UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Davon Jermell White, Debtor.	Case No.: 2:24-bk-14190-NB Chapter: 7 **MEMORANDUM DECISION SUPPLEMENTING ORAL RULING RE MOTION FOR STAY PENDING APPEAL** Hearing: Date: October 10, 2024 Time: 1:00 p.m. Place: Courtroom 1545 255 E. Temple Street Los Angeles, CA 90012 (or via ZoomGov)

This Memorandum Decision supplements this Bankruptcy Court's "Order Providing Indicative Ruling That if This Court Had Jurisdiction it Would Grant Relief in Response to Motion for Stay Pending Appeal for 28 Days" (dkt. 125, "Stay Order"). Specifically, this decision elaborates on this Bankruptcy Court's oral findings of fact and conclusions of law set forth on the record at the above-captioned hearing on Debtor's motion (dkt. 117, "Stay Motion") seeking to stay the effectiveness of this Bankruptcy Court's order dismissing this bankruptcy case with a 180-day bar to being a debtor in bankruptcy (dkt. 106, "Dismissal Order").

1. BACKGROUND

Debtor filed this case under chapter 11 on May 28, 2024 (the "Petition Date"). From the inception of this case, Debtor's disclosures were inadequate and in dereliction of his duties as a debtor in possession.

a. This Bankruptcy Court was prepared to convert or dismiss Debtor's case at the first status conference based on Debtor's lack of transparency and inadequate disclosures

In advance of the first status conference in this case, on June 25, 2024, this Bankruptcy Court issued a tentative ruling that highlighted a long list of issues with Debtor's initial filings, including his Bankruptcy Schedules, Statement of Financial Affairs ("SOFA"), creditor matrix, and status conference and cautioned Debtor that failing to comply with his disclosure obligations could result in dismissal of his case or other adverse consequences. That tentative ruling stated, in part:

> (b) Anticipated motions
>
> Debtor's status report (dkt. 23) contemplates a motion for use of cash collateral, a budget motion [as mandated by the "Procedures of Judge Bason," posted at www.cacb.uscourts.gov], eight motions to avoid judicial liens, an application to employ an "Associate general counsel," and at least one more application to employ another professional - the particulars are unclear because of illegible type. *See* Stat.Rpt. (dkt. 23) p. 4. Debtor should have explained in detail in the Status Report why all of these things are appropriate or feasible. *See* Stat. Rpt. (dkt. 23, p. 2, item A.2.).
>
> As discussed below, it appears that Debtor has $100.00 in the bank, no net income, no prospects of any future net income for at least a year, and essentially no unencumbered assets with which to pay administrative expenses let alone creditors. This appears on its face to be a liquidating case in which Debtor has no realistic prospect of paying anyone, except himself through an asserted homestead exemption.
>
> Again, all of these things should have been addressed in writing prior to this hearing, and Debtor's failure to address those things might be a waiver or forfeiture of any right to contest them. Alternatively, if Debtor is permitted to address these issues orally, Debtor must address **why should this case not be immediately converted to chapter 7 or DISMISSED** [capitalization added]. *See* 11 U.S.C. 1104 & 1112, *and* Procedures Order (dkt. 6).
>
> (c) Income and assets

Debtor's bankruptcy schedules and Statement of Financial Affairs ("SOFA") are missing key information, as is his status report. They also appear to be inconsistent both internally and one to another.

Debtor reports that he is not employed; he has $100.00 in the bank; he has closed a check cashing business and a luxury car rental/"Lifestyle consultant" business, his only remaining business is owning two over-encumbered rental properties (one directly and another, in which he lived until 5/23, indirectly), and his only other significant assets are (i) a third over-encumbered property to which he moved prepetition (and in which he now asserts a homestead exemption of $699,421.00 (Sch. C, dkt. 22 at PDF p. 19)), and (ii) a Lamborg[h]ini with roughly $20,000.00 in equity. *See* dkt. 22 at PDF pp. 12, 13, 15 19, 63 & 69 *and passim*. Debtor reports that he receives $491.00 per month in food stamps and general assistance plus an estimated net income of $1,753.00 per month from an unspecified business or property - presumably one or both rental properties. *See* Bankr. Sch. I (dkt. 22 at PDF p. 59).

