023, at which time it made an oral tentative ruling which
8 would approve the Compromise Motion, deny the Abandonment Motion, and allow
9 the homestead exemption but not allow it to attach to the carveout.¹³ However, both
10 parties had requested a continuance of the hearing, which the Court granted to May
11 2, 2023, so his oral tentative was not finalized on March 7. Before the continued
12 hearing, the Trustee filed supplemental points and authorities whereby he indicated
13 that the agreement with FCS had been changed from a carveout to an assignment of
14 a partial interest in FCS's deed of trust, attempting to make the agreement palatable
15 under an unpublished Ninth Circuit Bankruptcy Appellate Panel (BAP) ruling¹⁴ that
16 had blessed such an assignment as proper (but under completely different facts as
17 discussed below).¹⁵ After further argument, on May 2, 2023, the bankruptcy court
18 stuck with its tentative by approving the Compromise Motion, denying the
19 Abandonment Motion, and ruling that homestead exemption was allowed but could
20 not attach to the carveout, entering the Order on the same date.¹⁶ That Order was
21 the subject of the first appeal before this Court.¹⁷

22 On August 15, 2023, the Trustee filed a motion to sell the Debtors' Residence
23

24 ¹² EOR 00299-00571.

25 ¹³ EOR 00572-00604.

26 ¹⁴ *Roach v. Marshack (In re Roach)*, 2019 WL 408628 (9th Cir. BAP 2019).

27 ¹⁵ EOR 00494-00566.

28 ¹⁶ EOR 00605-00621.

¹⁷ Known by case number 5:23-cv-01907-ODW ("1st Appeal") and consolidated
with this appeal pursuant to order entered on October 12, 2023 and known as
Docket No 21.

(the “Sale Motion”), putting into action what he always contemplated doing when he filed the Compromise Motion and the Homestead Exemption Motion.¹⁸ That motion proposed to sell the Residence for \$1,279,000.00 to the Purchasers, subject to overbid.¹⁹ From the proceeds of the sale, the Trustee would pay the unpaid principal balance, deferred principal balance and unpaid interest to first trust deed holder Shellpoint; the unpaid principal balance and interest to second trust deed holder Cenlar; \$150,000 to third trust deed holder FCS under the deal approved in the Compromise Motion; \$100,000 to the bankruptcy estate under the deal with FCS in the Compromise Motion; costs of sale including the broker’s commission; and \$122,153 to the IRS based on its tax lien recorded subsequent to the third trust deed.²⁰

The debtors opposed the motion, arguing that the proposed distribution of \$100,000 to the estate violated their homestead exemption (a similar argument to that which was overruled in the Compromise Motion) and further that the Trustee, who stood in the shoes of FCS from which is claimed its rights, had only the remedy of foreclosure on the Residence, not a right to sell the property.²¹ The debtors filed supplemental opposition²² and the Trustee filed a reply. The bankruptcy court overruled the opposition and approved the sale by its Order Granting Chapter 7 Trustee’s Motion for Order Authorizing Sale of Estate’s Right, Title, and Interest in Real Property Free and Clear of Liens (the “Sale Order”), entered on September 8, 2023.²³ On the same date, the bankruptcy court entered its Order Granting Chapter 7 Trustee’s Motion for Order Compelling Debtors to Turn Over Real Property (the

¹⁸ EOR 21.

¹⁹ EOR *Id.*

²⁰ EOR *Id.*

²¹ EOR 22.

²² EOR 23.

²³ EOR 24.



1 “Turnover Motion”), which had the effect of evicting the Debtors’ family of five
2 from their home with 19-days-notice.²⁴

3 **B. What This Case is Really All About**

4 Debtors filed a chapter 7 while residing in a Residence that they owned which
5 was fully encumbered. Because the Residence had no realizable equity for the
6 estate, particularly when their homestead exemption was taken into account, they
7 had a reasonable expectation that the fresh start which a bankruptcy discharge
8 would give them (*Lac du Flambeau Band of Lake Superior Chippewa Indians v*
9 *Coughlin*, 599 U.S. ---, 143 S. Ct. 1689, 1697 (2023)) meant they could keep their
10 home and deal with the secured debt outside bankruptcy, since secured debt passes
11 through. *Owen v. Owen*, 500 U.S. 305, 308-309 (1991). Instead, an aggressive
12 Trustee decided to take extraordinary steps to sell the home out from under the
13 Debtors by making a deal with a junior secured creditor that had not attempted to
14 foreclose on the Residence from its junior position, despite nonpayment. His
15 scheme was intended to allow the estate to skirt the statutorily mandated distribution
16 order set forth in the Bankruptcy Code²⁵ sections 726(a) and 507, using part of
17 secured debt to pay unsecured creditors who were lower in priority than the
18 Debtors’ homestead exemption.

19 The Supreme Court has forbidden such attempts to pay claims in an order
20 which differs from that set forth in section 726 in *Cryzewski v Jevic Holding Corp.*,
21 580 U.S. 451 (2017). The Trustee here may not pay the unsecured creditors and his
22 expenses ahead of the Debtors’ homestead exemption. In addition, the Ninth Circuit
23 ruled in *United States v. Warfield (In re Tillman)*, 53 F. 4th 1160, 1168-69 (9th Cir.
24 2022), that a claim of exemption *withdraws* the property from the bankruptcy estate.

25
26 ²⁴ EOR 00657-00658.

27 ²⁵ Unless specified otherwise, all chapter and section references are to the
28 Bankruptcy Code/the Code, 11 U.S.C. §§ 101-1532, and all Rule references are to
the Federal Rules of Bankruptcy Procedure.

1 In *Tillman*, the circuit held that a trustee could not recover the penalty portion
 2 of a tax lien and use it for the benefit of the estate's unsecured creditors because the
 3 Debtors' homestead exemption withdrew the property which was subject to the lien
 4 from the estate, such that the debtor had to deal with the lien outside of bankruptcy.

5 As discussed more thoroughly in Argument below, the same reasoning
 6 prevents the Trustee here from snatching value for the unsecured creditors from the
 7 debtors' homestead exemption. The exemption should attach to any carved-out
 8 value.

9 This scheming cannot be tolerated by equity and sound policy. Debtors with
 10 fully encumbered property should be allowed to expect that they will keep their
 11 homes or at a minimum realize the value of their homestead exemptions before
 12 unsecured creditors get paid. The Summary of Argument and Argument sections
 13 below will demonstrate why reversal of this Order is compelled by Supreme Court
 14 and Ninth Circuit authority, bankruptcy court case law, sound policy and common
 15 decency.

16 II. JURISDICTIONAL STATEMENT

17 The Sale Order fell within the bankruptcy court's core jurisdiction as set forth
 18 in 28 U.S.C. § 157(b)(2)(A) (matters pertaining to estate administration) and (N)
 19 (orders concerning sale of estate property). Therefore, the bankruptcy court had
 20 jurisdiction. The district court has jurisdiction of this appeal under 28 U.S.C. §
 21 158(a)(1).

22 The Order on appeal was entered by the bankruptcy court on September 8,
 23 2023. The Notice of Appeal was filed on September 13, 2023, within 14 days of
 24 entry of the Order, so the appeal was timely. Rule 8002(a)(1).²⁶ The Order totally
 25 disposed of all the issues raised in the Sale Motion by approving it in full.

26
 27 ²⁶ Unless specified otherwise, all chapter and section references are to the
 28 Bankruptcy Code/the "Code," 11 U.S.C. §§ 101-1532, and all Rule references are to
 the Federal Rules of Bankruptcy Procedure.

1 Therefore, the Order is final appealable because it ends any interim disputes from
2 which appeal would lie. *Slimick v. Silva (In re Silva)*, 928 F.2d 304, 307 n. 1 (9th
3 Cir. 2007). In addition, a sale order is a final order. *In re Lewis*, 515 B.R. 591 (9th
4 Cir. BAP 2014).

5 III. STATEMENT OF ISSUES

6 Whether the bankruptcy court erred in entering an order granting the Sale
7 Motion when (a) the Trustee only held an assignment of a portion of a third deed of
8 trust recorded against the real property and the property had been withdrawn from
9 the estate; (b) there was no equity in the real property over and above the
10 encumbrances; and (c) the Trustee was not required to pay the Debtors' their
11 homestead exemption from the sale proceeds before funds were used to pay general
12 unsecured creditors and administrative expenses.

13 IV. STANDARD OF REVIEW

14 The bankruptcy court's factual findings are reviewed for clear error, and its
15 conclusions of law are reviewed de novo. *Ewell v. Diebert (In re Ewell)*, 958 F.2d
16 276, 279 (9th Cir. 1992). An appellate court reviews an order authorizing the sale of
17 property of a bankruptcy estate for an abuse of discretion. *In re Lahijani*, 325 B.R.
18 282, 287 (9th Cir. BAP 2005). Abuse of discretion is a two-step process. First the
19 appellate court considers whether the bankruptcy court identified the correct legal
20 standard for decision of the issue before it; second, it determines whether the
21 bankruptcy court's findings of facts, and its applications of those findings to the
22 correct legal standard, were illogical, implausible, or without support in inferences
23 that may be drawn from the record. *United States v. Hinkson*, 585 F. ed 1247, 1251
24 (9th Cir. 2009).

25 V. SUMMARY OF ARGUMENT

26 The Sale Motion was the culmination of the Trustee's Motions addressed in
27 the first of these consolidated appeals. Just as predicted from the Compromise
28 Motion, the Trustee sold the Residence and made distributions from escrow to the



1 first and second trust deed holders in full, then paid \$150,000 to FCS and \$100,000
2 to the bankruptcy estate per the Compromise, then paid the balance of the funds to
3 the costs of sale and the IRS based on its junior priority lien. The Trustee intends to
4 use the purported estate proceeds to pay unsecured creditors and administrative
5 expenses. This distribution scheme pays nothing to the Debtors based on their
6 homestead exemption. The Debtors submit that the approval of the Sale Motion by
7 the bankruptcy court was error for several reasons.

8 First, the Debtors assert that by using what would otherwise be the value of
9 their homestead exemption to pay unsecured creditors, the Trustee is violating the
10 order of distributions from a bankruptcy estate as prohibited by the Supreme Court's
11 decision in *Jevic*. It is noteworthy that the Trustee never attempted in his
12 Responsive Brief to tackle the merits of the Debtors' *Jevic* arguments. Rather, he
13 stated they were irrelevant because that appeal was not about the actual
14 distributions. In these appeals the erroneous proposed distributions were before the
15 bankruptcy court and are directly before this Court and he cannot duck them any
16 further. In *Jevic* the debtors entered into a proposed structured dismissal²⁷ which
17 carved out a portion of a lienholder's secured value to pay unsecured creditors who
18 were lower in priority under the distribution scheme set forth in sections 726(a) and
19 507 than an intervening class of priority creditors. The Supreme court reversed the
20 bankruptcy court's approval of this structured dismissal, holding that a bankruptcy
21 court may not approve a dismissal that provides for distributions that do not follow
22 the Code's ordinary priority rules. The same reasoning applies here, the only
23 difference being that the intervening claim with a higher priority than the unsecured
24 creditors is the Debtors' homestead exemption, an exemption provided by state law
25 to shield equity in property from unsecured claims.

26
27 ²⁷ A structure dismissal pertains to the dismissal of a chapter 11 case while
28 approving certain distributions to creditors, among other conditions on the
dismissal. *Jevic*, 580 U.S. at 457.

1 Second, as a parallel argument to the *Jevic* violation, once the funds were
 2 distributed from escrow to the bankruptcy estate, they no longer had the priority of
 3 FCS's third trust deed. They became property of the estate and could only be
 4 distributed according to the order set forth in section 726(a). Although that scheme
 5 means they could be used to pay liens on the Residence junior to FCS, such as the
 6 IRS lien, they could not be used to pay either administrative expenses or unsecured
 7 creditors, both of which are junior in priority to the Debtors' homestead exemption.

8 Third, the Trustee's distribution of the carved out funds also violates the
 9 principles laid down in *Tillman*. There, the Ninth Circuit described what happens
 10 when a debtor claims an exemption in a homestead: the property is withdrawn from
 11 the estate. Any value of that property which a trustee attempts to recover under
 12 section 724(a) may not be used to benefit the estate because of this withdrawal.
 13 *Tillman*, 53 F. 4th at 1173-74. In the same fashion, the Trustee here is recovering or
 14 carving out a portion of a junior lien from property that is no longer property of the
 15 estate. He cannot use this non-estate property to pay estate creditors.

16 Finally, an entirely new argument which pertains specifically to the Sale
 17 Motion appeal are the considerations raised by the First Circuit in *Degiacomo v.*
 18 *Traverse (In re Traverse)*, 753 F. 3d 19 (1st Cir. 2014).²⁸ In *Traverse* the trustee
 19 sought to recover the value of an unrecorded mortgage and then claim distributions
 20 from a sale of the property in the order of priority of that mortgage, had it been
 21 recorded, for unsecured creditors. The First Circuit agreed with the debtor's
 22 argument that the only rights that the trustee could recover were those held by the
 23 mortgage holder, to foreclose on the property. By this recovery, the trustee could not
 24

25 ²⁸ *Traverse* was cited by the Ninth Circuit BAP in *Jue v. Liu* BAP No. CC-19-1101-
 26 STaL (*In re Liu*) (B.A.P. 9th Cir. 2020) (unpublished decision). The Second Circuit
 27 has held the same as *Traverse* in *Jones v. Brand Law Firm, P.A. (In re Belmonte)*,
 28 931 F.3d 147, 154 (2nd Cir. 2019); the Tenth Circuit has cited *Traverse* in *In re*
Reynolds (10th Cir. 2021); and forty-one (41) other courts/opinions have cited
Traverse for which it is asserted here.

1 sell the property. The Trustee countered the holding of *Traverse* by arguing that
 2 because the Residence was property of the estate, he could sell it under section 363.
 3 The bankruptcy court bought that argument. But what both the Trustee and the
 4 bankruptcy court ignored was the holding of *Tillman*. In that case, the Ninth Circuit
 5 described what happens when a debtor claims an exemption in a homestead: the
 6 property is withdrawn from the estate. This withdrawal has two effects. First, it
 7 prevents the Trustee from selling the Residence under section 363. Second, the
 8 funds which the Trustee claims for the estate in the carveout are non-estate funds
 9 which he cannot use to pay unsecured creditors.

10 VI. ARUMENT

11 A. *Jevic* Forbids the Use of the Carved-Out Equity to Pay Unsecured 12 Creditors Before Paying the Homestead Exemption

13 The bankruptcy court made a telling statement while ruling for the Trustee in
 14 its oral tentative announced on March 7, 2023:

15 “A lender can do whatever they want. A secured lender can do whatever it
 16 wants with its cash collateral. It can do whatever it wants with the proceeds of its
 17 loan. It can do whatever it wants with its lien.”

18 Transcript of Proceedings, March 7, 2023, p. 23, lines 7-10.²⁹

19 Many might have thought that to be the case before *Jevic*. In fact, that is what
 20 the debtors and certain secured creditors thought could happen in the proposed
 21 structured dismissal in that case. When Jevic Holdings (“Jevic”) filed its chapter 11
 22 petition, it owed senior secured debt to its parent company Sun Capital Partners
 23 (“Sun”) and CIT Group. Before filing bankruptcy, Jevic had ceased operations and
 24 laid off truckdrivers without following the requirements of the federal Worker
 25 Adjustment and Retraining Notification Act (“WARN Act”) which requires a 60-
 26 day notice before termination. The truckdrivers sued Jevic and Sun and obtained
 27

28 ²⁹ EOR 00596 at lines 7-10.



1 summary judgment against Jevic, which was accorded priority status as a claim in
2 the chapter 11 because it was based on wage claims of the truckdrivers. The
3 litigation continued against Sun. In addition, the Unsecured Creditors Committee
4 (the “Committee”) sued Sun and CIT, on behalf of the estate, over the leveraged
5 buyout which led to Jevic’s financial distress, asserting fraudulent transfer claims.

6 Subsequently, Sun, CIT, Jevic and the Committee negotiated a settlement
7 which would resolve the Committee’s lawsuit and allow dismissal of the chapter 11
8 by: (1) CIT depositing \$2 million into an account to pay the Committee’s legal fees
9 and administrative expenses; and (2) Sun assigning its lien on Jevic’s assets, worth
10 about \$1.7 million, to a trust to pay taxes and other administrative expenses and then
11 distribute the remainder pro-rata to the general unsecured creditors. The settlement
12 specifically did not provide for payments to the priority wage creditors because Sun,
13 the source of the funds, was still litigating at that time with the truckdrivers and
14 didn’t want to finance that litigation. The bankruptcy court approved this settlement,
15 including the distribution scheme, over objections from the truckdrivers and the
16 United States Trustee about the order of distribution, but the Supreme Court struck
17 it down because it failed to follow the distribution order set forth in section 726(a).

18 The Supreme Court noted that the Code’s priority system is usually
19 implemented when the assets of a debtor’s estate are distributed at the termination
20 of a case, whether in a chapter 7 or a liquidating chapter 11. It is “fundamental to
21 the Bankruptcy Code’s operation” ‘designed to enforce a distribution of the debtor’s
22 assets in an orderly manner...in accordance with established principles rather than
23 on the basis of the inside influence or economic leverage of a particular creditor.’”
24 *Jevic*, 580 U.S. at 465 (quoting from H.R. Rep. No. 103-835, p. 33 (1994).)

25 Section 726(a)³⁰ provides for the distribution of estate assets, after secured
26 creditors have been paid from their collateral, according to the priority order set
27

28

30 Section 726(a) provides:

1 forth in section 507. The order of priority set forth in section 507 (a) is, in general
 2 terms as applicable, first to administrative expenses and domestic support
 3 obligations, then to other priority claims such as wage claims and taxes, then to
 4 general unsecured creditors, and finally to equity holders. The Supreme Court noted

5
 6
 7 (a) Except as provided in section 510 of this title, property of the estate shall
 be distributed-

8 (1) first, in payment of claims of the kind specified in, and in the
 9 order specified in, section 507 of this title, proof of which is timely filed
 under section 501 of this title or tardily filed on or before the earlier of

10 (A) the date that is 10 days after the mailing to creditors of the
 summary of the trustee's final report; or

11 (B) the date on which the trustee commences final distribution
 under this section;

12 (2) second, in payment of any allowed unsecured claim, other than a
 13 claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof
 of which is-

14 (A) timely filed under section 501(a) of this title;

15 (B) timely filed under section 501(b) or 501(c) of this title; or

16 (C) tardily filed under section 501(a) of this title, if-

17 (i) the creditor that holds such claim did not have notice or
 actual knowledge of the case in time for timely filing of a proof
 of such claim under section 501(a) of this title; and

18 (ii) proof of such claim is filed in time to permit payment
 of such claim;

19 (3) third, in payment of any allowed unsecured claim proof of which
 20 is tardily filed under section 501(a) of this title, other than a claim of the kind
 21 specified in paragraph (2)(C) of this subsection;

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

26 (5) fifth, in payment of interest at the legal rate from the date of the
 filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4)
 27 of this subsection; and

28 (6) sixth, to the debtor.

1 that the proposed distribution of the funds assigned from the secured claim of Sun
2 was to pay the unsecured creditors rather than the higher priority claim of the
3 truckdrivers. This was a violation of the distribution scheme set forth in Code and
4 could not be countenanced over the objection of any higher priority claimant, such
5 as the truckdrivers. Beyond just the words of the statutes, the Supreme Court
6 bolstered its ruling by acknowledging the policies behind strictly adhering to the
7 codified priority order: avoiding the “risks of collusion, i.e., senior secured creditors
8 and general unsecured creditors teaming up to squeeze out priority unsecured
9 creditors.” *Jevic*, 580 U.S. at 470. It refused to alter the balance set forth in the Code
10 and ruled that Sun could not give the monetary value of its secured claim to the
11 estate for payment to unsecured creditors when a higher priority creditor objected.

12 Just like Sun in *Jevic*, FCS proposes to carve out or assign (there is no
13 practical difference here based on the ruling in *Jevic* which considered an
14 assignment) a portion of the monetary value of its junior secured lien for the estate
15 to use to pay unsecured creditors, lower in priority than the tax liens on the property
16 held by the IRS. But the IRS did not object. So, you might ask, where is the higher
17 priority objecting creditor or, in this instance, claim? It is the allowed homestead
18 exemption of the Debtors.

19 The California automatic homestead exemption applicable in this case is set
20 forth in Cal. Code Civ. Proc. § 704.710, et seq. and was enacted long ago to protect
21 equity in a judgment debtor’s homestead property from judgment creditors who did
22 not hold a voluntary lien on the debtor’s property. § 704.720; *In re Kelley*, 300 B.R.
23 11 (9th Cir. BAP 2003). Such exemption is automatic, in the sense that it arises by
24 operation of law with no overt act required of the homeowner. *In re Cumberbatch*,
25 302 B.R. 675 (Bankr. C.D. Cal. 2003). It protects debtor’s homestead from a forced
26 sale. A bankruptcy proceeding has been interpreted to be identical to a forced sale;
27 if the trustee tries to liquidate the debtor’s home, he is standing in the shoes of a
28 judgment creditor conducting an involuntary sale. *Kelley*, 300 B.R. at 20. In every



1 sense, the Debtors' allowed homestead exemption in this case stands between equity
 2 in the property remaining after all secured claims have been paid and money going
 3 to pay the unsecured creditors or administrative expenses of the estate. It is higher in
 4 priority than administrative expenses and unsecured claims of the estate. The
 5 Trustee here would not have dreamed of selling the Debtors' home and taking the
 6 net proceeds from the sale while ignoring the homestead exemption. He knows he
 7 cannot touch that protected equity. But he believed what the bankruptcy court said
 8 in its ruling: "A secured creditor can do whatever it wants with its cash collateral."
 9 *Jevic* says no. The bankruptcy court was wrong. The Trustee was wrong. The
 10 Compromise approved by the bankruptcy court and the distribution scheme it
 11 contemplates after sale contravenes established precedent. Reversal is necessary.³¹

12 In his Responsive Brief³² on the original appeals, the Trustee brushed off the
 13 *Jevic* arguments made by the Debtors. He ducked the issue by asserting that the
 14 orders before the appellate court were not about making distributions to unsecured
 15 creditors ahead of the Debtors' allowed homestead exemption. The debtors
 16 disagreed with that position, since the whole purpose of the Compromise Motion
 17 was to use the \$100,000 carve out from FCS to pay administrative expenses and
 18 unsecured creditors. But all that is past history and not worth nitpicking now. The
 19 Sale Motion shows the \$100,000 carve out going to the estate and the rationale for
 20 doing so is because it creates value for the unsecured creditors. Now the Trustee
 21 must come to grips with the Supreme Court ruling which holds that he cannot use
 22 funds from an assignment as he proposes to do.