First, **the express instruction in bankruptcy Schedule I, line 8a [(applicable in all chapters of the Bankruptcy Code)], is to "*[a]ttach a statement* for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income."** *Id.* (emphasis added). No such statements are attached.

Second, Debtor is reminded that for *all* reporting purposes he must disclose affiliates' income and expenses (among other things). *See* Procedures Order (dkt. 6) p. 2:11-13. In other words, he must **disclose the income and expenses of the rental property that he owns indirectly** [emphasis added], not just the one that he owns directly.

Third, despite claiming to have no active businesses except two rental properties, Debtor apparently has multiple employees. *See* StatRpt (dkt. 23) p. 7 (stating that Debtor paid in cash his "workers" - plural). That appears to be inconsistent: why would rental properties need more than one employee? In fact, given that Debtor is not working and has not been working for a couple of years (per the SOFA [Statement Of Financial Affairs]), **why has he not been fully managing the rental properties himself with no employees [– *i.e.,* is his income artificially reduced?]** [emphasis added].

Fourth, Debtor's current and projected income appear to be minimal, and far less than his expenses. Debtor's historical reported gross income is under $11,000.00 per year (SOFA, dkt. 22, at PDF pp. 63-64). Debtor's current reported gross income amounts to $26,928.00 per year based on his bankruptcy Schedule I (*i.e.,* $491.00 + $1,753.00 = $2,244.00/mo. x 12 = $26,920.00). **Debtor's Schedule I states that he does not expect any other changes within the coming year. Is Debtor proposing to remain unemployed for at least the next year, rent out two rental properties for minimal if any net income (it is unclear which properties are rented out and/or which generate any positive cash flow** [emphasis added], but the current net income is far below his expenses), and do nothing else to pay creditors?

Fifth, how can Debtor suggest in his status report that he will have enough income for "refinancing" his alleged "primary residence"? *See*

> Stat.Rpt. (dkt. 23) p. 8. This is especially suspect because Debtor states under oath that he does not expect his income or expenses to change over the next year (dkt. 22 at PDF pp. 59 & 61) and he reports negative monthly net income: -$11,640.00. In these circumstances, how is any refinance possible (what lender will extend a loan based on a large negative monthly income?); and even if it were possible (from some "hard money" lender), how would it be on terms that could be approved by this Court?
>
> Sixth, **given the above issues, how can creditors, the U.S. Trustee, the Subchapter V Trustee, or this Court have any confidence that there are not other matters (presently unknown) that should have been disclosed and addressed in Debtor's bankruptcy schedules, SOFA, and status report?** [Emphasis added.]
>
> In sum, Debtor's "disclosures" appear to be wholly inadequate. They are (w) incomplete, (x) internally inconsistent, (y) so unrealistic that they make a mockery of the disclosures required by the bankruptcy rules, forms, and this Court's Procedures Order [dkt. 6], and (z) predicated on proceeding under chapter 11 even though there is no apparent reason for proceeding in chapter 11 instead of chapter 7.
>
> Of course, this Court recognizes that it has only a very limited record before it and, conceivably, there are plausible explanations for all of the foregoing issues. But the trouble is that any such explanations should have already been included in the Status Report (dkt. 23, p. 2, question A.2.), and/or in bankruptcy Schedules I and J, including in the space provided to explain any expected increase or decrease in income or expenses within the next year (dkt. 22 at PDF pp. 59 & 61).
>
> ***If*** this case is not immediately converted to chapter 7 or **DISMISSED** [emphasis added] - which, on the present record, it probably will be - the tentative ruling is to set a deadline of 7/2/24 [emphasis omitted] for Debtor to file: (A) an amended bankruptcy Schedule I with attached statements for each rental property or business and an attached explanation, under penalty of perjury, why Debtor does not expect any change in his income or expenses for the coming year, (B) an amended status report that explains how a refinance of his alleged principal residence is remotely feasible, or alternatively explains what steps he is taking toward an immediate sale of that property, and that states what Debtor intends to do with his rental properties and Lamborg[h]ini, and how all of that can make proper use of chapter 11, all supported by Debtor's declaration under penalty of perjury, and (C) whatever other amended or supplemental papers are necessary or appropriate to provide meaningful and full disclosures, all verified under oath.
>
> Debtor is cautioned that, even if this case is not converted to chapter 7 or **DISMISSED** [emphasis added] today - which it probably will be - the foregoing matters appear to be evidence of failing to appear in proper prosecution of this case, and can lead to other adverse consequences for Debtor.

Debtor and his counsel appeared at that status conference and this Bankruptcy Court emphasized the need for transparency and accurate disclosures:

> **The Court:** [B]ankuptcy comes with these huge privileges. It's not anything of course that anyone should take lightly, and it's … not something anyone feels happy about, but it does actually come with huge privileges. And that includes, for example, the automatic stay and the right to, generally speaking, to a discharge, and so on, but it also comes with enormous responsibilities. And that includes, generally speaking, that all sorts of things outside of bankruptcy you would just do, and … you wouldn't check in with anyone, you wouldn't give anyone notice, you wouldn't do anything like that. In bankruptcy there's a huge premium on transparency and on getting court authorization after notice to creditors and a chance for them to object. Do you understand, Mr. White?
> **Debtor:** Yes, I do. [Tr. 06/25/24 (dkt. 137), pp. 4:4-18, 4:25 & 5:1]

Despite this Court's serious concerns, and its stated intent prior to the hearing that it probably would convert or dismiss this case, this Court was persuaded to provide Debtor additional opportunities to appear in proper prosecution of this case.

b. Debtor continued to file incomplete and inaccurate papers and missed deadlines ordered by this Bankruptcy Court

Debtor did not take advantage of the additional time to cure the issues raised by this Bankruptcy Court. Instead, Debtor missed deadlines ordered by this Bankruptcy Court to file amended papers and filed other papers that suffered from the same deficiencies previously noted. Debtor was again made aware of these issues in tentative rulings posted in advance of continued status conferences on July 16 and 30, 2024.

The first of these tentative rulings stated in relevant part:

> **Tentative Ruling for 7/16/24:**
> Appearances required.
> …
> (a) Debtor's disclosures
> The tentative ruling is that Debtor's additional disclosures still have not sufficiently remediated the deficiencies discussed at the 6/25/24 status conference. The parties should be prepared to address that issue, and potential remedies.

At the hearing on July 16, 2024 this Bankruptcy Court reviewed with Debtor's counsel some of the ongoing deficiencies in Debtor's bankruptcy Schedules I and J:

> If I look at the amended Schedule I, which is docket 43, line 5, there's no income tax. There is no other payroll deduction. It's possible, of

course, that the Debtor is an independent contractor with whatever car business he's now working for but then Schedule J, line 16, is zero and if [Debtor is] an independent contractor I would have expected that there would be some payment there too. So, is the Debtor just not paying income taxes? It's conceivable that the debtor operates a business, and that the business has net operating loss carry forwards and therefore that the business doesn't pay taxes or whatever, but this is guess work. Why are we guessing?

We've had a status report and a status conference and at the last status conference I tried to be very clear that there needed to be a lot of disclosure so that people have a complete financial picture. I got some oral financial disclosure, but I directed the Debtor to file amended Schedules I and J and a cash collateral motion and a budget motion.

Now there's no budget motion that I've seen and the cash collateral motion simply attaches the same lack of information that's in the Schedules I and J. And, to resume with Schedules I and J, there is not only no indication of any income tax being paid by anyone or any business at any level … if Debtor is an independent contractor then Schedule I, line 8a, says for each business attach a schedule of gross revenues and expenses and net income so that should have been addressed both for the business that owns the one rental property but also it says for each business or each rental property so for all of the rental properties and if the debtor is an independent contractor Schedule I, line 8a, would say attach a statement. And if the statement is that there are no other expenses … that seems very dubious. Really? There are no other expenses? Again, come back to taxes, come back to insurance. The tenants pay the insurance on the property? Seems doubtful. It's possible but seems doubtful … and if all of those things really don't need to be reported I would have expected, as in any financial statement, a footnote. Something that would say there is no income tax shown because there are net operating loss carry forwards or because the Debtor isn't expected to earn any income for the foreseeable future or I don't know what the explanation would be but it's very odd and it would normally require some sort of explanation.