23 //

24
 25 ³¹ In *In re Tovan Construction, Inc.*, 2021 WL 1235359 (Bankr. E.D. VA. 2021), the
 26 bankruptcy court used the reasoning of *Jevic* when denying approval of a
 27 compromise which intended to use payments to the estate by the debtor's principal
 28 and a related entity to pay a particular creditor, violating the distribution priority
 order.

³² Docket No 9 in 1st Appeal.

1 **B. The Analysis in and the Policy Behind *Tillman* Demands Reversal**

2 The issue before the Ninth Circuit in *Tillman* was admittedly different than
 3 the one before this Court. However, the language and policies stated in the opinion,
 4 as well as the arguments by the trustee which the Circuit struck down, reflect a
 5 precedent which this Court cannot ignore. The trustee in *Tillman* sought to use the
 6 provisions of section 724(a)³³ to avoid the penalty portion of an IRS lien on the
 7 debtor's home and preserve the monetary value of that lien under section 551³⁴ for
 8 the benefit of the estate, i.e., administrative expenses and unsecured creditors.
 9 *Tillman*, 53 F. 4th at 1165. The IRS objected, arguing that section 724(a) avoidance
 10 and section 551 preservation did not apply to exempt property. The debtor had
 11 exempted her home using the applicable Arizona homestead exemption. The Circuit
 12 agreed with the IRS, reversing the bankruptcy court's approval of the motion.

13 After discussing the nature of the homestead exemption, it said repeatedly
 14 ““an exemption is an interest *withdrawn* from the estate (and hence from the
 15 creditors) for the benefit of the debtor.’ *Owen*, 500 U.S. 308. [*Owen v. Owen*, 500
 16 U.S. 305 (1991)].” *Tillman*, 53 F. 4th at 1168 (emphasis in the original). It also cited
 17 to its own authority on that issue, *Gebhart v. Gaughan (In re Gebhart)*, 621 F. 3d
 18 1206, 1210 (9th Cir. 2010) for the statement “[a]fter the commencement of
 19 bankruptcy proceedings, property interests which are exempted by a debtor are
 20 ‘withdrawn from the estate’,” noting that after exemption the property reverts in the
 21 debtor. *Tillman*, 53 F. 4th at 1168. It rejected the reasoning of the bankruptcy court
 22 that “it was only the Debtors’ equity beyond the mortgage and tax lien that the
 23 debtor was entitled to exempt.” *Id.*, at 1165. It also overruled the district court

24
 25 ³³ Section 724(a) provides: “The trustee may avoid a lien that secures a claim of a
 26 kind specified in section 726(a)(4) of this title.”

27 ³⁴ Section 551 provides: “Any transfer avoided under section 522, 544, 545, 547,
 28 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is
 preserved for the benefit of the estate but only with respect to property of the
 estate.”

1 affirmance, where that court stated “that the Debtor was only entitled to use
2 Arizona’s homestead exemption to exempt unencumbered property - i.e., the
3 exemption excluded the mortgage and the IRS lien.” The Circuit disagreed. *Id.*, at
4 1166.

5 Debtors here have an allowed homestead exemption. As a result, the
6 Residence has been withdrawn from the estate, subject to the three trust deeds and
7 the IRS tax liens, which the Debtors must deal with outside of the bankruptcy
8 proceedings. The Trustee cannot make a deal with one of those secured creditors to
9 recapture the withdrawn property and sell it to benefit creditors who are junior to the
10 homestead exemption. It does not matter, per *Tillman*, that the Debtors had no
11 realizable equity in the Residence when they filed. It reverted in them, nevertheless,
12 leaving them with the obstacles they knew they faced when they filed bankruptcy:
13 the obligation to deal with that secured debt on their own. *Tillman* reaffirms that
14 expectation.

15 The legal conclusions and policies espoused in *Tillman* resound in a
16 bankruptcy case and its appeal to the Tenth Circuit BAP, *In re Christensen*, 561
17 B.R. 195 (Bankr. D. Utah 2016) and *Jubber v. Bird (In re Bird)*, 577 B.R. 365 (10th
18 Cir. BAP 2017). In *Christensen*,³⁵ the debtors’ residences were encumbered by liens
19 which exceeded their value on the petition date and both debtors properly exempted
20 their homesteads. Among the encumbrances was an IRS lien which was junior to
21 voluntary mortgages. The trustee in *Christensen* sought to use the provisions of
22 724(b)³⁶ to subordinate the IRS liens to the estate’s interest so that he could sell the
23

24
25 ³⁵ The *Christensen* case actually involved two different debtors, Christensen and
26 Bird, with identical factual scenarios and identical actions by the same trustee, so
the bankruptcy court resolved both with one published opinion.

27 ³⁶ Section 724(b) provides:

28 (b) Property in which the estate has an interest and that is subject to a lien
that is not avoidable under this title (other than to the extent that there is a
properly perfected unavoidable tax lien arising in connection with an ad

1 property and claim the value of those liens for the estate to pay, among other things,
2 his administrative expenses with a small distribution to unsecured creditors. The
3 proposed distribution from the sale did not pay anything to the debtors based on
4 their homestead exemptions, which were allowed by the bankruptcy court. Section
5 724(b) operates similarly to section 724(a) but allows the trustee to subordinate the
6 entire amount of the tax lien to pay senior encumbrances and administrative priority
7 expenses of the estate. The debtors opposed the trustee's plans.

8 However, to assure they could keep their homes, they converted their cases to
9 chapter 13, which made the sale efforts moot and ended the costly litigation. In the
10 chapter 13 cases, the trustee and his counsel filed fee applications as a basis for
11 priority claims they asserted must be paid in those proceedings. The ruling on these
12

13 valorem tax on real or personal property of the estate) and that secures an
14 allowed claim for a tax, or proceeds of such property, shall be distributed--

15 (1) first, to any holder of an allowed claim secured by a lien on such
16 property that is not avoidable under this title and that is senior to such tax
lien;

17 (2) second, to any holder of a claim of a kind specified in section
18 507(a)(1)(C) or 507(a)(2) (except that such expenses under each such
19 section, other than claims for wages, salaries, or commissions that arise after
the date of the filing of the petition, shall be limited to expenses incurred
20 under this chapter and shall not include expenses incurred under chapter 11
of this title), 507(a)(1)(A), 507(a)(1)(B), 507(a)(3), 507(a)(4), 507(a)(5),
21 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such
allowed tax claim that is secured by such tax lien;

22 (3) third, to the holder of such tax lien, to any extent that such holder's
23 allowed tax claim that is secured by such tax lien exceeds any amount
distributed under paragraph (2) of this subsection;

24 (4) fourth, to any holder of an allowed claim secured by a lien on such
25 property that is not avoidable under this title and that is junior to such tax
lien;

26 (5) fifth, to the holder of such tax lien, to the extent that such holder's
27 allowed claim secured by such tax lien is not paid under paragraph (3) of
this subsection; and

28 (6) sixth, to the estate.

1 fee applications resulted in the published opinion, with the bankruptcy court
2 denying the fees as not being based on services which were required for
3 administration of the estates. *Christensen*, 561 B.R. at 198.

4 The bankruptcy court first cited to the generally accepted principle that
5 trustees should not seek to sell fully encumbered property (discussed more fully in
6 Part D of Argument): “‘it is universally recognized...that the sale of a fully
7 encumbered asset is generally prohibited’ (citation omitted).”

8 The court then characterized the subordination of the IRS liens as a carveout,
9 because it proposed to take a portion of the cash value of a subordinate lien for the
10 benefit of the estate.

11 It concluded the proceeds from the sale were subject to the exemptions
12 claimed by the debtors, analogizing the situation to one where “the secured creditor
13 caps its claim in an amount that is less than the value of the debtor’s interest in the
14 property, [so] the remaining value of the debtor’s interest in that property is subject
15 to other claims or interests,” including exemptions. *Christensen*, 561 B.R. at 209.

16 The court criticized any scheme where carveouts were used by secured
17 creditors or trustees to direct payments to other creditors, administrative or
18 otherwise. It held that a trustee cannot simply by agreement or use of section 724(b)
19 defeat junior liens or the homestead exemption. *Id.* at 210-211. It then analyzed
20 sections 724 and 506(c)³⁷ of the Bankruptcy Code and concluded neither provided
21 or disposing of, such property to the extent of any benefit to the holder of such
22 claim, including the payment of all ad valorem property taxes with respect to the
23 property.”

24 The *Christensen* court finished with a robust criticism of the trustee’s
25 endeavors to sell the debtors’ homes without recognizing the homestead
26 exemptions: “Exemptions are a bulwark against destitution, but one that is not
27

28 ³⁷ Section 506(c) provides: “The trustee may recover from property securing an
allowed secured claim the reasonable, necessary costs and expenses of preserving

1 immune from being undermined, circumvented, or torn down. A trustee should not
2 eviscerate a debtor's fresh start by seeking to disallow validly claimed exemptions."
3 *Id.* at 216. Using this sound reasoning, the bankruptcy court denied the fees.

4 The court here may use similar reasoning to overturn the Sale Motion and the
5 distribution scheme it contemplates which ignores the homestead exemption on
6 property withdrawn from the estate.

7 In *Bird* the Tenth Circuit BAP affirmed *Christensen* in all respects, reciting
8 the principles which generally forbid a trustee from selling fully encumbered
9 property and concluding the trustee should have abandoned the residences. *Bird*,
10 577 B.R. at 374-379. It reinforced the bankruptcy court's focus on the importance of
11 preserving homestead exemptions and eschewed any trustee manipulation of the
12 Code which would bypass that exemption to use proceeds from the sale of the
13 property to pay administrative expenses or unsecured creditors while disregarding
14 the proscribed priorities of distribution. *Id.* at 379-381. Although *Bird* was decided
15 before *Jevic*, it did rely on Supreme Court authority for its conclusions, noting that
16 in *Law v. Siegel*, 571 U.S. 415 (2014), the Court ruled that exemptions can be
17 denied only on statutory bases enumerated in the Code. *Bird*, at 386.

18 The case at bar is not a tax lien carveout matter, but the effect of what the
19 Trustee proposes to do is exactly the same: create equity from a property sale based
20 on a carveout³⁸ from a junior secured creditor. The Trustee and that creditor then
21 devised a plan to use that cash value to skip the Debtors' homestead exemption on
22 property which has been withdrawn from the estate and pay administrative expenses
23

24 ³⁸ The Trustee at the last minute changed the terminology of his deal with FCS from
25 a carveout to an "assignment" of a partial interest in FCS's trust deed in hopes of
26 using more a palatable term. *See* EOR 00499. Debtors submit it is a distinction
27 without a difference because the effect is exactly the same: a portion of the cash
28 value that FCS would be entitled to upon sale of the fully encumbered property will
be paid to the estate. Whether an assignment or a carveout, it skips the homestead
exemption if used to pay lower priority claims. In *Jevic* it was an assignment and
forbidden.

1 and the lower priority class of unsecured creditors. The *Tillman*, *Christensen*, and
2 *Bird* courts concluded such a plan must fail. This court may do the same.

3 **C. Even if the Settlement Between FCS and the Trustee Constitutes a**
4 **“Valid Settlement” it Still Does Not Give the Trustee the Power to *Sell***
5 **the Residence as he *is* Attempting to Do Here.**

6 Even if the compromise between the Trustee and FCS was a valid Rule 9019
7 motion or order, it does not give the Trustee the authority to sell the Debtors’
8 Residence and not pay the Debtors’ their homestead exemption as he was allowed to
9 do here in the Sale Order. *KVN*³⁹ and *Roach* do not bridge the gap either, as the
10 Trustee argued.

11 *KVN* and *Roach* were completely different than the case here, and nothing
12 here allows the Trustee to jump from receiving an assignment of a deed of trust and
13 do anything else other than exercise the same rights FCS had under its deed of trust,
14 which here, is to foreclose. Because the Trustee, here, did not “recover” property
15 pursuant to section 510(c)(2), which is the only bridge that gets the Trustee from
16 receiving an “assignment” or “carveout” from a secured lender, and then to
17 authority to 1) sell the property; and 2) not pay the Debtors’ homestead exemption,
18 which is section 522(g).

19 Both *KVN* and *Roach* relied on section 522(g) to proceed with a sale that
20 subordinated the debtors’ homestead exemption. Because each trustee in *KVN* and
21 *Roach* recovered property in litigation, and obtained a subordination from the lender
22 under section 510(c)(2), each of these trustees proceeded under 522(g) to sell and
23 not pay the debtors’ homestead exemption on the subordinated portion of the
24 lender’s claim in the hands of the Trustee. Here, the Trustee did not proceed under
25 any of the sections listed in 522(g) that would allow the Trustee to proceed to a sale
26 and not pay the Debtors’ homestead exemption.

27
28

39 *In re KVN Corp*, 514 B.R. 1 (9th Cir. BAP 2014).

1 In other words, here, the Trustee “recovered” nothing, but even if the
2 bankruptcy court, and ultimately this Court, found/find that he did, Section 522(g)
3 only precludes the Debtors from exempting property recovered by a trustee “under
4 section 510(c)(2), 542, 543, 550, 551, or 553 (of the Code)” if Debtors voluntarily
5 transferred the property. None of these specifically enumerated statutes are
6 applicable to Trustee’s alleged recovery in this case. Given Section 522(g)’s
7 inapplicability, there is no statutory authority for disallowing the Debtors’ right to
8 exempt property of the bankruptcy estate. Pursuant to *Law v. Siegel*, absent express
9 statutory authority, there is no basis for surcharging or circumventing a debtor’s
10 rights to exempt property.

11 Nowhere in the Trustee’s briefing does the Trustee claim that he disputes the
12 validity of FCS’s debt/lien and that he “recovered” anything, or at the very least, did
13 not recover a type of asset/interest that would justify the disallowance of an
14 exemption. As a result, the Trustee here did not seek relief under any of the sections
15 above listed and is aware there is no justification to disallow the Debtors’
16 homestead exemption. However, even if the Trustee somewhere argues that he
17 “recovered” something that was covered by the 522(g) exceptions disallowing
18 exemption of the property recovered, that argument should fail as well. That very
19 issue was addressed by the First Circuit (and later relied on by other courts
20 including the Ninth Circuit) in a case that tackled a trustee’s argument under almost
21 identical circumstances. *Degiacomo v. Traverse (In re Traverse)*, 753 F.3d 19 (1st
22 Cir. 2014).

23 In the *Traverse* case, the trustee made the same argument the Trustee makes
24 in his Sale Motion, under a slightly different scenario. The *Traverse* trustee, unlike
25 the Trustee here, did actually bring suit “to preserve (an unrecorded mortgage) for
26 the benefit of the estate...”. *Traverse* at 23. The debtor (*Traverse*) objected/filed a
27 counterclaim to the trustee’s suit, claiming that “even if he preserved the mortgage,
28 (the trustee) could sell only the mortgage itself and not her underlying property.

1 Traverse argued that because the trustee's preservation of JP Morgan's mortgage
2 gave the estate only the rights of the original mortgagee, it created no right to sell
3 her home until (something) triggered the right of foreclosure (emphasis added) ...”
4 *Id.* The First Circuit agreed with the debtor and reversed the bankruptcy court and
5 the BAP. The *Traverse* court first explains: “Under § 541 of the Bankruptcy Code,
6 all of the debtor's legal and equitable interests in property at the time of her
7 bankruptcy petition automatically become the property of the bankruptcy estate. 11
8 U.S.C. § 541(a)(1) ...Nevertheless, § 522 of the Code allows a debtor to exempt
9 certain property, based either on an enumerated list of federal exemptions or on any
10 alternate exemptions provided by her state. See 11 U.S.C. § 522(b)...”. *Id.* at 24. It
11 then explained that:

12 “...the Bankruptcy Code empowers a trustee to avoid and preserve the lien
13 for the benefit of the estate. The trustee exercises this power through two strong-arm
14 provisions. First, the trustee's right of avoidance under 11 U.S.C. § 544...Second,
15 his right of preservation under 11 U.S.C. § 551 automatically preserves the benefit
16 of the avoided interest for the estate by ‘put[ting] the estate in the shoes of the
17 creditor whose lien is avoided.’ *In re Carvell*, 222 B.R. 178, 180 (1st Cir. BAP
18 1998)...In this case, the trustee exercised his strong-arm powers to avoid and
19 preserve JP Morgan's mortgage on Traverse's home.³ He now argues that, by
20 preserving the mortgage lien, he may sell the property that is subject to the lien in
21 order to realize the value of the mortgage for the bankruptcy estate.”

22 *Id.* at 26.

23 Here, the Trustee does not even claim to have “recovered and preserved”
24 pursuant to any of the above provisions or any referenced in section 522(g), so the
25 Trustee should not be allowed to sell here. However, even if the Trustee did
26 “recover” something, the next section of *Traverse* explains exactly why the
27 Trustee’s arguments in his Sale Motion still fails. Under the Code, when a trustee
28 preserves any lien for the benefit of the estate, the trustee “preserves the benefit of
only that which has been (avoided or preserved)...in this case [just like here], the
mortgage....Preservation gives the bankruptcy estate an exclusive interest in the



1 avoided lien, but it does not give the estate any current ownership interest in the
2 underlying asset (here, the Residence)...As far as the trustee's § 363 powers are
3 concerned, avoidance and preservation thus empower the trustee to sell the newly
4 avoided *mortgage* (here, the assigned portion of the third deed of trust) as property
5 of the estate. But if the underlying property has been exempted and withdrawn from
6 the 'property of the estate' (as the Residence was through its exemption per
7 *Tillman*) for the purposes of § 363, the preservation of a mortgage does not resurrect
8 the trustee's § 363 powers over that property itself (here, the Residence). *See*
9 *Carmichael*, 439 B.R. at 890 ('The only property interest which the Trustee may sell
10 under § 363(b) is the estate's one-half interest in the unperfected lien...')." *Id.* at 27.

11 Finally, the *Traverse* court completes the analysis of the issues in this case, by
12 explaining that even though the trustee stands in the shoes of the lender/lienholder
13 and a sale of the *home* will benefit the unsecured creditors, the preserved *mortgage*
14 does not empower the Trustee to sell the *home* which is identical to what the Trustee
15 argues here.

16 The *Traverse* court points out that though "the preserved mortgage entitles
17 the estate to benefit (emphasis added) from the sale of the (Residence, here)...it
18 does not mean that the trustee is by that fact empowered to sell the property so as to
19 immediately realize that benefit." A mortgage/lien on a residence does not carry "a
20 right of immediate ownership...nor a right of immediate payment of the secured
21 loan's outstanding value, but only a right to foreclose on (on the property) in the
22 event that (here, Debtors) default on their loan...And that is the extent of the rights
23 gained by the estate through the trustee's preservation." *Id.* at 29. See also
24 *Haberman*, 516 F.3d at 1210 (10th Cir. 2008) and *Carvell*, 222 B.R. at 180 (BAP
25 1st Cir. 1998).

26 Therefore, the Trustee had no right to sell the Residence based on the
27 assignment from FCS. But if he did, he must pay the debts secured against the
28 Residence in full, and pay the Debtors' homestead exemption, and he may then take

1 his portion of the FCS lien that is paid from such a sale, from the closing of the sale
2 last. If he cannot pay the secured liens of all creditors and the Debtors' homestead
3 exemption, then he should not have been authorized by the bankruptcy court to
4 proceed with a sale of the Debtors' Residence.

5 Since the Trustee cannot sell the property based on his receipt of an
6 assignment or carveout from FCS, he will argue that he is entitled to sell property of
7 the estate under section 363(b). However, that is not allowed here where the
8 Debtors' homestead exemption has been allowed by the bankruptcy court. As
9 discussed above, exempt property is withdrawn from the bankruptcy estate by the
10 holding in *Tillman*, 53 F. 4th at 1168 and *Gebhart v. Gaughan*, 62 F. 3d at 1210.
11 Therefore, because the homestead exemption was allowed – other than its
12 application to the carveout – the Residence is no longer property of the estate and
13 the Trustee cannot use section 363(b) to sell it. Section 363(b) by its language is
14 restricted to sales of property of the estate and cannot be used to sell the Residence.

15 In conclusion, the Trustee cannot sell the Residence as a result of his
16 obtaining an assignment from FCS, since he only gains the right which FCS held –
17 to foreclose. And he cannot sell under section 363(b) because under *Tillman*,
18 exempt property is withdrawn from the estate. As a result, the bankruptcy court
19 erred when it approved the sale.

20 **D. Bankruptcy Code Section 105, Longstanding Policies and Equity**
21 **Weigh Against a Trustee Selling Fully Encumbered Property and**
22 **Evicting Debtors**

23 Debtors were aware when they filed their chapter 7 petition that their home
24 was underwater when the tax liens were taken into account. They also were advised
25 that - because trustees are generally prohibited from selling fully encumbered
26 property - they could expect to discharge their dischargeable debts and receive a
27 fresh start from the bankruptcy, which would then allow them to address the secured
28 debts while maintaining their residence. The Trustee and FCS have orchestrated a



1 plan which would destroy those dreams and have the dire consequence of evicting a
2 family of five from their home. The bankruptcy court blessed this collusion and
3 actually applauded the Trustee's ingenuity. But the bankruptcy court overlooked the
4 fresh start purpose of bankruptcy and the downside to all debtors if such schemes
5 are countenanced.