Next issue. The net income on amended Schedule J, docket 43, line 23, says eight dollars a month. Not eight hundred dollars a month, not eight thousand. Eight dollars a month. And although now the amended Schedule I does say that there is an expected change in the future … [t]he only information is potential commissions [*i.e.,* nothing about future changes in rental income, or any new or additional employment consistent with Debtor's historical earnings]. Well, first of all, if that's the income and there is just some potential hope of … future income, again this looks like a liquidating case. There is no income, there's no assets beyond liens … why isn't this a chapter 7?

Going back to the expenses that should have been either in Schedule J or in the schedules attached to Schedule I, line [8]a, what about, in addition to income taxes that I've mentioned several times, what about property taxes? And is it really true that the tenants are paying not only all water and electricity and gas and garbage but also for repairs and

> maintenance and a gardener and HOA dues? … No expenses at all? This all just seems bizarre and if that's really true I would have expected some explanation.
>
> At the last hearing I had ordered a budget motion and cash collateral motion to be filed by July 9. There was a cash collateral stipulation that was filed later on but it doesn't include any more information about any of this. So it seems as if you know despite what I said at the last hearing and despite the procedures order [dkt. 6] that requires … disclosure for any affiliate the same as if it were the debtor unless you're excused … I'm still getting nothing. I'm getting no information on this and that means creditors are not getting any information and the United States Trustee is not getting information and the Subchapter V Trustee is not getting any information about all of these things and maybe there is an explanation for why there is no income tax, no property tax, no insurance listed, no garbage collection fee ... maybe all of this has an explanation but its just really frustrating, frankly, to have to dig for all of these things, especially when I thought it had been conveyed at the last hearing that there needs to be real candor about this.
>
> So I just feel as if the debtor is just digging himself deeper, that this has the flavor of someone who is trying to hide the ball and/or someone who is intentionally trying to minimize income … The more Debtor tries to hide information the more suspicious I get. And it just, especially after the last hearing when the Debtor was present and I tried to say you need to be very candid, it's all about being an open book and providing information, and to get back in response to that two lines of here is the property's gross income and here is the mortgage expense and that's it … it just seems that the Debtor wasn't paying attention to the sort of disclosure that's needed …. [Audio from 07/16/24 hearing, commencing at timestamp 1:54:56 p.m. (on file with the Clerk of the Court).]

Before noon on July 26, 2024 this Court posted its tentative ruling for the hearing on July 30, 2024. That was before Debtor's deadline to file his further amended bankruptcy Schedules I and J and his budget motion, so the tentative ruling did not address those things, but it did address the budget attached to a cash collateral stipulation.

> **Tentative Ruling for 7/30/24:**
> Appearances required.
> …
> (b) Notice (dkt. 45) of (implicit) motion to approve cash collateral stipulation (dkt. 44)
>
> **The bare-bones "profit and loss" projection (proposed budget) attached to the stipulation suffers from the same deficiencies as Debtor's first amended bankruptcy Schedules I and J** [emphasis added] (dkt. 43) as discussed at the hearing on 7/16/24. *See also* Tentative Ruling for 6/25/24 (reproduced below). …

> All of that said, the tentative ruling is to treat the notice and stipulation together as a form of cash collateral motion and approve it because (i) the only party whose asserted interest in cash collateral is being affected (V & E Inc.) has signed off on the stipulation, (ii) no party in interest has objected to Debtor's procedure or to Debtor's concessions as to V & E Inc. having a security interest (dkt. 44, pp. 1:28-2:5) nor to the limitation period for anyone to challenge the terms of the stipulation (*id.*, pp. 3:22-4:9), and (iii) those provisions appear to be reasonable. Debtor's counsel is cautioned, however, that in future an actual motion should be filed and served (it can be very short - just a request to approve the stipulation - but there should be a motion).
> …
> (c) Budget motion [none filed as of preparation of this tentative ruling]
> This Court's concerns about the **lack of information in the proposed budget** [emphasis added] (see part "(1)(b)" of this tentative ruling, above) are much more significant in connection with the budget motion that Debtor was supposed to have filed. As of the preparation of this tentative ruling, no such motion has been filed. The parties are directed to address these issues at the hearing.
> …

After the preparation of the above-quoted tentative ruling, Debtor filed his further amended bankruptcy Schedules I & J (dkt. 80) and a budget motion (dkt. 81) both of which list net income of negative $593.00 from the rental properties and which belatedly provide a statement of gross income and expenses. Unlike a typical chapter 11 budget, which projects future income over a period of time such as 13 weeks (typical for an operating business) or three to six months (typical for a rental property), Debtor's budget failed to provide any such projections: it was just a snapshot, apparently based on an "Average" over the "6 Months" before the Petition Date. *Id.* at PDF p. 11.

In addition, despite the instructions on Schedules I and J to explain any anticipated increase or decrease in income or expenses within the year after the Petition Date, Debtor failed to disclose any such anticipated changes. Of course, if Debtor truly did not expect any increase in his *negative* monthly rental income, one would expect that he would have disclosed an intent to abandon or sell the rental properties (just as Debtor stated, with respect to his principal residence, that he "will be

selling his home," dkt. 81 at PDF pp. 8 & 10), but Debtor did not make any such disclosure.

The remaining component of Debtor's income, beyond his rental income, is earnings from employment. Here, too, his disclosures were inadequate. True, his amended Schedule I did disclose that Debtor "expects [his] commissions to be much higher than [the] $1,000.00 per month" listed on Schedule I, line 3. But it failed to include any information about when or how much.

At the hearing on July 30, 2024, this Bankruptcy Court again expressed its concern that Debtor was abusing the bankruptcy process:

> **The Court:** I've got a number of concerns from the papers that were filed. … [T] he context here is that I – my feeling, just from where I sit, and maybe there's more information provided to the Subchapter V Trustee or the United States Trustee along the way … – … it's been like pulling teeth to get any context and full information from Debtor. And although there's been some supplemental information, there's still a lot that's missing.
>
> For example, the Debtor's budget figures are apparently based on an average of six months, but of course that is – I don't know about intentionally misleading, but it's not very helpful to have an average when the Debtor only recently got employment and when – it's hard to know anything about the employment income, future income, based on a – the one hypothetical example with no backup that was given in the declaration.
>
> So, let me expand on that a little. There's an example of I think if there were to be a car that were purchased at an auction for 26,000 or something and then sold for 30,000, a 15-percent commission on that – the math wasn't done, but if you take 24 subtracted from 30, that gives you 6,000. Six thousand times 15-percent would … get you to the $600 that I think was put forth in the declaration … Okay, but is that realistic?
>
> Is the business – is the particular car dealership that the Debtor is working for a high-end dealership? Are we talking about cars that are being sold for [$]180,000, [$]320,000 or figures like that, or are we talking about cars that the – that are more sort of a standard retail amount? What sort of volume does this business do? What's the nature of the dealership? What is – does it deal in Fiats or in Range Rovers, or what? There's no context at all.
>
> And so there's this hypothetical without even any statement in the declaration that the hypothetical is representative of anything. But supposing it is, okay, that's one transaction. How many transactions are expected …
>
> [¶] Then the budget also seems to be misleading in the sense that – again, just turning from the earnings income to the marina property income, not in the budget but in other papers, it seems to be stated that

the marina property is vacant. So, the budget is a fiction, and there's no disclosure in the budget that that particular item is a fiction.

...

Then what efforts is the Debtor making to rent out that property? Or now maybe it's already been foreclosed, maybe it's in the process of being foreclosed, maybe there's something been worked out. If so, what's the thing that's been worked out … There's no information about any of that.