6 Section 105(a) of the Bankruptcy Code gives the bankruptcy courts the power
7 to issue any order that is necessary or appropriate to carry out the provisions of this
8 title. One of the provisions of "this title" (the Bankruptcy Code) is to distribute
9 estate assets in the order of priority set forth in section 507. Another is to honor the
10 exemptions allowed under section 522. Either of those Code sections gave the
11 bankruptcy court here the power to deny the Trustee's "Compromise" and abolish
12 the order of distribution orchestrated by the Trustee and FCS. After all, several
13 courts have noted that to allow trustees and creditors to dictate how estate funds are
14 allocated "would be improper." The Turnage court used that polite term but others
15 have been more stridently opposed, as discussed above. And no wonder, because
16 this outcome is an abomination, to be struck down, not admired.

17 Several of the cited cases explained why a trustee normally is prohibited from
18 selling a fully encumbered asset, as established by the United States Trustee's
19 Chapter 7 Handbook and ample case law, including a much-cited case from the
20 Ninth Circuit BAP, *In re KVN*, 514 B.R. 1 (9th Cir. BAP 2014). KVN dealt with a
21 trustee who had made a deal with a creditor for a carveout for the estate if the estate
22 auctioned personal property worth far less than its secured claim. The bankruptcy
23 court denied the stipulation, perceiving that only the trustee would benefit, despite a
24 promise to use some funds to pay unsecured creditors. This was a corporate
25 bankruptcy with no exemptions in play and no junior liens.

26 On appeal, the BAP reversed the outright denial and remanded for a factual
27 determination on whether there was a substantial benefit to the estate. However, in
28 doing so, it discussed at length why "The General Rule [is] That the Sale of Fully

1 Encumbered Property is Prohibited,” a caption in the opinion. *Id.*, at 5. It cites to a
2 myriad of caselaw, mostly from bankruptcy courts, all of which acknowledge
3 “universal recognition” that such sale is prohibited. The BAP also references the
4 Handbook for Chapter 7 Trustees promulgated by the Office of the United States
5 Trustee: “Generally, a trustee should not sell property subject to a security interest
6 unless the sale generates funds for the benefit of unsecured creditors.” *Id.* Summed
7 up, the BAP concluded that such sales were generally improper and that the proper
8 action is to abandon the property. *Id.* at 6.

9 The *Christensen* and *Bird* decisions also impress the principle that it is not
10 within a trustee’s normal fiduciary duties to make deals so that he can sell fully
11 encumbered property. The proper disposition is abandonment. *Bird*, 577 B.R. at
12 377-379; *Christensen*, 561 B.R. at 205.

13 Despite these admonitions, the Trustee here, with the bankruptcy court’s
14 blessing, defied the general rule and went out of his way to create a scenario which
15 would dispossess the Debtors of their home without any homestead exemption
16 funds to foster a fresh start. Debtors have cited numerous legal reasons why this is
17 wrong. But what about equity? Should trustees be encouraged to evict debtors from
18 their homes by colluding with creditors to create “equity” which the estate can grab,
19 ignoring homestead exemptions and leaving debtors homeless and penniless?

20 What ever happened to that ubiquitous fresh start for the honest but
21 unfortunate debtors?

22 The underlying bankruptcy court’s decision encourages trustees to go out of
23 their way to try to sell homes which should be abandoned. Although not
24 “precedential” it sets a precedent which should make every debtor’s counsel
25 shudder. How can they advise their clients to use their ample homestead exemptions
26 to protect the equity in their homes when there are trustees out there who will labor
27 to create a scenario that sells the home while ignoring the homestead exemption? If
28 the Trustee here is allowed to make a deal with a junior secured creditor that allows



1 sale of the house without honoring the homestead exemption, then can't every
2 trustee do the same with every property? Many junior creditors, even when "in the
3 money," might jump at the chance to be paid a discounted sum on their junior debt
4 and be done with it. Where would it stop?

5 Debtors suggest it stops here with reversal.

6 **VII. CONCLUSION**

7 For the reasons stated above, Debtors request this court to reverse the
8 decisions of the bankruptcy court so that they might save their family home.

9 Dated: January 11, 2024

Respectfully submitted,
SHAW & HANOVER, P.C.

11 /s/ Summer Shaw

12 Summer Shaw/Meredith A Jury
13 (Of Counsel), Attorneys for
14 Appellants, Marcos & Natalie
15 Romero
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DISCLOSURE STATEMENT REQUIRED BY FED. R. BANKR. P. 8012

(a) There are no nongovernmental corporations that are parties to this proceeding.

(b) (1) Each debtor is named in the caption. There are no other debtors who are not named in the caption.

(2) There are no debtor corporations that are parties to this appeal.



Certificate of Compliance

The undersigned certifies that the Opening Brief by Appellants, dated January 11, 2024, complies with the type-volume limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7) because the text of brief contains 9,024 words (excluding the parts exempted by the rules) according to Microsoft Word, the word-processing program on which the brief was prepared.

Dated: January 11, 2024

/s/ Summer Shaw

Summer Shaw

Certificate of Corporate Disclosure and Statement of Interested Parties

The undersigned certifies that the following parties have an interest in the outcome of this appeal and/or have at least a ten percent (10%) interest in an entity in a party to this appeal. Appellants makes these representations to enable the judge on appeal to evaluate possible disqualification or recusal.

- Todd A Frealy, Chapter 7 Trustee and Appellee
- Marcus & Brenda Romero, Debtor and Appellant

Dated: January 11, 2024

/s/ Summer Shaw
Summer Shaw



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Certificate of Related Appeals

The undersigned certifies that the following are known appeals that are related to this appeal:

Appeal Case No.: 5:23-cv-01010-FLA

Appeal Case No.: 5:23-cv-01910-FLA

Dated: January 11, 2024

/s/ Summer Shaw
Summer Shaw



PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **44-901 Village Court, Suite B, Palm Desert, CA 92260**

A true and correct copy of the foregoing document entitled (*specify* **OPENING BRIEF BY APPELLANTS MARCUS ALBERT ROMERO AND NATALIE VICTORIA ROMERO WITH EXCERTPS OF RECORD 21 THROUGH 25**) will be served or was served (a) on the judge in chambers in the form and manner required by L.R. 5-4 in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING

(NEF): Pursuant to controlling General Orders and L.R. 5-3.3, the foregoing document will be served by the court via NEF and hyperlink to the document. On **01/11/2024** I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Todd A Frealy** taf@lnbyg.com
- **Anthony Alan Friedman** aaf@lnbyg.com
- **Summer M Shaw** ss@shaw.law

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE

TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 (d)(3) and/or controlling L.R. 5-4, on **01/11/2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

APPELLEE: Emailed Brief & Appendix & EOR to: taf@lnbyb.coom

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/11/2024

Date

Teresa Stone

Printed Name

Signature



**CASE NO. 5:23-cv-01010-FLA
(Related Appeal No.: 5:23-cv-01907-FLA)**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re MARCUS ALBERT ROMERO and NATALIE VICTORIA ROMERO,
Debtors.

MARCUS ALBERT ROMERO and NATALIE VICTORIA ROMERO,

Appellants,

v.

TODD A. FREALLY, Chapter 7 Trustee for
the bankruptcy estate of Marcus Albert Romero and Natalie Victoria Romero,
Appellee.

On Appeal from the United States Bankruptcy Court, Central District of
California, Bankruptcy Case No. 6:22-bk-12942-WJ

APPELLEE’S ANSWERING BRIEF

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Todd A. Frealy, the Chapter 7 Trustee (the “Trustee” or “Appellee”) for the bankruptcy estate of Marcus Albert Romero and Natalie Victoria Romero (the “Debtors or Appellants”) and the Appellee herein, respectfully submits his answering brief in this Appeal.¹

I.

STATEMENT OF ISSUES ON APPEAL AND APPLICABLE

STANDARD OF REVIEW

F.R.B.P. 8014 provides that Appellee can provide a statement of issues if Appellee is dissatisfied with the Appellants’ statement. Appellee disagrees with the first issue in Appellant’s statement of issues because it contains incorrect factual statements and legal conclusions. Appellants’ first issue asks whether the bankruptcy court erred in entering an order granting a sale motion “when (a) the Trustee only held an assignment of a portion of a third deed of trust recorded against the real property and the property had been withdrawn from the estate.”²

Appellants have misstated the facts in this issue. The Trustee did not only hold an assignment of a portion of a third deed of trust. The Property was property of Appellants’ bankruptcy estate pursuant to 11 U.S.C. Section 541(a), which the

¹ Unless otherwise stated: (1) “Section” refers to sections of the United States Bankruptcy Code, 11 U.S.C. §101 et seq. (the “Bankruptcy Code”), and (2) “F.R.B.P.” refers to the Federal Rules of Bankruptcy Procedure.

² See Appellant’s Opening Brief, page 11, lines 7 through 9.

Trustee was authorized to sell under Sections 363(b) and (f). In addition, the Property was never withdrawn from the estate. As discussed below, *United States of America v. Warfield (In re Tillman)*, 53 F.4 1160 (9th Cir. 2022), does not apply to the facts of this case, yet Appellants state as fact that the Property is no longer estate property. This is not correct. Appellants' incorrect issue attempts to lead the Court away from the fact that Appellants already agreed that they had no equity in the Property against which their homestead exemption can attach. Accordingly, the first issue this Court should decide in this appeal should be whether Appellants' claimed homestead exemption in a property that has no equity above consensual liens and tax liens, can prevent the Trustee from administering and selling the Property? (the "First Issue").

Appellants' remaining issues are whether the Bankruptcy Court erred in entering the Sale Order: (b) where there was no equity in the Property over and above encumbrances (the "Second Issue") and (c) the Trustee was not required to pay Appellants their homestead exemption from the sale proceeds before funds were used to pay general unsecured creditors and administrative expenses (the "Third Issue").³ The Trustee agrees this Court should rule on the Second Issue and the Third Issue.

³ See Appellant's Opening Brief, page 11, lines 9 through 12.

Bankruptcy court decisions interpreting the Bankruptcy Code present questions of law that are reviewed de novo and a bankruptcy court's findings of fact are reviewed for clear error. *Matter of Meruelo Maddux Properties, Inc.*, 667 F.3d 1072, 1076 (9th Cir. 2012).

The Bankruptcy Court's order approving the sale of property of the bankruptcy estate is reviewed for an abuse of discretion. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (B.A.P. 9th Cir. 2005).

Under the abuse of discretion standard of review, the reviewing court must first "determine *de novo* whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested." *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009). If the bankruptcy court identified the correct legal rule, the reviewing court must then determine under the clearly erroneous standard whether the bankruptcy court's factual findings and application of the facts to the relevant law were "illogical, implausible, or without support in inferences that may be drawn from the record." *Id.* at 1263.

In the instant case, the Bankruptcy Court applied the correct legal rule in granting the Trustee's sale motion and not requiring the Trustee to pay anything to Appellants on account of their homestead exemption.

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II.

STATEMENT OF THE CASE

On August 4, 2022 (the “Petition Date”), the Debtors filed a voluntary chapter 7 petition in the United States Bankruptcy Court, Central District of California, Riverside Division, commencing case no. 6:22-bk-12942-WJ (the “Case”).⁴ On the Petition Date, the Debtors owned the property located at 45118 Riverstone Court, Temecula, California 92592 (the “Property”).⁵ The Property, which was the Debtors’ residence, is property of the Debtors’ bankruptcy estate pursuant to 11 U.S.C. Section 541(a).⁶

Prior to Debtors’ bankruptcy filing, the Debtors operated a bail bonds business known as Power Bail Bonds (which filed its own chapter 11 bankruptcy case on June 15, 2020).⁷ On December 19, 2019, the Debtors executed a deed of trust in favor of FCS in the amount of \$250,000 to secure a bond (the “FCS DOT”).⁸

The Trustee consulted with a real estate broker who estimated that the Property has a value of approximately \$1,125,000.⁹ The Debtors valued the

⁴ ER, Tab D, ER000013 through ER000087.

⁵ ER, Tab D, ER000021.

⁶ ER, Tab D, ER000022.

⁷ ER, Tab G, ER000164.

⁸ ER, Tab G, ER000214.

⁹ ER, Tab E, ER000102.

Property at \$1,254,300 on Schedule A/B.¹⁰ The Property is encumbered by the following liens:¹¹

- a) A first priority deed of trust in favor of JP Morgan Chase Bank, National Association (“Chase”) with an approximate balance of \$519,945 as of August 2022.
- b) A second priority deed of trust in favor of Pentagon Federal Credit Union (“PFCU”), with an approximate balance of \$258,223 as of August 2022.
- c) The FCS DOT is in third position with a balance of \$250,000.
- d) A tax lien securing a debt of \$48,673 in favor of the United States of America, that was recorded on April 5, 2022.
- e) A tax lien securing a debt of \$122,354 in favor of the United States of America, that was recorded on April 5, 2022.

On November 9, 2022, FCS filed a proof of claim against the estate (the “FCS Claim”).¹² The FCS Claim sought payment of a total debt from the estate in the amount of \$907,245.75, including a \$250,000 secured debt (pursuant to the FCS DOT) and an unsecured debt totaling \$657,245.75.¹³

¹⁰ ER, Tab D, ER000022.

¹¹ ER, Tab E, ER000116 – ER000123.

¹² ER, Tab G, ER000200-ER000217.

¹³ ER, Tab G, ER000200-ER000217.

The Trustee and FCS entered into settlement discussions concerning the FCS Claim and a potential sale of the Property.¹⁴ Those discussions culminated in a settlement which is memorialized in a stipulation (the “Stipulation”) wherein FCS agreed to consent to a sale of the Property pursuant to 11 U.S.C. Section 363(f)(2) provided that FCS would receive 60% of the proceeds encumbered by the FCS DOT from the sale of the Property after payments to satisfy, in full, the first priority mortgage in favor of Chase, the next priority mortgage in favor of PFCU, estimated sale costs of \$90,000, insurance costs and any unpaid real property taxes.¹⁵ FCS further agreed to provide the Debtors’ bankruptcy estate with a carve-out of 40% of the proceeds encumbered by the FCS DOT from the sale of the Property.¹⁶ FCS later agreed to assign 40% of the beneficial interest in the FCS DOT to the Debtors’ bankruptcy estate.¹⁷ In addition, to ensure a meaningful distribution to unsecured creditors, FCS agreed to subordinate the general unsecured portion of the FCS Claim, which totaled \$657,245.75, to allowed general unsecured claims.¹⁸

In exchange for the forgoing, the Trustee agreed to prepare all pleadings necessary to obtain Bankruptcy Court approval for the Stipulation, employment of

¹⁴ ER, Tab E, ER000104.

¹⁵ ER, Tab E, ER000108-ER000112.

¹⁶ ER, Tab E, ER000108-ER000112.

¹⁷ ER, Tab P, ER000522-ER000529.

¹⁸ ER, Tab P, ER000526.

a real estate broker to market the Property for sale and a sale of the Property under Section 363 of the Bankruptcy Code.¹⁹

The Trustee estimated that a sale of the Property will yield \$250,000 in sales proceeds subject to FCS's lien, as follows:

\$1,155,000 Estimated value

(\$538,119) Chase as of 1/9/2023

(\$265,195) PFCU as of 1/10/2023

(\$90,000) Costs of sale

(\$6,625) Property taxes

\$255,061 Estimated net proceeds subject to the FCS lien, then IRS liens²⁰

Therefore, assuming a sale of the Property for \$1,155,000, FCS will receive a payment of \$150,000 from the escrow established for the sale transaction (60% of \$250,000), and the bankruptcy estate will receive \$100,000 pursuant to the assignment of the beneficial interest in the FCS DOT to the bankruptcy estate.²¹ In addition, the Trustee further agreed to ensure that a minimum of 50% of the net proceeds received by the bankruptcy estate from the sale of the Property be paid to non-administrative unsecured creditors.²² Thus, assuming the bankruptcy estate receives \$100,000 from the sale of the Property, the Trustee agreed to cap the

¹⁹ ER, Tab P, ER000526.

²⁰ ER, Tab P, ER000518.

²¹ ER, Tab P, ER000518-ER000519.

²² ER, Tab P, ER000518-ER000519.

administrative fees and costs of the bankruptcy estate at \$50,000, and ensure that at least \$50,000 is paid to unsecured creditors.²³

The claims bar date for non-governmental claims expired on January 17, 2023 and 25 claims have been filed against the bankruptcy estate.²⁴ The Franchise Tax Board (“FTB”) filed a priority claim in the amount of \$2,735.71 and the Internal Revenue Service (the “IRS”) filed a secured claim in the amount of \$129,162.21.²⁵ The liens of the IRS were recorded after the FCS DOT and are therefore junior to the FCS DOT.²⁶ Aside from the FTB and IRS claims, there are 23 general unsecured claims totaling \$964,919, including the sum of \$657,245.75 that was claimed by FCS.²⁷ Pursuant to the Stipulation, FCS agreed to subordinate the general unsecured portion of the FCS Claim to allowed general unsecured claims, thus leaving general unsecured claims totaling \$307,673.²⁸ Accordingly, the Trustee anticipates there will be approximately \$50,000 for general unsecured claims which will enable an approximately 16% dividend to general unsecured claims in their currently filed amounts.²⁹

²³ ER, Tab P, ER000519.

²⁴ ER, Tab P, ER000519; ER000558-ER000565.

²⁵ ER, Tab P, ER000519; ER 000558-000565.

²⁶ ER, Tab P, ER000540.

²⁷ ER, Tab P, ER000519; ER000558-000565.

²⁸ ER, Tab P, ER000519.

²⁹ ER, Tab P, ER000519.

On February 10, 2023, the Trustee filed a motion to approve the Stipulation with FCS pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Compromise Motion”) and an objection to the Debtors’ claim of exemption (the “Exemption Objection”).³⁰ The Trustee scheduled hearings on the Compromise Motion and the Exemption Objection for March 7, 2023.³¹

On February 14, 2023, the Debtors filed a motion to compel the Trustee to abandon the Property (the “Abandonment Motion”).³²

On February 17, 2023, the Debtors filed an Amended Schedule C which claims a homestead exemption against the Property in the amount of \$558,000 pursuant to Section 704.730 of the California Code of Civil Procedure.³³

On February 21, 2023, the Trustee filed an opposition to the Abandonment Motion and the Debtors filed oppositions to the Compromise Motion and the Exemption Objection.³⁴ On February 28, 2023, the Trustee filed reply briefs to the Debtors’ oppositions to the Compromise Motion and the Exemption Objection (the “Replies”).³⁵ In the Replies, the Trustee advised the Court and the Debtors that the Stipulation between the Trustee and FCS was being amended to provide for the

³⁰ ER, Tab E, ER000088-ER000148; ER, Tab G, ER000156-ER000217.

³¹ ER, Tab F, ER000149-ER000155; ER, Tab G, ER000156.

³² ER, Tab H, ER000218-ER000294.

³³ ER, Tab I, ER000295-ER000298.

³⁴ ER, Tab J, ER000299-ER000313; Tab K, ER000314-ER000392; Tab L, ER000393-ER000462.

³⁵ ER, Tab M, ER000463-ER000476; Tab N, ER000477-ER000487.

assignment by FCS of 40% of the beneficial interest in the FCS DOT to the bankruptcy estate (the “Amended Stipulation”).³⁶ After oral argument, the Court advised the parties of his tentative ruling, including proposed findings of fact and conclusions of law, and continued the hearings on the Compromise Motion and the Exemption Objection at the parties’ request to provide time for the Trustee to file supplemental papers to provide notice of the Amended Stipulation.³⁷

On March 28, 2023, the Trustee filed and served his supplemental points and authorities in support of the Compromise Motion to approve the Amended Stipulation with FCS.³⁸ On April 18, 2023, the Debtors filed their supplemental opposition to the Compromise Motion.³⁹

After oral argument on May 2, 2023, the Court issued an order granting the Compromise Motion, denying the Abandonment Motion and granting certain relief requested in the Exemption Objection (the “Compromise Order”).⁴⁰ The Bankruptcy Court issued extensive findings of fact and conclusions of law at both the March 7th and May 2nd hearings on the Compromise Motion, Exemption

³⁶ ER, Tab M, ER000475; Tab N, ER000486.

³⁷ ER, Tab R, ER000592-ER000604.

³⁸ ER, Tab P, ER000494-ER000566.

³⁹ ER, Tab Q, ER000567-ER000571.

⁴⁰ ER, Tab A, ER000001-ER000002.

Objection and the Abandonment Motion.⁴¹ With regard to the Exemption

Objection, the Compromise Order states:

With respect to the Objection to Exemption, the relief set forth on page 8, lines 1-5 of the Objection to Exemption is granted. The homestead exemption of the Debtors attaches to any and all sales proceeds of the home (after payment of all secured claims, real estate taxes, closing costs, etc.) but does not attach to any sales proceeds attributable to the portion of the consensual lien of Financial Casualty and Surety, Inc. (“FCS”) which FCS assigned to the bankruptcy estate for the benefit of creditors pursuant to the stipulation approved by the Court.

ER, Tab A, ER000002.

On May 16, 2023, the Debtors filed an Amended Notice of Appeal of the Compromise Order (the “First Appeal”).⁴² The First Appeal has been fully briefed by the parties.

On May 16, 2023, the Trustee filed an application to employ a real estate broker, which was approved by the bankruptcy court on June 5, 2023.⁴³ Thereafter, the Property was marketed for sale and the Trustee received 4 offers including an offer for \$1,279,000 from Lucas and Amanda Wymore (the “Purchasers”).⁴⁴

⁴¹ ER, Tab R, ER000592-ER000604; Tab S, ER000615-ER000621.

⁴² ER, Tab C, ER000008-ER000012.

⁴³ ER, Tab T. ER000659 – ER000660.

⁴⁴ ER, Tab T, ER000660.

On August 15, 2023, the Trustee filed a motion to approve the sale of the Property to the Purchasers for \$1,279,000 (the “Sale Motion”).⁴⁵ The Trustee also filed a motion for turnover of the Property (the “Turnover Motion”).⁴⁶ Hearings on the Sale Motion and Turnover Motion were set for September 5, 2023.⁴⁷

In their opposition to the Sale Motion, in addressing the liens that encumber the Property, the Debtors acknowledged: “[t]hese liens totaled approximately \$1,207,433, which, based on our valuation of the Residence, left no realizable equity in the Residence even without taking into consideration the Debtor’s homestead exemption.”⁴⁸ The Debtors have not made any mortgage payments on the Property for the first and second mortgages since the Petition Date.⁴⁹

On August 22, 2023, the Debtors filed a motion for stay pending appeal in the Bankruptcy Court (the “Bankruptcy Court Stay Motion”).⁵⁰ On September 5, 2023, the Bankruptcy Court granted the Sale Motion because the Trustee met the standards for a sale of estate property under Sections 363(b) and 363(f) (the “Sale

⁴⁵ ER, Tab T, ER000622 - ER000743.

⁴⁶ ER, Tab W, ER000765 – ER000777.

⁴⁷ ER, Tab T, ER000622; ER, Tab Y, ER000783.

⁴⁸ ER, Tab U, ER000751.

⁴⁹ ER, Tab T, ER000660.

⁵⁰ ER, Tab Z, ER000785- ER000808.

Order”).⁵¹ The Bankruptcy Court also granted the Turnover Motion on the grounds that the Property is estate property and the Trustee requires possession to complete its sale (the “Turnover Order”).⁵² In addition, the Bankruptcy Court denied the Bankruptcy Court Stay Motion because the Debtors failed to establish all four elements required for a discretionary stay pending appeal.⁵³

During the hearing on the Sale Motion, the bankruptcy court stated that in evaluating the Sale Motion and Bankruptcy Stay Motion, it was important to consider Debtors’ admissions that there is no realizable equity in the Property.⁵⁴

On September 19, 2023, Appellants filed notices of appeal for the Sale Order and the Turnover Order. On September 25, 2023, Appellants filed an emergency motion for a stay pending appeal (the “District Court Stay Motion”). On September 26, 2023, the Trustee filed an opposition to the District Court Stay Motion. The District Court denied the District Court Stay Motion pursuant to an order entered on October 10, 2023.

⁵¹ ER, TAB X, ER000778 – ER000782.

⁵² ER, TAB Y, ER000783 – ER000784.

⁵³ ER, TAB Z, ER000804 – ER000807.

⁵⁴ ER, TAB Z, ER000798 – ER000799.

On December 12, 2023, the bankruptcy court issued a notice that the record was complete.

On January 11, 2024, Appellants filed their Amended Opening Brief in this Appeal [Appeal Docket No. 26] (the “Opening Brief”).

Appellee hereby timely files the Appellee’s Answering Brief on February 8, 2024.

III.

SUMMARY OF ARGUMENT

The Sale Order should be affirmed for the following reasons.

First, homestead exemptions protect equity, not the underlying property.

Thus, Appellants’ homestead exemption does not prevent the Trustee from selling the Property because there was no equity above consensual mortgages and tax liens against which Appellants’ homestead exemption could attach.

Second, the Bankruptcy Court properly granted the Sale Motion because the Trustee demonstrated there is a sound business reason for the sale which will generate \$100,000 for the bankruptcy estate, reasonable and accurate notice was provided, the sale price was fair and reasonable, and the Purchasers satisfied the test for good faith.

Third, Appellants’ claimed homestead exemption is unenforceable against the consensual mortgage lien that was assigned to the bankruptcy estate. Both

federal and state law prevent homestead exemptions from being enforced against consensual mortgages. Section 522(c)(2); Cal. Civ. Proc. §703.010(b). Because the bankruptcy estate has received an assignment of a portion of the FCS DOT, the Debtors' homestead exemption is unenforceable against any proceeds received by the bankruptcy estate on account of that lien.

Fourth, the Sale Order and the Trustee's administration of the sale proceeds according to the Amended Stipulation do not violate the United States Supreme Court's decision in *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017). This is not a chapter 11 case where the Trustee is seeking a structured dismissal of the case that proposes to skip Section 507 priority claimants. Instead, the Trustee's compromise with FCS is consistent with *Jevic* because the estate will receive proceeds from a consensual secured lien which is not subject to the Debtors' claimed homestead exemption, and such funds will be distributed in accordance with Section 726 as required. The Debtors' homestead exemption attaches to nothing because there is no equity in the Property above consensual and tax liens and the Debtors are only entitled to receive a distribution under Section 726 after all creditors have been paid in full.

Fifth, the Property remains property of the bankruptcy estate and it was not "withdrawn" from the estate under *United States of America v. Warfield (In re Tillman)*, 53 F.4 1160 (9th Cir. 2022). The *Tillman* decision is not applicable to the

facts of this case because the Trustee is not seeking to administer a debtor's residence simply to avoid and preserve IRS tax liens for the benefit of the bankruptcy estate under Sections 724 and 726. The Ninth Circuit in *Tillman* noted that under Arizona law, the homestead exemption is not reduced by tax liens, a fact which guided the Court's decision. *Id.* at 1174-75. In addition, the Sale Order did not constitute an allowance of the Debtors' homestead exemption that removed it from the bankruptcy estate. The Trustee objected to the Debtors' homestead exemption within the time requirements of F.R.B.P. 4003(b). The Bankruptcy Court expressly held that the Debtors' homestead exemption could not be enforced against proceeds that emanate from the portion of the FCS DOT that was assigned to the bankruptcy estate, and the Property was not withdrawn from the estate.

IV.

ARGUMENT

A. THE SALE ORDER SHOULD BE AFFIRMED.

The Bankruptcy Court did not abuse its discretion in connection with entry of the Sale Order. As set forth in *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009), if the Bankruptcy Court identified the correct legal rule applicable to the relief requested in the Motion, the reviewing court must then determine under the clearly erroneous standard whether the Bankruptcy Court's factual findings and application of the facts to the relevant law were "illogical,

implausible, or without support in inferences that may be drawn from the record.” *Id.* at 1263. In the instant case, as demonstrated by the Bankruptcy Court’s extensive findings of fact and conclusions of law, the Bankruptcy Court’s factual findings and application of those facts to the relevant law were logically stated and analyzed, were beyond plausible and fully supported by the record in the case, thus, rightfully and appropriately concluding with entry of the Sale Order.

B. HOMESTEAD EXEMPTIONS ONLY PROTECT EQUITY, NOT THE UNDERLYING PROPERTY.

The Debtors’ arguments that the Trustee must pay them their homestead exemption on a fully encumbered property ignore binding Ninth Circuit authority that the homestead exemption protects only equity and not the property itself. *See In re Hyman*, 123 B.R. 342, 345 (9th Cir. BAP 1991). In *In re Reed*, 940 F.2d 1317, 1331 (9th Cir. 1991) the Ninth Circuit Court of Appeals stated: “California does not permit a debtor to exempt his entire interest in a homestead, but specifically limits the dollar amount up to which a homestead exemption can be claimed. Cal.Civ.Proc.Code Section 704.730(a). The language of the relevant statutes makes it clear that the “homestead exemption” in California is merely a debtor’s right to retain a certain sum of money when the court orders sale of a

homestead in order to enforce a money judgment; it is not an absolute right to retain the homestead itself.”

This case law is dispositive of Appellants’ entire appeal of the Sale Order and mandates that Appellants’ appeals be rejected. Appellants attempt to use their homestead exemption to claim that the Property was removed from the estate under *Tillman* and that the Trustee is violating *Jevic* by proposing to pay administrative creditors and unsecured creditors without paying anything on account of their homestead exemption. Both arguments fail because there was no equity in the Property against which their homestead exemption could attach. Appellants failed to address this binding Ninth Circuit case authority in their brief because it contradicts their narrative that Appellants’ homestead exemption prevents the Trustee’s administration of the Property. It does not. Thus, as to the First Issue to be decided in this appeal, Appellants’ homestead exemption does not prevent the Trustee from selling the Property.

C. THE TRUSTEE MAY SELL THE PROPERTY UNDER SECTION 363 OF THE BANKRUPTCY CODE.

The bankruptcy court granted the Sale Motion because the Trustee satisfied the standards for a sale under Section 363. Section 363(b) of the Bankruptcy Code provides that a trustee “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” To approve a use, sale

or lease of property other than in the ordinary course of business, the court must find “some articulated business justification.” *See, e.g., In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) citing *In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.* and requiring good faith); *In re Delaware and Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision).

In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the best interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988). In determining whether a sale satisfies the business judgment standard, courts have held that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the sale be given to interested persons; (3) the sale yield an adequate price (i.e., one that is fair and reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also, In re Walter*, 83 B.R. at 19-20). The

bankruptcy court granted the Sale Motion because the Trustee established the business judgment standard for the sale of the Property under Section 363.

1. Sound Business Purpose.

The Ninth Circuit Bankruptcy Appellate Panel in *In re Walter, supra*, has adopted a flexible case-by-case test to determine whether the business purpose for a proposed sale justifies disposition of property of the estate under § 363(b). In *Walter*, the Bankruptcy Appellate Panel adopting the reasoning of the Fifth Circuit in *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986) and the Second Circuit in *In re Lionel Corp., supra*, articulated the standard to be applied under § 363(b) as follows:

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtor, creditors and equity holders, alike. He might, for example, look to such relevant facts as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

In Re Walter, 83 B.R. at 19-20, citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986).

As discussed herein, there is a sound business justification for the sale of the Property by the Trustee. By entering into the Amended Stipulation with FCS and selling the Property, the Trustee will recover \$100,000 for the bankruptcy estate. The Trustee has further agreed to ensure that a minimum of \$50,000 will be paid to the non-administrative creditors. As a result, the Trustee estimates that he will be able to make a 16% dividend to general unsecured creditors. Therefore, there is a sound business justification for the sale.

2. Accurate and Reasonable Notice.

In connection with a proposed sale under §363 of the Bankruptcy Code, “four pieces of information must be presented to the creditors. The notice should: place all parties on notice that the debtor is selling its assets; disclose accurately the full terms of the sale; explain the effect of the sale as terminating the debtor’s ability to continue in business; and explain why the proposed price is reasonable and why the sale is in the best interest of the estate.” *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 180 (D. Del. 1991). A notice is sufficient if it includes the terms and conditions of the sale and if it states the time for filing objections. *In re Karpe*, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an opportunity for objections and hearing before the court if there are objections. Id.

The Trustee's notice of the Sale Motion complied with Bankruptcy Rules 6004(a) and 2002(a)(2), (c)(1), (i) and (k), because the notice included the date time and place of the sale and the deadline for objecting thereto, was served on the United States Trustee, all of the Debtors' known creditors, and all parties requesting special notice. The Trustee has complied with Bankruptcy Rule 6004(c), because the Notice and the Motion were also served upon the parties who have alleged liens or interests in the assets to be sold. Thus, the Trustee provided accurate and reasonable notice of the proposed sale.

3. Fair and Reasonable Price.

Section 363(b) requires the purchase price to be fair and reasonable. *Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re Coastal Indus., Inc.)*, 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). "It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); *see also In re Wilde Horse Enterprises*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) ["in any sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold"].

The Trustee submits that the sale of the Property for \$1,279,000 represents a fair and reasonable price for the Property. The Trustee retained a broker who is an

expert in the Temecula real estate market and who aggressively marketed the Property. The Broker's efforts resulted in 4 offers for the Property. The current offer from the Purchasers was the highest and best offer received. In addition, the sale was subject to overbid but no such overbids materialized. Based on the foregoing, the Trustee submits that the sale price is fair and reasonable.

4. Good Faith.

When a bankruptcy court authorizes a sale of assets pursuant to § 363(b)(1), it is required to make a finding with respect to the "good faith" of the purchaser. *In re Abbotts Dairies*, 788 F.2d at 149. "Good faith" encompasses fair value, and further speaks to the integrity of the transaction. *In re Wilde Horse Enterprises*, 136 B.R. at 842. In *In re Filtercorp, Inc.*, 163 F.3d 570 (9th Cir. 1998), the Ninth Circuit set forth the following test for determining whether a buyer is a good faith purchaser:

A good faith buyer "is one who buys 'in good faith' and 'for value.'" [citations omitted.] [L]ack of good faith is [typically] shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" [citations omitted.] *Filtercorp*, 163 F.3d at 577.

The Ninth Circuit made clear in *Filtercorp* that this standard for determining good faith is applicable even when the buyer is an insider; however, the Purchasers are not insiders. Other than in connection with the transactions summarized in the Sale Motion, the Purchasers have no relationship to the Trustee (other than that

they are a party to the Purchase Agreement), or to the Broker. The Purchasers have no relationship to the Debtors, or to any creditor or interest holder of the Debtors. The Purchase Agreement was negotiated at arm's length by the Trustee, and his broker, and the Purchasers and their broker. There is no indication of any fraud, collusion or attempt to take unfair advantage of any potential bidders or interested parties.

Based on the foregoing, the bankruptcy court correctly held that the Trustee was authorized to sell the Property under Section 363(b). Moreover, as to the Second Issue in this appeal, the Trustee satisfied all of the requirements for a sale of estate property under Section 363. Even though there is no equity in the Property above consensual liens and tax liens, the sale enables the Trustee to recover \$100,000 for the bankruptcy estate, \$50,000 of which will be distributed to non-administrative creditors. Accordingly, this Court should decide the Second Issue in favor of the Trustee and find that the bankruptcy court did not err in entering the Sale Order even though there was no equity in the Property above consensual liens and tax liens.

D. THE DEBTORS' HOMESTEAD EXEMPTION IS NOT ENFORCEABLE AGAINST THE BENEFICIAL INTEREST OF FCS'S MORTGAGE THAT WAS ASSIGNED TO THE BANKRUPTCY ESTATE.

FCS assigned 40% of the beneficial interest of its voluntary, consensual mortgage to the bankruptcy estate. Debtors' claimed homestead exemption cannot

be enforced against the beneficial interest of the FCS DOT that was assigned to the bankruptcy estate because both federal and state law prevent homestead exemptions from being enforced against consensual mortgages.

Section 522 (c) states:

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt has arisen, before the commencement of the case, except-

- (1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);
- (2) a debt secured by a lien that is-
 - (A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
 - (ii) not void under section 506(d) of this title..."

11 U.S.C. Section 522(c).

The FCS DOT was not avoided under any of the statutes cited in Section 522(c)(2)(A) and is not void under Section 522(c)(2)(A)(ii). In fact, the Bankruptcy Court noted during the hearing on the motions on March 7, 2023, that the Debtors testified in their declaration that the FCS DOT was a valid lien:

No one is arguing that the lien is invalid. In fact, the declaration by your client say exactly the opposite. Your declaration, your client's declaration say this is a valid lien.

ER, page 00594, lines 8 through 11.

In *In re Pavich*, 191 B.R. 838, 846 (Bankr.E.D.Cal. 1996), the bankruptcy court stated:

The Bankruptcy Code provide uniform “exemptions” which shield certain types of a debtor’s property from the claims of creditors, helping the debtor to obtain a “fresh start”. See 11 U.S.C. Section 522(d). Exemption laws protect a debtor’s property against the enforcement of certain “nonconsensual” liens, such as money judgments or attachment liens. 2 CEB, Debt Collection Practice in California Section 9.4 (1987); see also Cal.Code.Civ.Proc. Section 703.010.

The Bankruptcy Court in *Pavich* goes on to state:

[a]s stated above, exemption laws do not protect property from enforcement of consensual liens, Cal.Code.Civ.Proc. Section 703.010, or federal tax liens. 11 U.S.C. Section 522(c)(1), 522(c)(2)(B); *Leuschner v. First Western Bank & Trust Co.*, 261 F.2d 705, 708 (9th Cir. 1958); *United States v. Heffron*, 158 F.2d 657 (9th Cir. 1947).”

Id. at 847.

Similarly, California law provides that exemptions are not enforceable against consensual liens. Cal. Civ. Proc. § 703.010(b) states:

Except as otherwise provided by statute: ... (b) [t]he exemptions provided by this chapter or by any other statute do not apply if the judgment to be enforced is for the foreclosure of a mortgage, deed of trust, or other lien or encumbrance on the property other than a lien created pursuant to this division or pursuant to Title 6.5 (commencing with Section 481.010)(attachment).

Cal. Civ. Proc. §703.010(b).

Cal. Civ. Proc. §704.850 provides the priority for distribution of proceeds from a sale:

- (a) The levying officer shall distribute the proceeds of a homestead in the following order:
 - (1) To the discharge of all liens and encumbrances, if any, on the property.
 - (2) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.720.
 - (3) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.
 - (4) To the judgment creditor to satisfy the following:
 - (A) First, costs and interest accruing after issuance of the writ pursuant to which the sale is conducted.
 - (B) Second, the amount due on the judgment with costs and interest, as entered on the writ.
 - (5) To the judgment debtor in the amount remaining.
- (b) Section 701.820 and 701.830 apply to distribution of proceeds under this section.

Cal. Civ. Proc. §704.850.

Therefore, California law expressly provides that a homestead exemption is not enforceable against a consensual mortgage (Cal. Civ. Proc. §703.010) and the distribution of proceeds from a sale expressly provides that consensual liens must be paid in full before any exemption (Cal. Civ. Proc. §704.850). Because the bankruptcy estate received an assignment of a portion of the FCS DOT, the Debtors' homestead exemption is unenforceable against any proceeds received by the bankruptcy estate on account of that lien. *See In re Roach*, 2019 WL 408628 (9th Cir. BAP 2019)(debtor not entitled to enforce homestead exemption against

proceeds from consensual lien that was assigned to the estate under Section 522(c)(2)).

The facts of the instant case are very similar to those in *Roach*. The primary difference is that in *Roach*, the assignment of a portion of Omaha Bank's deed of trust was made to the estate in connection with a subordination agreement pursuant to Section 510. Here, the estate expects to receive proceeds from the FCS deed of trust as a carve-out, and the parties agreed to execute an assignment agreement in connection with a sale of the Property that would assign 40% of the FCS deed of trust to the bankruptcy estate. The Amended Stipulation entered into between FCS and the Trustee, has the same effect as the subordination agreement in *Roach*, as they both result in an assignment of a portion of a voluntary lienholder's deed of trust to the bankruptcy estate. Based on the foregoing, the proceeds that the Trustee expects to recover from a sale of the Property emanate directly from a voluntary lien to which the Debtors' homestead exemption cannot attach. Thus, as to the Third Issue in this appeal, this Court should find that the Trustee is not required to pay Appellants their homestead exemption from the sale proceeds before funds are used to pay general unsecured creditors and administrative expenses.

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E. THE SALE ORDER DOES NOT VIOLATE THE UNITED STATES SUPREME COURT'S OPINION IN *JEVIC*.

The Sale Order does not violate the United States Supreme Court's decision in *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017). This is not a chapter 11 case where the Trustee is seeking a structured dismissal of the case that proposes to skip Section 507 priority creditors. Indeed, in rejecting Appellants arguments that *Jevic* applied to this case during the hearings in bankruptcy court, the bankruptcy court stated: "This is not a situation where the trustee is skipping any statutory priorities or any priorities of any kind."⁵⁵ Instead, the Trustee's compromise with FCS is consistent with *Jevic* because the estate will receive proceeds from a secured lien, and such funds will be distributed in accordance with Sections 726 and 507. Secured creditors maintain the highest priority because they must receive the proceeds of the collateral that secures their debts. *See* Section 725; *Czyzewski v. Jevic*, 580 U.S. at 457. The Trustee's compromise with FCS will enable the estate to recover \$100,000 from a sale of the Property pursuant to the assignment of FCS's consensual mortgage, which the Trustee is required to distribute in accordance with Section 726. The fact that the Debtors cannot enforce their homestead exemption against the consensual mortgage that FCS assigned to the bankruptcy estate does not violate *Jevic*. Rather, that is required by both federal

⁵⁵ ER, TAB Z, ER000804, lines 9-11.

and state law, and is consistent with the *Jevic* holding. Once the proceeds are in the estate, the Trustee is required to distribute them as required by Section 726 and 507. That priority scheme does not authorize distributions to the Debtors until all claims have been paid in full. *See* Section 726(a)(6).

Appellants attempt to create an issue where there is none, and argue that the Trustee is “ducking” the issues created by the *Jevic* opinion. However, the Trustee is not avoiding anything. Appellants’ homestead exemption attached to nothing because there is no equity in the Property above consensual liens and tax liens. In addition, Appellants are not “creditors” that entitle them to a priority distribution under Section 507. Indeed, Appellants’ homestead exemption is not included in the priority scheme set forth in Section 507. Thus, the Sale Order should be affirmed because it does not violate the United States Supreme Court’s opinion in *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451 (2017).

F. THE NINTH CIRCUIT’S OPINION IN *TILLMAN* DOES NOT APPLY TO THE FACTS OF THIS CASE.

The *Tillman* decision is not applicable to the facts of this case for several reasons. First, the Trustee is not seeking to administer the Debtors’ residence simply to avoid and preserve IRS tax liens for the benefit of the bankruptcy estate under Sections 724 and 726. Instead, the Trustee is seeking to administer the Debtors’ residence to monetize the estate’s interest in a consensual mortgage that

the Trustee received pursuant to the Amended Stipulation. As discussed herein, a homestead exemption cannot be enforced against a consensual mortgage.

Second, the decision in *Tillman* turned on Arizona law, which does not provide for a reduction of a homestead exemption based on tax liens. A.R.S. Section 33-1104(D) states: “Any recorded consensual lien, including a mortgage or deed of trust, encumbering homestead property shall not be subject to or affected by the homestead claim or exemption.” Noticeably absent from the Arizona statute is any mention of other liens such as tax liens.

However, unlike Arizona law, California law provides that exemptions are unenforceable against liens that are not attachment and judgment liens. Cal. Civ. Proc. §703.010(b) states: “[t]he exemptions provided by this chapter or any other statute do not apply if the judgment to be enforced is for foreclosure of a mortgage, deed of trust, **or other lien or encumbrance other than a lien created pursuant to this division or pursuant to Title 6.5 (commencing with 481.010)(attachment).**” Cal. Civ. Proc. §703.010(b)(emphasis added). The statute plainly states that exemptions are unenforceable against liens that are not created pursuant to “this division” or “pursuant to Title 6.5 (commencing with 481.010)(attachment)”. Title 6.5 of the California Code of Civil Procedure governs attachment. The phrase “this division” refers to Division 2 which is for enforcement of a judgment. Thus, Cal. Civ. Proc. §703.010 provides that

exemptions are enforceable against attachment and judgment liens, but NOT other liens such as tax liens. California law expressly limits the homestead exemption in ways not considered by Arizona law, thus distinguishing the facts of this case from the facts in *Tillman*.

Third, the Property was not removed from the Debtors' bankruptcy estate by the "allowance" of the homestead exemption because the Trustee objected to the Debtors' homestead exemption within the time requirements of Rule 4003(b) of the Federal Rules of Bankruptcy Procedure. The Bankruptcy Court expressly held that the Debtors' homestead exemption could not be enforced against proceeds that emanate from the assignment of 40% of the beneficial interest of FCS DOT to the bankruptcy estate. There was no "allowance" of the Debtors' homestead exemption that removed it as property of the Debtors' bankruptcy estate. The Bankruptcy Court stated:

The order in response to the Trustee's motion will track closely the language in his moving papers on page eight, lines one through five. The Trustee can – in he says: "The Trustee contends the Debtors cannot enforce its homestead exemption against the carve-out because such funds were subject to the FCS DOT, which is a consensual lien. However, the Trustee agrees that if there are proceeds remaining from the sale of the property after the satisfaction of all voluntary liens and tax liens, the Debtors would receive payment of their exemption up to the amount claimed. That is a very precise and accurate statement of exactly what the law is."⁵⁶

⁵⁶ ER, Tab R, ER000599-ER000600.

Fourth, the *Tillman* decision was also driven by the Ninth Circuit's concern that the debtor would be required pay the same tax lien twice. This policy concern is not present in this case because the Trustee is not seeking to avoid the penalty portion of the tax liens that encumber the Property for non-dischargeable debts, which the Ninth Circuit Court of Appeals believed would leave the Debtors with still owing the tax debt (resulting in a double payment). Upon the sale of the Property, the portion of the FCS DOT that is assigned to the bankruptcy estate would be paid from the sale proceeds, and the Debtors would not be liable for that debt after their bankruptcy case is concluded. Thus, for all of the foregoing reasons, *Tillman* does not apply to the facts of this case.

Appellants build on their incorrect *Tillman* arguments by claiming that the Sale Order should be reversed as a result of policies and legal conclusions in two Tenth Circuit decisions, *In re Christensen*, 561 B.R. 195 (Bank.D.Utah 2016) and *Jubber v. Bird (In re Bird)*, 577 B.R. 365 (10th Cir. BAP 2017). However, these decisions can be distinguished from the facts in this case. The bankruptcy court in *Christensen* found that the carve-out agreement and administration of the property in question were not reasonably likely to benefit the debtors' estate. *Christensen*, 561 B.R. at 208. The Tenth Circuit Bankruptcy Appellate Panel in *Bird* affirmed. *Bird*, 577 B.R. at 380. In *Bird*, the Court also found that the proposed sales would primarily benefit the trustee and professionals. *Bird*, 577 B.R. at 379. However, in

the instant case, the bankruptcy court held that the Trustee's sale of the Property would yield a meaningful benefit to the estate and unsecured creditors. Moreover, the Trustee agreed to ensure that 50% of the proceeds received by the estate from the sale of the Property will be distributed to non-administrative creditors. Accordingly, the Trustee's sale of the Property will not primarily benefit the Trustee and professionals. Finally, the *Christensen* and *Bird* cases applied Utah law, which provides that a homestead may not be sold if there is no bid which exceeds the amount of the declared homestead exemption. *Bird*, 577 B.R. at 384. This is not the law in the Ninth Circuit, where a homestead exemption only attaches to equity and not the underlying property. *Hyman*, 123 B.R. at 345; *Reed*, 940 F.2d at 1331. For the foregoing reasons, *Bird* and *Christensen* are not applicable.

G. THE FIRST CIRCUIT'S HOLDING IN DEGIACOMO V. TRAVERSE (IN RE TRAVERSE), ALSO DOES NOT APPLY TO THE FACTS OF THIS CASE.

Appellants further claim the First Circuit's opinion in *Degiacomo v. Traverse (In re Traverse)*, 753 F.3d 19 (1st Cir. 2014) constitutes strong caselaw in support of Debtors' legal position. However, *Traverse* can be easily distinguished from the facts presented in this case. In *Traverse*, the trustee avoided an unperfected mortgage and preserved it for the benefit of the estate. *Id.* at 23. The

debtor was current on the mortgage payments. *Id.* The trustee then moved to sell the property. *Id.* The bankruptcy court and the BAP concluded that the trustee could sell the home pursuant to his core powers as a trustee administering a debtor's property under the Bankruptcy Code. *Id.* at 24. The First Circuit reversed on the grounds that the debtor's "unchallenged exemption of \$500,000 swallows the full \$223,500 value of her home regardless of whether the sale's proceeds are first used to satisfy the \$185,777.30 mortgage claim." *Id.* at 27. The First Circuit goes on to find that the property had been exempted and withdrawn from the estate for purposes of Section 363, and thus the trustee could not sell it under Section 363. *Id.* The First Circuit also found that preservation of an avoided lien under Sections 544 and 551 do not give the estate any current ownership in the underlying asset. *Id.*

The facts in *Traverse* are different from the facts in this case. First, the Debtors' homestead exemption did not go unchallenged in this case. The Trustee filed an objection to the claim of exemption to the extent that the Debtors sought to enforce it against the proceeds from the FCS DOT that was assigned to the estate. The Bankruptcy Court expressly held that the Debtors' homestead exemption could not be enforced against the funds which emanate from the portion of the FCS DOT that was assigned to the estate. Thus, the Debtors' homestead exemption was not "unchallenged" and it was not "allowed." Second, in *Traverse*, the debtor was

current on the mortgage. In the instant case, the Debtors have not made a mortgage payment since the Petition Date and are in default under their consensual mortgages. Third, as the Bankruptcy Court in *In re Childers*, 526 B.R. 608, 611-612 (Bankr.D.South Carolina 2015), explained, while Section 551 does not give the estate any current ownership interest in the underlying asset, that does not override other provisions of the Bankruptcy Code that “separately and clearly grant the Chapter 7 Trustee rights in property of the estate and the obligation to liquidate such property.” See Section 541(a)(1) and Section 704(a)(1). The Court in *Childers* goes on to explain that there is no requirement under Section 363(b) of Section 704(a) that there be equity in the property of the estate above any existing liens or interests before the Court can approve a sale. *Id.* In the instant case, as discussed above, the Trustee has satisfied the requirements for a sale under Section 363.

V.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an order (1) AFFIRMING the Sale Order, and (2) granting such further and other relief as is warranted under the circumstances.

DATED: February 8, 2024

/s/ Todd A. Frealy
TODD A. FREALY
Chapter 7 Trustee

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF
APPELLATE PROCEDURE 32(a)(7) AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 8015(a)(7)

The foregoing “Appellee’s Answering Brief” is in compliance with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure and Rule 8015(a)(7) of the Federal Rules of Bankruptcy Procedure (but not including parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure or Rule 32(g) of the Federal Rules of Bankruptcy Procedure). The number of words in the foregoing brief according to the word-processing system used to prepare the brief is 8847.

DATED: February 8, 2024

/s/ Todd A. Frealy

TODD A. FREALY
Chapter 7 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2818 La Cienega Avenue, Los Angeles, California 90034.

A true and correct copy of the foregoing document entitled **APPELLEE'S ANSWERING BRIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 8, 2024**, I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Todd A Frealy**
taf@lnbyg.com
- **Anthony Alan Friedman**
aaf@lnbyg.com
- **Summer M Shaw**
ss@shaw.law

2. SERVED BY UNITED STATES MAIL: On **February 8, 2024**, I served the following persons and/or entities at the last known addresses in this case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 8, 2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

June 2012

F 9013-3.1.PROOF.SERVICE

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Case 5:23-cv-01010-FLA Document 27 Filed 02/08/24 Page 45 of 45 Page ID #:2390

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 February 8, 2024 Lisa Masse /s/ Lisa Masse
4 *Date Type Name Signature*

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

June 2012

F 9013-3.1.PROOF.SERVICE

649 B.R. 206

**IN RE Todd James OLIVER, dba T. James
Construction, dba James Built
Construction Inc., Debtor.**

**Case No. 22-20811-C-7
DCN No. PGM-1**

**United States Bankruptcy Court, E.D.
California.**

Signed March 23, 2023

[649 B.R. 207]

J. Russell Cunningham, Sacramento, CA, for
Trustee J. Michael Hopper.

Peter G. Macaluso, Sacramento, CA, for Debtor.

CHRISTOPHER M. KLEIN, United States
Bankruptcy Judge:

In this case of early impression, the debtor's motion for an order compelling abandonment of an exempt homestead on the theory of inconsequential value and benefit to the estate under 11 U.S.C. § 554(b) is denied as premature on account of § 522(q).

The value and benefit to the estate remains uncertain because § 522(q)(1)(B)(ii) could limit the claimed \$626,400 exemption to \$189,050 if pending adversary proceedings alleging fraud and fiduciary fraud establish there is debt arising from "fraud, deceit, or manipulation in a fiduciary capacity."

Depending on the outcome of that open question of law, the trustee might have more than \$250,000 available to pay claims if the § 522(q) cap, which was dormant in California until the state increased its homestead exemption in 2021, applies.

As the time for any "party in interest" to object to exemptions under § 522(q) does not, per Federal Rule of Bankruptcy Procedure 4003(b)(3), expire

until the case is closed, abandonment will be under § 554(c) incident to case closure.

[649 B.R. 208]

The motion to compel abandonment under § 554(b) is DENIED.

Facts

Chapter 7 debtor Todd Oliver elected to exempt his residence in Soda Springs, Placer County, California, for \$626,400 under new California exemptions effective in 2021.¹

He valued the property at \$825,000, subject to consensual liens of \$379,155 and to two judgment liens totaling \$134,339.

In lien avoidance proceedings under § 522(f), the judgment lienors were given time to gather evidence probative of whether the property is his residence and its value exceeded the \$1,005,555 apparently needed to preserve a judgment lien. When such evidence was not forthcoming, the liens were ordered avoided as impairing the claimed exemption under the § 522(f) calculus on the assumption the exemption is \$626,400.

Two pending adversary proceedings seek to except debts from discharge on counts under 11 U.S.C. §§ 523(a)(2) and (a)(4).

Meanwhile, the debtor filed the instant motion to compel abandonment of his exempt property pursuant to § 554(b) as being of inconsequential value and benefit to the estate. He reasons that more than 30 days have transpired since the last amendment to Schedule C and that no objection to his claim of exemption was filed within the deadline prescribed by Rule 4003(b)(1).

Jurisdiction

Jurisdiction is founded on 28 U.S.C. § 1334(a). A motion to compel abandonment of property of the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

Analysis



The fly in the ointment is 11 U.S.C. § 522(q)(1)(B)(ii), which preempts and caps California's recently-increased homestead exemption at \$189,050 for debtors with debt arising from "fraud, deceit, or manipulation while acting in a fiduciary capacity."

The issue is not peculiar to California, which measures its maximum exemption by "countywide median sale price for a single-family home in the calendar year prior to the calendar year." The State of Washington has recently-enacted a similar homestead exemption measured by the "county median sale price of a single-family home in the preceding calendar year," which could exceed the exemption cap. Rev. Code Wash. § 6.13.030 (2021).

Paucity of precedent regarding a phenomenon migrating into the Ninth Circuit warrants more extensive analysis than is usual.

I

The Statutory Context

The 2005 Amendments to the Bankruptcy Code, commonly known as BAPCPA,

[649 B.R. 209]

included a package that included three new subsections to § 522 in order to address perceived abuses of exemptions.

By these amendments Congress exercised its Constitutional authority under the Bankruptcy Clause at Article I, Section 8, to preempt state-law exemptions with which it had not previously interfered. U.S. Const. Art. 1, § 8.

A

Exemption Planning

The first provision, § 522(o),² is a quasi fraudulent transfer provision addressed to abusive exemption planning transfers infected by actual intent to hinder, delay, or defraud creditors made within the 10 years preceding bankruptcy.

The reduction of an exemption on account of a § 522(o) violation turns on actual intent and does not require that the debtor have relocated from another state. 11 U.S.C. § 522(o).

B

Bankruptcy Tourism

The second added subsection, § 522(p),³ addressed abusive bankruptcy tourism to remedy the so-called "mansion loophole" that figured prominently in legislative debate.

It had become regarded as a notorious abuse that individuals facing large liabilities would relocate from low-exemption states to high-exemption states, such as Florida or Texas, and purchase mansions as a homestead before filing a bankruptcy case.

[649 B.R. 210]

New subsection § 522(p) prescribes an inflation-adjusted exemption cap (presently \$189,050) for interests in property "acquired" within 1215 days preceding the bankruptcy case filing by persons who move from another state. 11 U.S.C. § 522(p).

This provision complemented a revision of § 522(b)(3) that saddles those who change domicile with the exemptions of their former domicile for up to two years. 11 U.S.C. § 522(b)(3)(A).

C

Abusive Exemption of Debt Arising From Misconduct

The third provision, § 522(q),⁴ prescribes the same \$189,050 exemption cap as § 522(p), but does not depend on when interests in property are acquired and applies to everyone, not just persons relocating from another state. It is designed to close the "mansion loophole" for persons who commit specified forms of misconduct and features a savings clause to ameliorate harsh consequences for debtors and dependents. 11 U.S.C. § 522(q).⁵

II

Early Debates Regarding Construction

The background and legislative history of the 2005 additions to § 522 came into focus in the course of the first substantial controversy regarding their terms.

The phrase "as a result of electing under subsection (b)(3)(A) to exempt property under State or local law" that is in §§ 522(p) and (q) stirred debate about whether Congress had succeeded in closing the dysfunctional "mansion loophole."

One school invoked "plain meaning" to contend that "result of electing" meant that the cap on exemptions could not apply in states that had exercised the § 522(b)(2) authority to prohibit use of the § 522(d)

[649 B.R. 211]

federal exemptions.⁶ In re McNabb, 326 B.R. 785 (Bankr. D. Ariz. 2005). It reasoned that no "election" occurs when there is only one possible exemption choice. However, the paradigm "mansion loophole" example is in such a jurisdiction.

The other school contended the cap applies in all states. To hold otherwise, based on the history of the "mansion loophole," would defeat the plain purpose of the exemption cap. E.g., In re Virissimo, 332 B.R. 201, 207 (Bankr. D. Nev. 2005).

In 2006, Judge Markell, rebutting McNabb, detailed the history of the "mansion loophole" abuse in the context of rules of statutory construction to conclude that the phrase "result of electing" may have been inept draftsmanship but could not be construed so as to defeat Congress' avowed purpose of closing the loophole. In re Kane, 336 B.R. 477, 479-85 (Bankr. D. Nev. 2006).

The view stated in Kane gains support from recognition of fallacy in the McNabb reasoning in which one exemption "election" was overlooked. The key is the threshold provision in § 522(b)(1) that an individual debtor "may exempt" property from property of the estate.⁷ Virissimo, 332 B.R. at 207. As the word "may" is permissive, not mandatory, it follows that every claim of exemption entails "electing" to exempt property.

In short, the fallacy of false choice infects McNabb. One cannot ignore the election preliminary to every claim of exemption. There is always a § 522(b)(1) "election" to exempt or not exempt, regardless of whether the state has opted out of § 522(d) exemptions. Nor is the "no-exemption" election absurd; debtors may elect to forego exemptions for various reasons.

The weight of modern trial-court authority supports the Kane- Virissimo analysis.

The Bankruptcy Appellate Panel and at least one District Court in this circuit have approved the Kane- Virissimo view that § 522(p) and § 522(q) apply in all states. E.g., Caldwell v. Nelson (In re Caldwell), 545 B.R. 605, 609 (9th Cir. BAP 2016) ; Kane v. Zions Bancorporation, N.A., --- F. Supp. 3d ---, --- - ---, Bankr. L. Rep. ¶ 83821, 2022 WL 4591787, at *6-*8 (N.D. Cal. 9/29/22) (Orrick, D.J.), notice of appeal filed, 9th Cir. No. 22-16674.

This court agrees and holds that the exemption caps in § 522(p) and § 522(q) apply in California bankruptcy cases.

III

§ 522(q) Misconduct Issues

Unlike the 522(p) 1215-day exemption cap, which has been the subject of cases involving timing issues and the meaning of "acquire," the terms of the § 522(q) exemption cap for bad acts have only occasionally been addressed in reported cases.

A

Cross-References in § 522(p) and § 522(q)

What is the effect of the cross-reference in § 522(q) to the 1215-day § 522(p) cap that applies to bankruptcy tourists?

[649 B.R. 212]

The syntax of the two subsections reveals that the cross-references in § 522(q)(1) to paragraphs (A), (B), (C), and (D) of § 522(p)(1) operate merely to designate the property to which the permanent cap of § 522(q) applies. Specifically, the property affected by a § 522(q) cap is the same property that is subject to the § 522(p)(1) 1215-day temporary cap.

The cross-references do not, however, tether § 522(q) to 1215-day provision of § 522(p) in any other respect. The § 522(q) exemption cap applies to all homesteads wherever situated. To hold otherwise would invalidate and leave § 522(q) meaningless.

B

Uncertain Meanings of Misconduct

The bad acts that trigger the § 522(q)(1) permanent cap on exemptions are a hodge-podge of five little-explored categories:

- (1) abusive filing of a bankruptcy case after being convicted of a felony;
- (2) debt from any violation of federal or state securities laws and regulations or orders issued under them;
- (3) debt from fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security register under specified sections of the Securities Exchange Act of 1934 or the Securities Act of 1933;

(4) debt from any civil remedy for racketeering; and

(5) debt from any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual within the preceding five years.

11 U.S.C. § 522(q)(1).

There is a savings clause at § 522(q)(2) permitting the § 522(q)(1) exemption cap to be exceeded to the extent "reasonably necessary for the support of the debtor and any dependent of the debtor."⁸

1

There is authority under § 522(q)(1)(A) construing what "under the circumstances" constitutes an "abuse" of title 11 following a felony conviction. *In re Cotton*, 647 B.R. 767 (Bankr. W.D. Wash. 2022) (Washington exemption).

2

Violation of securities laws for purposes of § 522(q)(1)(B)(i) has been addressed in a Texas decision. *In re Bounds*, 491 B.R. 440 (Bankr. W.D. Tex. 2013).

3

The § 522(q)(1)(B)(ii) clause regarding "fraud, deceit, and manipulation in a fiduciary capacity" was addressed in an Enron executive's bankruptcy. *In re Presto*, 376 B.R. 554, 586-601 (Bankr. S.D. Tex. 2007).

4

The § 522(q)(1)(B)(iii) clause regarding "any civil remedy under section 1964 of title 18," which relates to racketeering, does not yet appear in reported decisions.

5

The First Circuit construed the § 522(q)(1)(B)(iv) clause regarding "any criminal act, intentional tort, or willful or reckless misconduct that caused serious

[649 B.R. 213]

physical injury or death to another individual in the preceding 5 years." Larson v. Howell (In re Larson), 513 F.3d 325 (1st Cir. 2008), aff'd 340 B.R. 444 (Bankr. D. Mass. 2006) (negligent homicide conviction).

C

§ 522(q)(2) Savings Clause

The savings clause of § 522(q)(2) for sums exceeding the § 522(q)(1) cap regarding what is "reasonably necessary for the support of the debtor and any dependent of the debtor" has been construed in a few cases. E.g., Bounds, 491 B.R. at 452-54; Presto, 376 B.R. at 598-600.

D

Fraud, Deceit, or Manipulation in a Fiduciary Capacity

The provision of particular pertinence to this case is § 522(q)(1)(B)(ii) prescribing a \$189,050 exemption cap if the debtor owes a debt "arising from" – "fraud, deceit or manipulation in a fiduciary capacity."

Whether the provision, which also is in § 548(e)(2)(B), encompasses the issues in the two pending adversary proceedings alleging causes of action under § 523(a)(2) and § 523(a)(4) is an open question as to which this court expresses no view.

Key questions will need to be resolved in the usual adversary manner:

What constitutes the requisite "fraud"?

What constitutes the requisite "deceit"?

What constitutes the requisite "manipulation"?

What constitutes the requisite "fiduciary capacity"?

Does "in a fiduciary capacity" modify "fraud" or "deceit"?

Although similarities of language with § 523(a)(2) and § 523(a)(4) are intriguing, one would need to consider the implications of why Congress did not merely clone them.

Answers to those questions must await decisions made in the usual case-by-case adversary manner.

IV

Procedure and Burdens

Although the paucity of § 522(q) precedent regarding substantive provisions leaves much uncertain, it is possible to be more definite about procedure and burdens.

A

Deadline to Make § 522(q) Objections

Rule 4003(b)(3) permits an objection to exemption under § 522(q) to be made by any party in interest at any time before the case closes.⁹

The expiration of the normal deadline under Rule 4003(b)(1) – usually 30 days after meeting of creditors or last amendment to claim of exemption¹⁰ – does not affect the § 522(q) deadline.

[649 B.R. 214]

In other words, open season on § 522(q) theories for limiting exemptions to the exemption cap does not expire before the case closes.

The prolonged opportunity to object under § 522(q) means that an order under § 554



authorizing or compelling abandonment cannot be trusted to be final before the case closes.¹¹ Until then, there is the risk that someone will surface with a § 522(q) objection. When there is pending litigation that alleges some trigger elements of § 522(q), the prudent course is for the court to decline to order a § 554 abandonment before the case closes.

Closure of the case, by operation of § 554(c), includes abandonment of all correctly scheduled property not otherwise administered. 11 U.S.C. § 554(c).¹²

B

Standing

Any party in interest has standing to make a § 522(q) objection to exemptions. Fed. R. Bankr. P. 4003(a)(1).

In addition to the plaintiffs in the pending adversary proceedings, the trustee may object, and any other party in interest could object.

One rationale for liberal standing is that the \$189,050 exemption cap against a \$626,400 exemption claim could make \$437,350 available as property of the estate, which case could translate to a substantially increased dividend.

C

Burdens

Shifting burdens apply in objections to exemptions in California bankruptcy cases.

1

The applicable burden of proof for exemptions claimed under California law is allocated by California statute governing judgment enforcement.

In general, the claimant of the exemption has the burden of proof of entitlement to a homestead exemption. Cal. Code Civ. Pro. § 703.580(b).¹³

The burden, however, is on the objector if the records of the county tax assessor reflect a property tax claim of homeowners exemption or disabled veterans exemption. Cal. Code Civ. P. § 704.780(a)(1).¹⁴

[649 B.R. 215]

2

In the context of § 522(q), after it is established there is entitlement to a homestead exemption, an objector asserting the § 522(q) exemption cap has the burden to prove the predicate for capping the exemption. Here, that would entail proof of the "fraud, deceit, or manipulation in a fiduciary capacity" required by § 522(q)(1)(B)(ii).

3

Finally, the § 522(q)(2) safety valve permitting an upward adjustment of the cap for necessary support is in the nature of an affirmative defense.

If the cap is determined to apply, then the exemption claimant has the burden of persuasion and correlative risk of nonpersuasion on the question of the "amount reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. § 522(q)(2).

The record in this case is silent about whether the Placer County Tax Assessor's records reflect the debtor has claimed a homeowner's tax exemption or a disabled veteran's exemption.

4

The provision of Rule 4003(c) purporting to allocate the burden of proof to exemption objectors cannot trump California's statutory allocations of burdens for state law exemptions.

a

Rule 4003(c), to the extent it displaces state-law burdens with respect to exemptions provided by state law, offends the Bankruptcy Rules Enabling Act, which forbids rules that modify any substantive right. 28 U.S.C. § 2075.

The Supreme Court's 2000 ruling that bankruptcy does not alter the burden imposed by underlying substantive law clarified that burden of proof is substantive, not procedural. Raleigh v. Ill. Dept. of Revenue, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000). Although the status of burden of proof as procedural or substantive may have been uncertain before Raleigh, after 2000 the law is: "the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." Raleigh, 530 U.S. at 21, 120 S.Ct. 1951.

To the extent Rule 4003(c) modifies the burden of proof for exemptions claimed under state law, the rule violates the prohibition on modifying substantive rights. In other words, regardless of Rule 4003(c), state law exemptions control the burdens of proof governing state law exemptions. Anderson v. Nolan (In re Nolan), 2022 WL 327927, *2 (9th Cir. 2022), aff'g 2021 WL 528679, *3, (C.D. Cal. 2021), aff'g 618 B.R. 860 (Bankr. C.D. Cal. 2020).

When in 2005 Congress imposed exemption caps on state-law exemptions, it did not modify basic proof rules regarding state-law exemptions.

b

After Raleigh and the recognition of the infirmity of Rule 4003(c), California state-law exemptions have been construed by bankruptcy courts as subject to the burdens of proof prescribed by state law, which generally place the burden on the person claiming the exemption. E.g., In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) ;

[649 B.R. 216]

In re Tallerico, 532 B.R. 774, 780-81 (Bankr. E.D. Cal. 2015). Accord, e.g., Bhangoo v. Engs Comm. Fin. Co. (In re Bhangoo), 634 B.R. 80, 85 (9th Cir. BAP 2021) ; Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (9th Cir. BAP 2016), cited with approval Nolan, supra (9th Cir. 2022).

Conclusion

The debtor's motion to compel abandonment of his homestead property pursuant to § 554(b) is DENIED as premature because the deadline under Rule 4003(b)(3) for any party in interest to object that the \$189,050 § 522(q) exemption cap applies to limit the debtor's \$626,400 exemption does not expire until the case closes. Pending litigation implicates § 522(q)(1)(B)(ii). If the exemption cap does apply, then the subject property could be of consequential value and benefit to the estate.

Notes:

¹ Cal. Code Civ. Pro. § 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Cal. Code Civ. Pro. § 704.730 (2021). The 2022 adjusted exemption range is \$312,200 to \$626,400; in 2023, \$339,196 to \$678,391.

² Section 522(o) provides:



(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value on an interest in —

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

11 U.S.C. § 522(o).

³ Section 522(p) provides:

(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate [now \$189,050] in value in —

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

11 U.S.C. § 522(p).

⁴ Section 522(q) provides:

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraph (A), (B), (C), and (D) of subsection (p)(1), which exceeds in the aggregate [now \$189,050] if —

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from —

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities law, or any regulation or order

issued under Federal securities laws or State securities laws;

(ii) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase and sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C) and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

11 U.S.C. § 522(q).

⁵ The House Judiciary Committee Report on BAPCPA and § 522(q)(1)(B)(ii) & (iii) noted "concerns that former Enron Chairman Kenneth Lay would be entitled to an unlimited homestead exemption in his native Texas should he file for Bankruptcy." H.R. REP. No. 109-31(1) at 595 (2005).

⁶ A state's power to "opt-out" of the federal bankruptcy exemptions at § 522(d) is at § 522(b)(2) :

(b)(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

11 U.S.C. § 522(b)(2).

⁷ The first sentence of § 522(b)(1) provides:

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or in the alternative, paragraph (3) of this subsection.

11 U.S.C. § 522(b)(1).

⁸ Section 522(q)(2) provides:

(q)(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

11 U.S.C. § 522(q)(2).

⁹ Rule 4003(b)(3) provides:

(b)(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

Fed. R. Bankr. P. 4003(b)(3).

¹⁰ Rule 4003(b)(1) provides:

(b)(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to



object expires, a party in interest
files a request for an extension.

Fed. R. Bankr. P. 4003(b)(1).

¹¹ If it were to be determined that the \$189,050 exemption cap applies, then it may be possible for the judgment lien creditors whose liens were avoided in this case on the premise a \$626,400 exemption applies to ask the court to revisit the questions of avoiding the respective liens.

¹² Trap for unwary: property of the estate that has not been scheduled remains property of the estate, essentially forever. 11 U.S.C. § 554(d) ; cf., In re Dunning Bros., 410 B.R. 877 (Bankr. E.D. Cal. 2009) (case reopened in 2009 to administer unscheduled property in case filed in 1936).

¹³ Cal. Code Civ. Pro. § 703.580(b) provides:

(b) At a hearing under this section,
the exemption claimant has the
burden of proof.

Cal. Code Civ. Pro. § 703.580(b).

¹⁴ Cal. Code Civ. Pro. § 704.780(a)(1) provides:

(1) If the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead.

Cal. Code Civ. Pro. § 704.780(a)(1).



<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p>		<p>FOR COURT USE ONLY</p>	
<p><input type="checkbox"/> <i>Individual appearing without attorney</i> <input type="checkbox"/> <i>Attorney for:</i></p>			
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA -- **SELECT DIVISION**</p>			
<p>In re:</p>		<p>CASE NO.: CHAPTER: 13</p>	
		<p>DECLARATION RE FILING OF TAX RETURNS AND PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS¹ (PRECONFIRMATION)</p>	
		<p>Next Meeting of Creditors Date: Time: Next Confirmation Hearing Date: Time:</p>	
<p>Debtor(s).</p>			

I, _____ (Debtor's name(s)),
hereby declare:

Debtor Joint Debtor

¹ The term “domestic support obligation” is defined in 11 U.S.C. § 101(14A).

December 2012

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Debtor ☐ Joint Debtor ☐

I have NOT filed all tax returns required to be filed with federal, state, or local taxing authorities for all taxable periods ending during the 4-year period ending on the date of the filing of the petition, as required by 11 U.S.C. § 1308. I have not filed the following return(s) for the following years:²

Year	Taxing Authority (federal, state, or local)	Proposed Date for Filing Return
_____	_____	_____
_____	_____	_____

☐ ☐ I am not required to file federal, state, or local tax returns because: _____

Domestic Support Obligations:

Debtor ☐ Joint Debtor ☐

- ☐ ☐ I do not owe any domestic support obligations.
- ☐ ☐ As of the date of this declaration, I have paid all amounts that are required to be paid under a domestic support obligation that have come due after the date of the filing of the petition.
- ☐ ☐ No domestic support obligations will come due between the date of this declaration and the date set for hearing on confirmation of my plan set forth above.
- ☐ ☐ As of the date of this declaration, I have NOT paid all amounts that are required to be paid under a domestic support obligation that have come due after the date of the filing of the petition. I am delinquent on the following post-filing payments:

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

_____	_____	_____
Date	Debtor's name	Debtor's signature

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

_____	_____	_____
Date	Joint Debtor's name	Joint Debtor's signature

² Attach additional pages as necessary.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DECLARATION RE FILING OF TAX RETURNS AND PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS (PRECONFIRMATION)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p><input type="checkbox"/> <i>Individual appearing without attorney</i> <input type="checkbox"/> <i>Attorney for:</i></p>	<p>FOR COURT USE ONLY</p>
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</p>	
<p>In re:</p> <p>Debtor(s)</p>	<p>CASE NO.: CHAPTER: 13</p> <p>DECLARATION OF CONTRIBUTION TO CHAPTER 13 PLAN [LBR 3015-1(c)(3)]</p>

1. I, _____, (Contributor) will contribute \$ _____ (Contribution) every month to the Debtor and I will continue to make this Contribution each month that the Debtor remains in bankruptcy, which may be up to 5 years.
2. My relationship to the Debtor is: _____.
3. My reason for making this Contribution is: _____.
4. The source of my Contribution is: _____.
5. Proof of my income for the past 60 days is attached.
6. I have the financial ability to make this contribution in addition to paying my own separate monthly expenses and obligations.
7. I do not foresee any change in my financial circumstances that will inhibit my ability to make this Contribution for the duration of the Debtor's Chapter 13 Plan, which may last for 5 years.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at _____, _____ on (date) _____

Printed name of Contributor

Signature of Contributor

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DECLARATION OF CONTRIBUTION TO CHAPTER 13 PLAN [LBR 3015-1(c)(3)]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date Printed Name Signature

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

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<div>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</div>		<div>FOR COURT USE ONLY</div>	
<div><div><input type="checkbox"/></div>Attorney for Movant</div> <div><div><input type="checkbox"/></div>Movant appearing without attorney</div>			
<div>UNITED STATES BANKRUPTCY COURT</div> <div>CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</div>			
<div>In re:</div>		<div>CASE NO.:</div> <div>CHAPTER:</div> <div><div>NOTICE OF MOTION AND</div><div>MOTION FOR ORDER DETERMINING</div><div>VALUE OF COLLATERAL</div><div>[11 U.S.C. § 506(a), FRBP 3012]</div></div> <div><div>This motion is being made under <u>ONLY ONE</u> of the following notice procedures:</div><div><div><input type="checkbox"/> No hearing unless requested under LBR 9013-1(o)(4);</div><div><input type="checkbox"/> Hearing set by Movant: LBR 9013-1(d);</div><div><input type="checkbox"/> Hearing on Shortened Notice: LBR 9075-1(b); or</div><div><input type="checkbox"/> Hearing on Emergency Basis: LBR 9075-1(a).</div></div><div>DATE:</div><div>TIME:</div><div>COURTROOM:</div><div>PLACE:</div></div>	
<div>Debtor(s)</div>			

Creditor Name *(Insert name of creditor holding collateral to be valued)*: _____

1. **PLEASE TAKE NOTICE THAT** _____ (Movant)
requests an order valuing the collateral described below. This motion does not request lien avoidance (see LBR
forms F 4003 for lien avoidance involving principal residences and judicial liens).

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

2024 SOUTHWEST BANKRUPTCY CONFERENCE

2. **NOTICE PROVISIONS AND DEADLINES FOR FILING AND SERVING A WRITTEN RESPONSE:** Your rights might be affected by this Motion. You may want to consult an attorney. Refer to the box checked below for the deadline to file and serve a written response. If you fail to timely file and serve a written response, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief. You must serve a copy of your opposition upon the Movant and the Movant's attorney and the United States trustee, and also serve a copy on the judge pursuant to LBR 5005-2(d) and the Court Manual.

- a. ☐ **No Hearing Scheduled; Notice Provided Under LBR 9013-1(o):** This Motion is filed by the Movant pursuant to LBR 9013-1(o), which provides for granting of motions without a hearing. The full Motion is attached, including the legal and factual grounds upon which the Motion is made. If you wish to oppose this Motion, you must file a written response and request for hearing with the court and serve it as stated above **no later than 14 days after the date stated on the Proof of Service of this Motion** plus 3 additional days if you were served by mail, electronically, or pursuant to F.R.Civ.P. 5(b)(2)(D), (E), or (F). Your opposition must comply with LBR 9013-1(f) and (o).
- b. ☐ **Hearing Set by Movant; Notice Provided Under LBR 9013-1(d):** This Motion is set for hearing on at least 21 days of notice pursuant to LBR 9013-1(d). The full Motion and supporting documentation are attached, including the legal and factual grounds upon which the Motion is made. If you wish to oppose this Motion, you must file a written response with the court and serve it as stated above **no later than 14 days prior to the hearing**. Your response must comply with LBR 9013-1(f). The undersigned hereby verifies that the hearing date and time selected were available for this type of Motion according to the judge's self-calendaring procedures [LBR 9013-1(b)].
- c. ☐ **Hearing Requested on Shortened Notice under LBR 9075-1(b):** Movant has filed a separate motion asking the court to set a hearing on shortened notice, titled Application for Order Setting Hearing on Shortened Notice (Application). If the court grants the Application, the Movant will serve you with another document providing notice. The deadline to file and serve a written response will be contained in this document. If the court denies the Application, the Movant will provide written notice of a regular hearing date or other proposed disposition of this motion.
- d. ☐ **Hearing Requested on Emergency Basis under LBR 9075-1(a):** **Hearing Requested on Emergency Basis under LBR 9075-1(a):** Movant has contacted the court and requested an emergency hearing on less than 48 hours notice. If the court grants the request, you will receive a separate Notice of Hearing that identifies the deadline for the Movant to file and serve the Motion and the deadline for you to file and serve a written response. If the court denies the request to set an emergency hearing, the Movant will provide written notice of a regular hearing date or other disposition of this motion and the deadline for filing an opposition.

Date: _____

By: _____
Signature of Movant or Attorney for Movant

Name: _____
Print Name of Movant or Attorney for Movant

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

**MOTION FOR ORDER DETERMINING VALUE OF COLLATERAL
PURSUANT TO 11 U.S.C. § 506(a) AND FRBP 3012**

1. The Movant is (check one):

- ☐ The debtor
☐ A creditor
☐ The trustee
☐ The Official Committee of Creditors Holding Unsecured Claims
☐ Other (specify): _____

2. The Collateral to be Valued:

a. The Movant requests a determination of the value of the following collateral (Collateral).

- ☐ Real Property
Street Address: _____
Unit Number: _____
City, State, Zip Code: _____

Legal description or document recording number (including county of recording):

- ☐ Personal Property
☐ Vehicle:
Year, manufacturer, type, and model: _____
Vehicle Identification Number: _____
Location of vehicle (if known): _____

- ☐ Equipment:
Manufacturer, type, and characteristics: _____
Serial number(s): _____
Location (if known): _____

- ☐ Other Personal Property (describe type, identifying information, and location):

- ☐ See attached page.

b. Purpose of the Valuation

- ☐ Treatment of the claim in a plan:
☐ Pursuant to 11 U.S.C. § 1322
☐ Pursuant to 11 U.S.C. § 1129
☐ Other: _____

- ☐ Disposition or use of Collateral pursuant to 11 U.S.C. § 363;

- ☐ Other: (specify): _____

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2024 SOUTHWEST BANKRUPTCY CONFERENCE

c. Movant asserts that the value of the Collateral is \$ _____ as of (date): _____

Check one:

☐ Date bankruptcy case was commenced.

☐ Other (specify): _____

3. Liens Encumbering the Collateral:

The Collateral is subject to the following liens in the amounts specified securing the debt against the Collateral:

Names of Lien Holders in Order of Priority	Original Lien Amount	Balance of Lien Amount As of (applicable date)
1 st Lien:	\$	\$
2 nd Lien:	\$	\$
3 rd Lien:	\$	\$

☐ See attached page for additional lien(s).

4. Determination of Secured/Unsecured Status:

Based upon paragraphs 2 and 3 above, Movant asserts the following:

Names of Lien Holders in Order of Priority	Secured Portion of the Claim	Unsecured Portion of the Claim
1 st Lien:	\$	\$
2 nd Lien:	\$	\$
3 rd Lien:	\$	\$

☐ See attached page for additional lien(s).

5. Evidence in Support of Motion:

a. Evidence establishing the value of the Collateral:

☐ Declaration of the debtor as owner of the Collateral

☐ Declaration of the expert witness

☐ Certified appraiser

☐ Other: _____

☐ Declaration of a party who can authenticate a market report (e.g. Kelley Blue Book) pursuant to F.R.Evid. 803(17).

☐ Other:

b. Evidence establishing the amount of the claims related to the liens encumbering the Collateral

☐ Declaration of the debtor as owner of the Collateral

☐ Declaration of a witness authenticating a document that is an admissible statement of a party opponent (e.g. proof of claim or a recent loan statement) pursuant to F.R.Evid. 801(d)(2).

☐ Other:

c. Evidence establishing the priority of the lien encumbering the Collateral

☐ Declaration of the debtor as owner of the Collateral

☐ Other:

d. ☐ Other evidence (specify):

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Based upon the foregoing, Movant requests that this Court value the Collateral as listed in paragraph 2.c. above and that the claims related to the liens encumbering the Collateral, listed in paragraph 3 above, are determined to be secured or unsecured as requested in paragraph 4 above.

☐ See attached continuation page for additional provisions.

Respectfully submitted,

Date: _____

By: _____
Signature of Movant or Attorney for Movant

Name: _____
Printed Name of Movant or Attorney for Movant

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

June 2013

Page 5

F 3012-1.MOTION.VALUATION

**DECLARATION OF THE DEBTOR AS OWNER OF THE COLLATERAL IN SUPPORT OF
MOTION FOR ORDER DETERMINING VALUE OF COLLATERAL**

1. I, *(state debtor's name)* _____ declare that I am the debtor in this bankruptcy case.
2. I make this declaration of my own personal knowledge and if called as a witness, could and would testify thereto.
3. I am the owner of the collateral listed in paragraph 1 of the Motion for Order Determining Value of Collateral to which this declaration is attached.
4. My opinion of the value of the Collateral is \$ _____ as of *(applicable date)* _____ based upon my personal knowledge, including but not limited to:
 - ☐ Review of an appraisal (do not attach).
 - ☐ Knowledge of comparable sales (do not attach).
 - ☐ Other: _____
5. As of *(applicable date)* _____, the Collateral is subject to the following liens in the amounts specified securing the debt against the Collateral:

Names of Lien Holders in Order of Priority	Original Lien Amount	Balance of Lien Amount As of <i>(state applicable date)</i>
1 st Lien:	\$ _____	\$ _____
2 nd Lien:	\$ _____	\$ _____
3 rd Lien:	\$ _____	\$ _____

The foregoing balances are established by true and correct copies of filed proofs of claim, or recent loan statements, or other documents attached to this declaration as Exhibit A.

6. The purpose of the valuation is to provide for treatment of the claim of:

Names of Lien Holders in Order of Priority	Secured Portion of the Claim	Unsecured Portion of the Claim
1 st Lien:	\$ _____	\$ _____
2 nd Lien:	\$ _____	\$ _____
3 rd Lien:	\$ _____	\$ _____

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature

Printed Name

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

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**DECLARATION OF EXPERT WITNESS IN SUPPORT OF
MOTION FOR ORDER DETERMINING VALUE OF COLLATERAL**

I, _____ declare:

1. I am over 18 years of age, and I am qualified to testify as an expert witness in my capacity as a:
☐ Licensed Residential Property Appraiser with license no. _____.
☐ Other: _____

2. Attached as Exhibit A to this declaration, is my report, which discloses all the data that I have used in forming my opinion.
3. My opinion of the value of the Collateral is \$_____ as of (*applicable date*) _____.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signature

Printed Name

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

June 2013

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F 3012-1.MOTION.VALUATION

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER DETERMINING VALUE OF COLLATERAL [11 U.S.C. § 506(a), FRBP 3012]** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

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*(Attached page to Proof of Service-please include any additional or alternative addresses and attach additional pages if needed)
(Certified Mail required for service on a national bank.)*

<i>(Name of 1st Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 1st Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 1st Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:

<i>(Name of 2nd Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 2nd Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 2nd Lienholder)</i> Agent for Service of Process <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

2024 SOUTHWEST BANKRUPTCY CONFERENCE

<i>(Name of 3rd Lienholder)</i> <i>Agent for Service of Process</i> <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 3rd Lienholder)</i> <i>Agent for Service of Process</i> <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:
<i>(Name of 3rd Lienholder)</i> <i>Agent for Service of Process</i> <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:

<i>Alternative/Additional Address</i> <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name:
<i>Alternative/Additional Address</i> <i>(Name & Address)</i>	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>(Specify)</i>	Delivery Method: <input type="checkbox"/> US mail <input type="checkbox"/> Certified mail – Tracking # <input type="checkbox"/> Overnight mail – Tracking # Carrier Name:

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California

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<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p>		<p>FOR COURT USE ONLY</p>	
<p><input type="checkbox"/> <i>Individual appearing without attorney</i> <input type="checkbox"/> <i>Attorney for:</i></p>			
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</p>			
<p>In re:</p>		<p>CASE NO.: CHAPTER 13</p>	
		<p>DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY UNDER LBR 3015-1(p)</p>	
		<p>[No Hearing Required]</p>	
<p>Debtor(s).</p>			

Debtor moves this court for an order authorizing the Debtor to sell the real property, described below, pursuant to the terms and conditions described herein.

1. Debtor's Chapter 13 Plan (Plan) was confirmed on: _____.
2. Debtor wishes to sell the real property (Property) located at: _____.

The Property is more particularly described in Exhibit "A" attached hereto.

- ☐ Debtor wishes to modify the Plan for early payment of the Plan as described in the *Motion to Modify Plan* submitted by Debtor concurrently with this Motion.

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

2024 SOUTHWEST BANKRUPTCY CONFERENCE

3. The sale price of the Property is \$_____. The following are all of the encumbrances of record against the Property:
- a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____

(Add additional page if necessary)

4. After payment of the foregoing encumbrances and all costs of sale:
- ☐ there will remain the approximate sum of \$_____; OR
- ☐ no proceeds will remain.
5. ☐ (a) The chapter 13 trustee is hereby authorized to make demand upon escrow for sufficient funds to pay off the Plan with a:
- ☐ 100% dividend to unsecured creditors; OR
- ☐ _____% divided as indicated in the confirmed plan.

After escrow's payment of the encumbrances listed above, any remaining funds shall be paid directly to debtor.

OR

- ☐ (b) The chapter 13 trustee is hereby authorized to make demand upon escrow for the balance remaining after escrow's payment of the encumbrances listed above even though the amount is insufficient to pay off the Plan. The sale is for the fair market value of the Property.

6. The escrow is being processed by:

Escrow company name: _____

Address: _____

Telephone: _____

Facsimile: _____

Escrow officer: _____

Escrow number: _____

7. Supporting documents attached to this Motion are:
- a. Exhibit A – Legal description with street address
 - b. Exhibit B – Escrow instructions and documents
 - c. Exhibit C – Estimated closing statement
 - d. Exhibit D – Schedules I and J of the bankruptcy petition

9. Debtor agrees to provide to chapter 13 trustee a certified copy of the escrow closing statement within 14 days of the close of escrow as a condition to any approval of this motion.

Date: _____

Attorney for Debtor

I declare under penalty of perjury that the following is true and correct.

Date: _____

Debtor

Date: _____

Joint Debtor

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY UNDER LBR 3015-1 (p)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

<div>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</div> <div><input type="checkbox"/> Respondent appearing without attorney <input type="checkbox"/> Attorney for Respondent:</div>		<div>FOR COURT USE ONLY</div>	
<div>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</div>			
<div>In re:</div> <div>Debtor(s).</div>		<div>CASE NO.:</div> <div>CHAPTER: **Select Chapter**</div>	
		<div>RESPONSE TO MOTION REGARDING THE AUTOMATIC STAY AND DECLARATION(S) IN SUPPORT</div>	
		<div>DATE:</div> <div>TIME:</div> <div>COURTROOM:</div> <div>PLACE:</div>	
<div>Movant:</div>			

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2. ☐ **LIMITED OPPOSITION**

a. ☐ Respondent opposes the Motion only to the extent that it seeks immediate relief from stay. Respondent requests that no lock out, foreclosure, or repossession take place before (*date*): _____ and the reason for this request is (*specify*): _____

b. ☐ As set forth in the attached declaration of the Respondent or the Debtor, the motion is opposed only to the extent that it seeks a specific finding that the Debtor was involved in a scheme to hinder, delay or defraud creditors.

The Debtor:

- (1) ☐ has no knowledge of the Property.
- (2) ☐ has no interest in the Property.
- (3) ☐ has no actual possession of the Property.
- (4) ☐ was not involved in the transfer of the Property.

c. ☐ Respondent opposes the Motion and will request a continuance of the hearing since there is an application for a loan modification under consideration at this time. Evidence of a pending loan modification is attached as Exhibit _____.

3. ☐ **OPPOSITION:** The Respondent opposes granting of the Motion for the reasons set forth below.

a. ☐ The Motion was not properly served (*specify*):

- (1) ☐ Not all of the required parties were served.
- (2) ☐ There was insufficient notice of the hearing.
- (3) ☐ An incorrect address for service of the Motion was used for (*specify*): _____

b. ☐ Respondent disputes the allegations/evidence contained in the Motion and contends as follows:

- (1) ☐ The value of the Property is \$ _____, based upon (*specify*): _____
- (2) ☐ Total amount of debt (loans) on the Property is \$ _____.
- (3) ☐ More payments have been made to Movant than the Motion accounts for. True and correct copies of canceled checks proving the payments that have been made are attached as Exhibit _____.
- (4) ☐ There is a loan modification agreement in effect that lowered the amount of the monthly payments. A true and correct copy of the loan modification agreement is attached as Exhibit _____.
- (5) ☐ The Property is necessary for an effective reorganization. Respondent filed or intends to file a plan of reorganization that requires use of the Property. A true and correct copy of the plan is attached as Exhibit _____.
- (6) ☐ The Property is fully provided for in the chapter 13 plan and all postpetition plan payments are current. A true and correct copy of the chapter 13 plan is attached as Exhibit _____ and proof that the plan payments are current through the chapter 13 trustee is attached as Exhibit _____.
- (7) ☐ The Property is insured. Evidence of current insurance is attached as Exhibit _____.

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

2024 SOUTHWEST BANKRUPTCY CONFERENCE

- (8) ☐ Movant's description of the status of the unlawful detainer proceeding is not accurate.
- (9) ☐ Respondent denies that this bankruptcy case was filed in bad faith.
- (10) ☐ The Debtor will be prejudiced if the Nonbankruptcy Action is allowed to continue the nonbankruptcy forum.
- (11) ☐ Other (*specify*):

c. ☐ Respondent asserts the following as shown in the declaration(s) filed with this Response:

- (1) ☐ The bankruptcy case was converted from chapter ____ to chapter ____.
- (2) ☐ All postpetition arrearages will be cured by the hearing date on this motion.
- (3) ☐ The Property is fully provided for in the chapter 13 plan and all postpetition plan payments
☐ are current, or ☐ will be cured by the hearing date on this motion.
- (4) ☐ The Debtor has equity in the Property in the amount of \$ _____.
- (5) ☐ Movant has an equity cushion of \$ _____ or _____% which is sufficient to provide adequate protection.
- (6) ☐ The Property is necessary for an effective reorganization because (*specify*):
- (7) ☐ The motion should be denied because (*specify*):
- (8) ☐ An optional memorandum of points and authorities is attached in support of this Response.

4. EVIDENCE TO AUTHENTICATE EXHIBITS AND TO SUPPORT FACTS INSERTED IN THE RESPONSE:

Attached are the following documents in support of this Response:

- | | |
|--|---|
| <input type="checkbox"/> Declaration by the Debtor | <input type="checkbox"/> Declaration by the Debtor's attorney |
| <input type="checkbox"/> Declaration by trustee | <input type="checkbox"/> Declaration by trustee's attorney |
| <input type="checkbox"/> Declaration by appraiser | <input type="checkbox"/> Other (<i>specify</i>): |

Date: _____

Printed name of law firm for Respondent (if applicable)

Printed name of individual Respondent or attorney for Respondent

Signature of individual Respondent or attorney for Respondent

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

AMERICAN BANKRUPTCY INSTITUTE

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **RESPONSE TO MOTION REGARDING THE AUTOMATIC STAY AND DECLARATION(S) IN SUPPORT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

This form is optional. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

<div>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</div>		<div>FOR COURT USE ONLY</div>	
<div><input type="checkbox"/> Debtor(s) appearing without an attorney <input type="checkbox"/> Attorney for Debtor(s)</div>			
<div>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – **SELECT DIVISION**</div>			
<div>In re:</div>		<div>CASE NO.:</div> <div>CHAPTER: 13</div>	
		<div>DECLARATION SETTING FORTH POSTPETITION, PRECONFIRMATION PAYMENTS ON: 1) DEEDS OF TRUST [OR MORTGAGES] 2) LEASES ON PERSONAL PROPERTY 3) PURCHASE MONEY SECURITY LIENS ON PERSONAL PROPERTY [LBR 3015-1(e) and LBR 3015-1(m)]</div>	
<div>Debtor(s).</div>		<div>[No Hearing Required]</div>	

1. I am the debtor in this chapter 13 bankruptcy case that was filed on: _____.
2. On the next page I have listed all the payments I have made to secured creditors and lessors since the filing of my chapter 13 petition.
3. I have provided the name of the secured creditor and/or lessor and the type of obligation to that secured creditor and/or lessor.
4. I understand that I must update the information on the next page and keep it current until my plan is confirmed.

June 2012

Page 1

F 3015-1.4.DEC.PRECONF.PYMTS

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5. The following are the postpetition payments up to the date of plan confirmation (Payments) that I have caused to be mailed/delivered to the appropriate creditors (Creditor)¹:

Property Description	Creditor/Type of loan	Payment Amount	Due Date ²	Date Mailed/ Delivered
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>): <input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	<input type="checkbox"/> Other (<i>specify</i>): _____			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>): <input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	<input type="checkbox"/> Other (<i>specify</i>): _____			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>): <input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	<input type="checkbox"/> Other (<i>specify</i>): _____			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>): <input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	<input type="checkbox"/> Other (<i>specify</i>): _____			

¹ Attach additional pages if necessary

² "Due Date" refers to the 1st day the Payment is due.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

2024 SOUTHWEST BANKRUPTCY CONFERENCE

Property Description	Creditor/Type of loan	Payment Amount	Due Date ³	Date Mailed/ Delivered
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>):			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>)			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>)			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>)			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>)			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			
	Name of Creditor (<i>printed</i>): _____			

	(<i>check one</i>)			
	<input type="checkbox"/> Deed of Trust/Mortgage			
	<input type="checkbox"/> Car loan			
	<input type="checkbox"/> Lease			

6. ☐ Continued on Attached Page.

7. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: _____

By: _____
Signature of Debtor

Printed Name of Debtor

³ "Due Date" refers to the 1st day the Payment is due.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

AMERICAN BANKRUPTCY INSTITUTE

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DECLARATION SETTING FORTH POSTPETITION, PRECONFIRMATION PAYMENTS ON: 1) DEEDS OF TRUST [OR MORTGAGES], 2) LEASES ON PERSONAL PROPERTY, 3) PURCHASE MONEY SECURITY LIENS IN PERSONAL PROPERTY [LBR 3015-1(e) and LBR 3015-1(m)]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date Printed Name Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:

,

Debtor.

Case No.:

CHAPTER 13

ORDER GRANTING VALUATION MOTION

Hearing:

Date:

Time:

Place: United States Bankruptcy Court
Courtroom 302
3420 Twelfth Street
Riverside, CA 92501

The Court has considered the motion of the debtors, [INSERT NAME OF DEBTORS], entitled “Debtor’s Motion To Avoid Junior Lien On Principal Residence [11 U.S.C. § 506(d)]” (“Motion”). The Motion pertains to [INSERT NAME OF CREDITOR] (“Creditor”) and the real property located at [INSERT PROPERTY ADDRESS] (“Property”). No party filed any opposition or response to the Motion and the deadline to do so passed. Accordingly, prior to the hearing scheduled for [INSERT HEARING DATE], the Court issued a final ruling approving the Motion and waiving appearances at the hearing.

Having considered the Motion, the declarations in support thereof, the papers and pleadings filed in this case, the Court hereby finds that good cause exists to grant the Motion (in part) to the extent set forth in the Court's ruling.

Therefore, the Court hereby ORDERS, ADJUDGES and DECREES:

1. The Motion is granted in part.¹

2. The Court finds that the Property has a value of no more than [INSERT VALUE] as of [DATE].

3. Any proof of claim of the Creditor based upon a junior lien secured by the Property ("Junior Claim") shall be allowed and treated as a non-priority, unsecured claim in this chapter 13 case and shall be paid through the chapter 13 plan pro rata with all other unsecured claims.² The Creditor is not required to, but may file an amended proof of claim asserting its Junior Claim as an unsecured claim to be paid in accordance with the chapter 13 plan in this case. If an amended claim is not filed, the chapter 13 trustee may treat any Junior Claim (secured or unsecured) filed by the Creditor as entirely unsecured.

4. No monthly mortgage payments shall be made on account of the Junior Claim.

¹ To the extent that the title of the Motion or the content of the Motion seek relief avoiding, extinguishing, attacking or otherwise modifying any lien, that language and relief is not approved by the Court. The relief granted in this order is limited solely to valuing the collateral of a junior lienholder and determining the treatment of its claims in this bankruptcy case. Nothing in this order shall be construed to avoid a lien or determine the extent, validity, or priority of a lien or security interest. The lien of the junior lienholder will remain of record and the junior lienholder shall retain all rights under the lien unless and until the Court enters a further order or judgment avoiding the lien. If the Court confirms a plan of reorganization and the debtor timely performs all obligations under the confirmed plan, the debtor may thereafter initiate an adversary proceeding pursuant to F.R.B.P. Rule 7001(2) to obtain a further order or judgment extinguishing or avoiding the junior lien.

² If, in addition to the Junior Claim, the Creditor is also the holder of another lien against the Property that is the senior lien against the Property, then none of the terms of this order shall be construed to apply to that senior lien or any proof of claim based upon that senior lien. This order only applies to any junior lien of the Creditor.

In re:	CHAPTER: 13
Debtor(s).	CASE NUMBER:

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify* **ORDER GRANTING VALUATION MOTION**) was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. The following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

☐ Service information continued on attached page

ADDITIONAL SERVICE INFORMATION (if needed):

ADDITIONAL SERVICE INFORMATION (if needed):

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FORM SECURED DEBT PAYMENT HISTORY DECLARATION
(VERSION 2) (APRIL 19, 2011)

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:

JOHN SMITH and
JANE SMITH,

Debtors.

Case No. 6:11-bk-12345-WJ

CHAPTER 13

**DECLARATION OF DEBTORS REGARDING
SECURED DEBT PAYMENT HISTORY**

Confirmation Hearing:

Date: April 20, 2011

Time: 1:30 p.m.

Crtm: Courtroom 302

United States Bankruptcy Court

Central District of California

3420 Twelfth Street

Riverside, California 92501

DECLARATION OF JOHN AND JANE SMITH

We, John and Jane Smith, declare:

1. We are the debtors in this chapter 13 bankruptcy case filed on _____.

2. The assets in this bankruptcy case include the real property located at the following street address: _____ (“Property”). We have listed the Property on Schedule A with a value of \$_____. A foreclosure sale is currently set for [Date].¹

3. The Property [is / is not] our current residence.

4. The Property is encumbered by the following deeds of trust:

a. First deed of trust in favor of _____.

i. The current amount owed is \$_____.

ii. The monthly mortgage payment is currently \$_____.

iii. The unpaid, accrued arrearage is \$_____.

(if applicable):

b. Second deed of trust in favor of _____.

i. The current amount owed is \$_____.

ii. The monthly mortgage payment is currently \$_____.

iii. The unpaid, accrued arrearage is \$_____.

(if applicable):

c. Third deed of trust in favor of _____.

i. The current amount owed is \$_____.

ii. The monthly mortgage payment is currently \$_____.

iii. The unpaid, accrued arrearage is \$_____.

¹ Instructions. For the last sentence of paragraph 2 use one (and only one) of the following alternative sentences: “A foreclosure sale is currently set for [insert date].” or “No foreclosure sale has been set but a notice of default was issued on [insert date].” or “No foreclosure sale has been set and no notice of default has been issued.”

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5. During each of the months listed below, we made the following payments:

Month	Amount Paid to 1 st Lienholder	Amount Paid to 2 nd Lienholder	Amount Paid to 3 rd Lienholder
January 2010			
February 2010			
March 2010			
April 2010			
May 2010			
June 2010			
July 2010			
August 2010			
September 2010			
October 2010			
November 2010			
December 2010			
January 2011			
February 2011			
March 2011			
April 2011			
*add additional months through the date of the filing of the declaration			

6. Attached to this declaration are true and correct copies of proof of any and all payments made during the last six months.

7. In 2010, our total income from all sources was \$_____.

3.

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8. Our total income for 2011 (year to date) from all sources is \$ _____ as of the date of this declaration.

We declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

John Smith, Debtor

Dated: _____

Jane Smith, Debtor

4.

(For use in Judge Yun's cases)

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In Re

) Case No.: 6:
)
) Chapter 13
)
) DECLARATION OF CONTRIBUTION
) TO CHAPTER 13 PLAN
)
) Debtor(s).)

1. I, _____, unconditionally promise that I will voluntarily contribute the sum of \$ _____ each month to the above-named debtor to assist in paying household expenses and in making payments under the chapter 13 plan. I promise that I will continue to make this contribution for the entire term of the plan, which may be up to 5 years. I agree that I will be bound by the terms of this agreement, regardless of any change in my relationship to the debtor.

2. My relationship to the debtor(s) is:

3. ☐ I reside with debtor and have resided with debtor for _____ months; or
☐ I do not reside with debtor. (*check one*)

4. If you do not reside with debtor:

- (a) What city do you live in? _____
- (b) How many people reside with you in your household? _____
- (c) Of those who reside in the household, how many are dependent on your income? _____
- (d) Do any other members of the household have income? _____
- (e) If yes, what is the approximate gross monthly income of all other household members combined (excluding your income)? _____

5. My motivation for making this contribution is (*explain in detail why you are making this contribution. Attach additional sheets if necessary. Note that merely residing with the debtor, without more, may be insufficient to demonstrate your commitment to making the contribution*):

6. I have contributed the amount set forth at #1 above to the debtor continuously for the past _____ months.

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7. If the amount or duration of your contribution to the debtor(s) has not been continuous, explain the history of the contributions, giving specific details about amounts, dates and the nature of the contributions. *(attach additional sheets if necessary):*

8. I certify to the court that I have the financial ability to both make this contribution and to continue to pay my own separate monthly expenses and liabilities during the term of the plan (up to 5 years). I have attached a statement of all of my sources of income and a statement of my monthly expenses and those of my household, both projected for the next 5 years. I have not included any of the debtor's expenses. *(It is recommended that you use the court's Schedules I and J for listing your income and expenses. If you reside with the debtor, list only your separate expenses. If you do not reside with the debtor, list all household income and expenses.)*

9. I have attached evidence of all sources of my income for at least the 6 month period immediately prior to the date I am signing this declaration. *(As evidence of income, you can attach 6 months of paystubs, and/or redacted bank statements if you receive Social Security or other benefit payments. If you are self-employed, you may attach a redacted copy of your most recent year's federal tax return and a copy of the Chapter 13 Trustee's business report, a profit and loss statement, and 6 months of bank statements.)*
Explanation of income (if necessary):

10. I am not aware of any factors that might increase my expenses or reduce my income over the next 5 years, except:

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed and dated this _____ day of _____, 20____, at _____, California.

Signature of Contributor

Print Name of Contributor

THIS FORM WITH ALL ATTACHMENTS MUST BE RECEIVED BY THE CHAPTER 13 TRUSTEE AND FILED WITH THE COURT AT LEAST 7 DAYS PRIOR TO THE DATE OF THE INITIAL SECTION 341(A) MEETING OF CREDITORS.

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STATEMENT OF CONTRIBUTOR'S MONTHLY INCOME AND EXPENSES

List your individual and household income and expenses, projected for the next year.

If you need another category, "borrow" a line that is not in use. Not all households will use all items.
Be as accurate as possible in reporting.

PROJECTED MONTHLY HOUSEHOLD INCOME	
Gross Salary/Wages/Business Draw	
Total monthly deductions from your income	
NET INCOME	
Other household income (after deductions)	
Social Security	
Pension/Retirement	
Interest on Accounts	
Alimony / Child Support	
Real Estate rent (income)	
Investment Dividends	
Unemployment/ Food Stamps	
Other:	
NET MONTHLY HOUSEHOLD INCOME	

NET MONTHLY HOUSEHOLD INCOME	
MONTHLY HOUSEHOLD LIVING EXPENSES	
AVAILABLE FOR CONTRIBUTION	

Monthly Living Expenses	
Rent	
1st Mortgage	
2nd Mortgage	
Homeowners Association Fees	
Property Taxes and Insurance	
Utilities	
Cable/Cell/Internet/Telephone	
Home Maintenance	
Food	
Clothing	
Laundry and Dry Cleaning	
Medical and Dental Expenses	
Transportation (not including auto payment)	
Recreation	
Charitable Contributions	
Other Insurance (life/health/auto)	
Taxes (not deducted from wages)	
Auto Payment	
Auto Payment	
Alimony/Maintenance/Support	
Payments to Dependents Not Living in Home	
Expenses From Operation of Business	
Property Services (Gardener, Pool)	
Student Loans	
Credit Card Payments (total monthly)	
Other:	
Other:	
Other:	
Other:	
MONTHLY HOUSEHOLD LIVING EXPENSES	

I declare under the penalty of perjury that this statement represents my best estimate of my household income and expense for at least the next 12 months.

Dated this _____ day of _____, 20____ at _____, California

CONTRIBUTOR

CHAPTER 13 CONTRIBUTION DECLARATION

DEBTOR(S): _____

CASE NUMBER: _____

I, _____, will contribute \$ _____ every month to the above-referenced debtor(s) for the full term of the plan, up to five (5) years if necessary, in order to assist the debtor(s) in making payments under the plan. I believe that I have the ability to make this contribution, and that I will continue to have the ability to contribute for up to five (5) years

My relationship to the debtor(s) is _____.

The source of my contribution is _____.

Evidence of my income, in the form of paystubs, or other kinds of evidence are attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed: _____

Date: _____

THIS FORM MUST BE SUBMITTED TO THE CHAPTER 13 TRUSTEE NOT LATER THAN EIGHT (8) DAYS PRIOR TO THE §341(A) MEETING OF CREDITORS. ATTACH PROOF OF THE INCOME OF THE CONTRIBUTOR.

ROD DANIELSON
CHAPTER 13 TRUSTEE

Name, Address and Telephone Number of Attorney for Debtor(s) or Debtor(s) In Pro Per	<p align="center">INSTRUCTIONS TO DEBTOR(S):</p> <p>FILE WITH CHAPTER 13 TRUSTEE ONLY - DO NOT FILE IN BANKRUPTCY COURT</p> <p>COMPLETE THIS FORM FOR EACH PROPERTY IN WHICH THE DEBTOR HAS AN INTEREST, AND FROM WHICH THE DEBTOR EARNS RENTAL INCOME FROM 3 OR MORE UNITS (DO NOT COMPLETE FOR ANY PROPERTY WHICH YOU INTEND TO SURRENDER/ABANDON.)</p> <p>THIS COMPLETED FORM IS DUE IN THE CHAPTER 13 TRUSTEE'S OFFICE AT LEAST EIGHT (8) DAYS PRIOR TO THE MEETING/HEARING.</p> <p>THIS FORM MAY BE COPIED IF THE DEBTOR HAS MULTIPLE PROPERTIES. PROVIDE ONE COMPLETE FORM FOR EACH PROPERTY.</p>
Attorney for Debtor / In Pro Per	
IN RE:	OFFICE OF ROD DANIELSON, CHAPTER 13 TRUSTEE CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE 3787 UNIVERSITY AVENUE, RIVERSIDE, CA 92501 (909) 826-8000 Fax: (909) 826-8090
DEBTOR(S).	
CHAPTER 13 Case Number	<p>REAL PROPERTY QUESTIONNAIRE</p> <p>CHECK ONE BOX: <input type="radio"/> OWNED <input type="radio"/> BEING PURCHASED <input type="radio"/> LEASED</p>
SECTION ONE: PROPERTY OWNED OR BEING PURCHASED BY DEBTOR	
A. Address of property including county and state in which it is located:	
B. Legal description of property (i.e., Lot and Tract Number, including Tax Assessor's I.D. Number. Note: without this information the County Tax Collector will be unable to properly credit any funds sent by the Trustee):	
C. Percentage interest in the property owned by the Debtor:	
D. Date of Debtor's acquisition of the property:	
Purchase Price: \$	

2024 SOUTHWEST BANKRUPTCY CONFERENCE

ROD DANIELSON ***CHAPTER 13 TRUSTEE***

SECTION ONE: (Cont'd) PROPERTY OWNED OR BEING PURCHASED BY DEBTOR	
E. Type of real property:	<input type="radio"/> Condominium/Co-op
<input type="radio"/> Single Family Residence	<input type="radio"/> Commercial
<input type="radio"/> Duplex	<input type="radio"/> Industrial
<input type="radio"/> Apartment Building	<input type="radio"/> Unimproved
	<input type="radio"/> Other
F. Description of property (i.e., number of units, number of offices, amenities, condition):	
G. Present Fair Market Value: \$	
H. State source and basis of the above fair market value:	
I. Does the property meet all federal, state and local requirements including, but not limited to health, building, safety, OSHA, earthquake and fire regulations? <input type="radio"/> Yes <input type="radio"/> No (If answer is "No," briefly explain and attach copies of any complaints, citations and/or recorded documents which specify the substance of the alleged violations)	
J. State the name(s) of the title holder(s) of record as of the date of the filing of the Petition:	
K. State the name of the Grantor of the property to the titleholders set forth in "J" above:	
L. State the date of the last transfer of any interest in the property and name of the transferor(s) and transferee(s):	
M. Was title to the property transferred to the Debtor within ninety (90) days prior to the filing of the Chapter 13 Petition? <input type="radio"/> Yes <input type="radio"/> No (If your answer is "Yes," state the reason for the transfer)	

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ROD DANIELSON CHAPTER 13 TRUSTEE

SECTION TWO: FINANCIAL STATUS OF OWNED PROPERTY

A. List voluntary encumbrances of record against the property (e.g., mortgages, stipulated judgments):

Lender Name	Current Principal Balance	Installment Amount	Due Date/Date Late
1st _____	\$ _____	\$ _____	_____
2nd _____	\$ _____	\$ _____	_____
3rd _____	\$ _____	\$ _____	_____
4th _____	\$ _____	\$ _____	_____

Maturity Date (If all due prior to or during term of bankruptcy)

1st _____
 2nd _____
 3rd _____
 4th _____

B. List involuntary encumbrances of record against the property (taxes, mechanics' and other liens, judgments, lis pendens):
 (State type of lien, amount claimed and date of recordation)

C. Property Taxes:

- (1) Are property taxes impounded (included in your mortgage payment)? ☐ Yes ☐ No
 (2) If "No," what is the amount of the annual taxes and installment due date?
 (3) Indicate the due dates and amounts of any tax bills which have not been paid:

D. Identify any person/entity other than (or in addition to) the debtor who uses, leases, or occupies the property and state that person's/entity's relationship to the debtor.

SECTION THREE: INCOME FROM RENTAL OF PROPERTY

A. What is the actual gross monthly income being received from rental of the property? \$ _____ per month.

B. Itemize the total monthly expenses:

Mortgage payment: _____	Utilities: _____
Homeowner's insurance: _____	Maintenance: _____
Property Taxes: _____	Other: _____

C. Is any person and/or entity occupying any portion of the property at a reduced rental rate or at no rental charge?
☐ Yes ☐ No (if your answer is "Yes," explain fully)

2024 SOUTHWEST BANKRUPTCY CONFERENCE

ROD DANIELSON *CHAPTER 13 TRUSTEE*

SECTION FOUR: **INSURANCE**

A. State the following as to each Policy of Insurance (even if payments are included with mortgage payments):

Type of Insurance	Insurance Company Name	Policy Number	Amt. Of Coverage	Exp. Date
_____	_____	# _____	\$ _____	_____
_____	_____	# _____	\$ _____	_____
_____	_____	# _____	\$ _____	_____

B. If any policy payments are delinquent, so state and provide the amount and number of installments that are past due:

I declare under penalty of perjury that the answers contained in the foregoing Real Property Questionnaire are true and correct to the best of my knowledge, information and belief.

Date: _____

Name (Please type or print): _____

Signature of Debtor: _____

Name (Please type or print): _____

Signature of Co-Debtor: _____

ROD DANIELSON
CHAPTER 13 TRUSTEE

4361 Latham Street, Suite 270

Riverside, CA 92501

(fax: 951 826-8090) (telephone: 951 826-8000)

PROOF OF INCOME FORMS

1. CHAPTER 13 BUSINESS REPORT (Short Form): To be submitted (with two years of personal and any business federal income tax returns) by self-employed debtor who:

1. Has no employees; and
2. Grosses less than \$50,000.00 annually from the business.

See LBR 3015-1 (c)(2) for additional requirements.

2. CHAPTER 13 BUSINESS REPORT (Long Form): To be submitted (with two years of personal and any business federal income tax returns) by self-employed debtor who:

1. Has any employees (full-time or part-time);
2. Grosses greater than \$50,000.00 annually from the business;
3. Carries inventories of goods for sale; or
4. Has assumed equipment leases with total payments of at least \$50,000.00 or
5. Continues to incur trade debt. (11 U.S.C. §1304 (a)).

See LBR 3015-1 (c)(2) & (4) for additional documentation requirements. Debtors who meet the requirements for the Long-Form Business Report MUST provide the additional documentation required under LBR 3015-1 (c)(4) (see reverse side of this page).

ALL DEBTORS ENGAGED IN BUSINESS ARE ADVISED TO REVIEW THE PROVISIONS OF RULE 3015-1 OF THE LOCAL BANKRUPTCY RULES, AND RULE 2015 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, EXCERPTS OF WHICH ARE PRINTED/SUMMARIZED ON THE REVERSE SIDE OF THIS PAGE AT PARAGRAPHS #6 AND #7.

3. CHAPTER 13 REAL PROPERTY QUESTIONNAIRE: *Attach copies of all leases and two months of rent receipts.* To be used by debtor who receives rental income from any property other than the debtor's principal residence, or who receives rental income from two or more rental units in the debtor's principal residence (e.g., debtor owns and resides in a tri-plex, where the remaining two units generate rental income).

4. CHAPTER 13 CONTRIBUTION DECLARATION: *Attach evidence of income of the contributor.* To be used by debtor who receives contribution income. This form should also be submitted when the debtor has rental income from a family member.

5. PROOF OF WAGE-EARNER INCOME: *Submit two current, consecutive pay stubs.* Be sure to indicate the frequency that debtor receives his or her paycheck (weekly, bi-weekly, bi-monthly, or monthly). Be sure the paystub is representative of debtor's regular income. For example, if the debtor does not regularly receive overtime, do not submit a stub that includes overtime pay. Similarly, if the debtor's stub reflects an unusually short pay period, do not submit it.

(Over)

6. LOCAL BANKRUPTCY RULE 3015-1, PARAGRAPH (c):

(2) Evidence of Income. The debtor shall provide evidence of current income (pay stubs, tax return or other equivalent documentation) to the Chapter 13 Trustee at least 8 days before the §341(a) meeting of creditors. If income from a third party contributor will be used to fund the plan, the debtor shall also provide evidence (declarations and pay stubs or other appropriate evidence) of the commitment and ability of the third party to make payments. Failure to provide this evidence may result in dismissal of the case, including but not limited to dismissal with a 180-day bar to refiling pursuant to 11 U.S.C. §109(g) if the court finds willful failure to comply with an order of the court. [emphasis added]

(4) Required Reports. If the debtor is operating a business, the debtor shall submit to the Chapter 13 Trustee, at least 8 days before the §341(a) meeting of creditors, the following reports required to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the feasibility of such business:

- (2) Projection of average monthly income and expenses for the next 12 months;
- (3) Evidence of appropriate business insurance;
- (4) Inventory of goods as well as a list of business furniture and equipment as of the date of the filing of the petition;
- (5) Monthly income and expense statements for at least the 6 months preceding the date of the filing of the petition, or for such shorter time if the business has been in operation for less than the requisite 6 months, signed by the debtor under penalty of perjury, including a statement regarding incurred and unpaid expenses;
- (6) Tax returns for at least 5 years or since the start of the business, whichever period is shorter; and
- (7) The Trustee may request additional evidence, including but not limited to bank statements, cancelled checks, contracts, or any other evidence to support the ability to fund the proposed plan.

Failure to submit timely reports required above may result in dismissal of the case, with or without a 180-day bar to refiling pursuant to 11 U.S.C. §109(g), if the court finds willful failure to comply with an order of the court. [Emphasis added]

7. RULE 2015 OF FEDERAL RULES OF BANKRUPTCY PROCEDURE PROVIDES THAT A CHAPTER 13 DEBTOR ENGAGED IN BUSINESS SHALL: . . . keep a record of receipts and the disposition of money and property received; file the reports and summaries required by §704(8) of the code which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; as soon as possible after commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case. . .

. . . if the court directs, [the debtor] shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

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ROD DANIELSON CHAPTER 13 TRUSTEE

CHAPTER 13 BUSINESS REPORT (Long Form)

Debtor(s)	Case Number:								
<p style="text-align: center;">OFFICE OF ROD DANIELSON, CHAPTER 13 TRUSTEE CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE 4361 LATHAM STREET, SUITE 270, RIVERSIDE, CA 92501 (951) 826-8000 Fax: (951) 826-8090</p>	<p>INSTRUCTIONS TO DEBTOR(S): COMPLETE THIS FORM IF YOU ARE SELF-EMPLOYED AND:</p> <p>A. Have employees; or B. Gross greater than \$50,000 annually from the business; or C. Carry inventories of goods for sale; D. Have assumed equipment leases with total payments of at least \$50,000; or E. Continue to incur trade debt</p> <p>PREPARE A SEPARATE BUSINESS REPORT FORM FOR EACH BUSINESS. RETURN TO CHAPTER 13 TRUSTEE NOT LATER THAN EIGHT (8) DAYS BEFORE THE MEETING/HEARING.</p>								
SECTION ONE: NATURE OF BUSINESS									
<p>Name of Business: _____ Number of Employees: _____</p> <p>Address: _____ <input type="checkbox"/> Sole Proprietorship</p> <p>Phone: _____ <input type="checkbox"/> Partnership</p> <p style="margin-left: 300px;"><input type="checkbox"/> Corporation</p> <p>Describe the business (nature of work performed or service provided):</p> <p>_____</p> <p>_____</p> <p>If the business is the reason for the bankruptcy, explain why:</p> <p>_____</p> <p>_____</p>									
SECTION TWO: ESTIMATED MONTHLY INCOME									
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Estimated monthly gross receipts (labor/services)</td> <td style="width: 50%;">\$ _____</td> </tr> <tr> <td>Estimated monthly gross receipts (sales of goods)</td> <td>\$ _____</td> </tr> <tr> <td>Estimated monthly gross receipts (other:)</td> <td>\$ _____</td> </tr> <tr> <td>Estimated monthly gross receipts (other:)</td> <td>\$ _____</td> </tr> </table>		Estimated monthly gross receipts (labor/services)	\$ _____	Estimated monthly gross receipts (sales of goods)	\$ _____	Estimated monthly gross receipts (other:)	\$ _____	Estimated monthly gross receipts (other:)	\$ _____
Estimated monthly gross receipts (labor/services)	\$ _____								
Estimated monthly gross receipts (sales of goods)	\$ _____								
Estimated monthly gross receipts (other:)	\$ _____								
Estimated monthly gross receipts (other:)	\$ _____								
TOTAL GROSS RECEIPTS \$									
<p>(1) On what do you base your estimates of income? (Attach copies of all documents which substantiate your estimate)</p> <p>_____</p> <p>_____</p> <p>_____</p>									
<p>(2) Attach signed copies of your federal income tax returns (with 1099s) for the prior 2 years and the last 3 months of your bank statements supporting this business report</p>									

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SECTION THREE: TOTAL ESTIAMTED MONTHLY EXPENSES

(From attachment A – include estimated cost of goods sold (1)): \$ _____

Total cost of good (1) and all operating expenses (2) (from attachment A): \$ _____

EXCESS OF: Total Gross Receipts over costs and expenses \$ _____

OR

Costs and expenses over total gross receipts \$ _____

3) On what do you base your estimates of expenses? (Attach copies of all documents which substantiate your estimate):

SECTION FOUR: LIST ALL BANK ACCOUNTS (Personal and Business)

<u>Name of Institution</u>	<u>Purpose of Account</u> (e.g., personal, payroll, etc.)	<u>Nature of Account</u> (e.g., Checking, Savings)	<u>Account #</u>
----------------------------	--	---	------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SECTION FIVE:

Attach a list of all inventory, including goods, furniture, equipment and the market value of inventory held by debtor on date of filing.

☐ My business has no items of inventory

I declare under penalty of perjury that the information contained in the foregoing Business Report and Attachment A are true and correct to the best of my knowledge, information and belief.

Date this day of at Riverside, California

Name of Debtor (print): _____

Signature of Debtor: _____

Name of Co-Debtor (print): _____

Signature of Co-Debtor: _____

ATTACHMENT A - DETAIL OF MONTHLY OPERATING INCOME AND EXPENSES

1. Estimated cost of goods sold: \$ _____

2. Estimated operation expenses of business (Do no include any personal expenses. All personal expenses should be listed on Scheduled J).

Federal income taxes: _____
 Self-employment taxes: _____
 Federal withholding taxes: _____
 State income taxes: _____
 State withholding taxes: _____
 State sales taxes: _____

Other taxes (itemize): _____

Leases of personalty (itemize): _____

Salaries: _____

Employee benefits (itemize): _____

Electricity: _____

Phone system: _____
 Phone bills: _____

Other utilities (itemize): _____

Automobile expenses (itemize): _____

Transportation expenses (itemize): _____

Advertising (itemize): _____

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Office Equipment (itemize):		
Office supplies:		
Insurance:		
Fire (extended coverage on business property and equipment):		
General liability:		
Non-owned vehicle insurance:		
Other (itemize):		
Licensing fees (itemize):		
Other (itemize):		

TOTAL MONTHLY OPERATING EXPENSES (2)	\$	
--------------------------------------	----	--

Loan Modification Management Program

The United States Congress created procedures to follow when parties seek to mitigate losses when a real estate loan is in distress, namely 12 CFR 1024 (Regulation X, Loss Mitigation Procedures). While in bankruptcy court, it can be difficult for the parties to invoke and comply with these statutory requirements in conjunction with relevant provisions of the Bankruptcy Code (“Code”) and Federal Rules of Bankruptcy Procedure (“FRBP”).

In 2017, U.S. Bankruptcy Court, Central District of California (USBC-CD) created a pilot program to meet this challenge. In 2023, the Board of Judges voted to make this program permanent. The title of this program is the Loan Modification Management Program (“LMM”) as implemented in the Central District of California within regulations referred to above, and within our Local Bankruptcy Rules (“LBR”).

The LMM is managed by a vendor approved by the USBC-CD and is a forum for debtors and creditors to reach a consensual resolution – or loss mitigation -- when a debtor’s Eligible Property is at risk of foreclosure related to a creditor’s Eligible Loan. Loss mitigation means the full range of solutions that may prevent either the loss of a Debtor’s Eligible Property to foreclosure, increased costs to the Creditor, or both, including but not limited to loan modification, loan refinance, forbearance, short sale, or surrender of the Eligible Property in full satisfaction of obligations arising under an Eligible Loan. The goal of the LMM is to facilitate communication and exchange of information in a confidential setting and encourage the parties to finalize a feasible and beneficial agreement under Court supervision. Participants in the LMM must comply with LMM Procedures and LMM Forms that are posted in section 3-10 of The Central Guide and at related links on the court’s website.



Los Angeles Division

Honorable Sheri Bluebond
Honorable Julia W. Brand
Honorable Neil W. Bason
Honorable Deborah J. Saltzman
Honorable Vincent P. Zurzolo

San Fernando Valley Division

Honorable Martin R. Barash
Honorable Victoria S. Kaufman
Honorable Maureen A. Tighe
Honorable Deborah J. Saltzman

Riverside Division

Honorable Scott H. Yun
Honorable Magdalena Reyes Bordeaux

Northern Division

Honorable Martin R. Barash
Honorable Deborah J. Saltzman

Santa Ana Division

Honorable Mark D. Houle

You may only use the LMM forms and the Loan Modification Management Program Procedures if your case or your client's case is assigned to one of the judges listed above.



Faculty

Tiffany M. Cornejo is the Standing Chapter 13 Trustee of New Mexico in Albuquerque, appointed on Dec. 1, 2017. She also is the Chapter 12 Trustee (case by case) for the District of New Mexico. While in law school, Ms. Cornejo clerked for Cloon Legal Services in Baldwin, Kan., a bankruptcy firm practicing solely in consumer bankruptcy law. From there, she was asked by one of the partners to aid in the start-up of his own firm; she accepted and continued her work as a law clerk for The Law Office of Garret & Coons in Lawrence, Kan., practicing primarily consumer bankruptcy law. After graduating from law school, Ms. Cornejo worked as an associate for Shapiro & Mock in Overland Park, Kan., representing mortgage companies in the areas of foreclosures of New Mexico in bankruptcy, creditors' rights, commercial litigation, collections, replevins, evictions and landlord/tenant law, all in both Kansas and Missouri. From there, she relocated to St. Louis to become senior staff attorney for Russell C. Simon, the Standing Chapter 13 Trustee in the Southern District of Illinois. She represented the trustee and trust operation, and supervised four paralegals, two mortgage administrators and a legal clerk. Since being appointed as Chapter 13 Standing Trustee, Ms. Cornejo has become a board member of both the National Association of Chapter 13 Trustees (NACTT) and the Association of Chapter 12 Trustees (ACT12), co-chair of NACTT's Loan Modifications and Loss Mitigations Committee and program chair of its Inclusion & Acceptance Committee, chair for ACT12's Bankruptcy DEI Consortium, and editor-in-chief of the *NACTT Quarterly*. She is admitted to practice in the Federal District Courts of Kansas, Western District of Missouri and Southern District of Illinois, and in the states of Kansas, Missouri and Illinois. Ms. Cornejo received her B.S. in journalism and her J.D. from the University of Kansas, Lawrence.

Hon. August B. Landis is Chief Judge of the U.S. Bankruptcy Court for the District of Nevada in Las Vegas, appointed on Nov. 27, 2013, and named Chief Judge on April 1, 2020. He currently chairs the Ninth Circuit Conference of Chief Bankruptcy Judges. Between 2005 and his appointment to the bench, Judge Landis served as an Assistant U.S. Trustee for the District of Nevada in Las Vegas, as the U.S. Trustee Program's first Acting Associate General Counsel for Chapter 11 Practice, and as the Acting U.S. Trustee for Region 17. Prior to joining the U.S. Trustee Program, he was an attorney in private practice with the Des Moines, Iowa, firms of Neiman, Neiman, Stone & Spellman (1987-90) and Whitfield & Eddy, P.L.C. (1990-2005), mostly representing trustees and advancing creditors' rights in commercial litigation, secured transactions and bankruptcy cases. Judge Landis is a member of the Iowa State Bar Association. He received his J.D. from Drake Law School in Des Moines.

Adam B. Nach is an attorney with Lane & Nach in Phoenix, where he focuses his practice on bankruptcy, foreclosures, real estate, business formation, company statutory agent and lender representation. Previously, he was a judicial law clerk to former Chief Bankruptcy Judge for the District of Arizona Robert G. Mooreman. Mr. Nach is a frequent lecturer on bankruptcy law and creditors' rights and has written extensively on such matters for the Norton Bankruptcy Institute, the National Association of Bankruptcy Trustees, the Arizona State Bar and the National Business Institute. He is admitted to the Ninth Circuit Court of Appeals and the U.S. Supreme Court. Mr. Nach is Board Certified in Bankruptcy Law by the State Bar of Arizona and in Creditors' Rights Law by the American Board of Certification, and he is AV-rated by Martindale-Hubbell. He received his B.S. in accounting in 1985 from the University of Arizona, and his J.D. from California Western School of Law.

Summer M. Shaw is the founder of Shaw & Hanover PC, a bankruptcy boutique law firm serving Southern California with its main office located in Palm Desert, Calif. She is a Bankruptcy Specialist certified by the State Bar of California and represents debtors, creditors and trustees in chapter 7, 11, 12 and 13 bankruptcy proceedings and enjoys litigating matters before the U.S. Bankruptcy Courts in the Central District of California. Ms. Shaw is a very active member of the bankruptcy bar and has served as a professor of bankruptcy law at the California Desert Trial Academy (CDTA). She also served as co-chair of ABI's first Consumer Practice Extravaganza in 2021, and she served as an education co-chair for the Consumer Education Programs at the Annual California Bankruptcy Forum Conferences for 2016 and 2019. In addition, she has been invited to speak at various education programs covering secured debt litigation, small business bankruptcies, individual chapter 11s, and bankruptcy law and crossover issues with civil litigation, family law, probate law and criminal law. Ms. Shaw is admitted to practice in all state and federal courts in California as well before the Ninth and Tenth Circuit Court of Appeals, and before the U.S. District Court for the Central District of California. She enjoys volunteering her time as often as possible through her local bar association's "Lawyer in the Library" program, assisting veterans through the Veterans Legal Institute, and volunteering her time to help educate new attorneys in the bankruptcy community whenever possible. Ms. Shaw was selected as a member of the inaugural class of ABI's "40 Under 40" in 2017, and in 2018, she received the National Association of Consumer Bankruptcy Attorney's National Distinguished Service Award. She has also been named one of *Palm Springs Life Magazine's* Top Bankruptcy Lawyers and was honored to be a part of the 2015 and 2016 Central District of California Bankruptcy Court's *Pro Bono* Honor Roll. Ms. Shaw received her B.S. in political science with a minor in law and society from the University of California, Riverside and her J.D. from Western State College of Law.