Then the budget refers to the – to rent/Airbnb, but which is it? Or is the Debtor still thinking about what to do? Or – and if so, what's going to go into that decision? To the extent the Debtor does list the property or either – any of the properties on Airbnb or any similar internet platform, what about the listing fees for that sort of platform? What about any other charges from Airbnb or whoever? There was nothing in the budget about that.

So, this is after we've already been a couple rounds of this, where I've raised where are the taxes being paid? Where are the HOA fees … what about the gardener, what about all of these things? Now, some of those things have been included, but we don't have the Airbnb expenses. What else is missing? This seems like a game of catch me if you can. This is really not the sort of disclosure that I think is required.

Then the status report refers to an existing tenant in the Wonderview (phonetic) property. And – but after paying – it gives an average income of $13,050, but then there's [$]12,148.23 for the mortgage and [also] other expenses, which means that it's losing [$]358.23 per month. There's no discussion about whether those losses are expected to continue or that the Debtor has the ability to increase rent.

Is the property under some sort of rent control? Is it under a long-term lease, is it a short term, is it a month to month? Can there be an increase? You know, we're left guessing. And by we, I mean, creditors and the Subchapter V Trustee and the United States Trustee, and also this Court.

And I'm concerned that this is just an abuse of process. That there's an attempt to hide the ball and not be forthcoming about all of these things.

…

But my overarching concern is that creditors can make their decision on [whether to confirm a plan] if they have accurate information and complete information. And that brings me back to how this just stinks. It doesn't seem to be accurate and complete information, and this is after several rounds of trying to get this.

And I know Mr. Fritz has already invested time in this, Ms. Law has already invested time in this, and creditors may be wanting to – this to go forward, but I just really have concerns about the integrity of the system when there are these many things this late in the game that are still missing.

[Tr. 7/30/24 (dkt. 136), pp. 5:8-9:11, 10:11-13 & 10:23-11:10]

c. This Bankruptcy Court's order to show cause put Debtor on notice that his case could be dismissed and the grounds for such dismissal

In view of Debtor's woeful failure to come into compliance with his disclosure obligations, on August 7, 2024, this Bankruptcy Court issued an "Order Directing Debtor to Appear and Show Cause Why This Court Should Not (A) Convert This Case to Chapter 7, (B) Dismiss This Case With a 180-[Day] Bar to Being a Debtor in Bankruptcy, (C) Expand the Powers of the Subchapter V Trustee, or (D) Impose Other or Additional Remedies" (dkt. 90, the "OSC").

The OSC described Debtor's lack of compliance with his disclosure obligations, including his failure to (w) file accurate and complete monthly operating reports ("MORs"), (x) provide accurate and complete disclosures of income and expenses in Bankruptcy Schedules I and J, (y) provide any adequate explanations regarding his past, present, and future finances and how he expected, when he filed his bankruptcy case and thereafter, to make proper use of bankruptcy, among other things. *Id.* pp. 2:14-3:21 & Ex. A. The OSC also directed Debtor to file further amended papers curing previously noted errors, omissions, inconsistencies, and lack of disclosure, but the papers Debtor did file (dkt. 89) still lacked sufficient disclosures. *See* Dismissal Order (dkt. 106), pp. 4:15-14 (describing deficiencies with Debtor's Amended Budget Motion). The OSC stated the statutory basis for the proposed relief by incorporating the adopted tentative ruling that was attached as Exhibit A and which cited 11 U.S.C. §§ 1104 and 1112, and this Bankruptcy Court's Procedures Order (dkt. 6).

The United States Trustee filed a timely response to the OSC (dkt. 94, "UST Response") recommending conversion of the case to chapter 7. The UST detailed the many ways in which Debtor's MORs had been deficient (*id.,* p. 4:11-27) and concluded more generally that "Debtor has not prosecuted this case in a manner allowing for transparency and monitoring of this case" and has only "react[ed] when others take action" to compel his compliance. *Id*., p. 6:13-14 & 16-19.

d. Debtor's conversion of his case to chapter 7 did not excuse his postpetition misconduct

In response to the OSC and UST Response, on August 22, 2024, Debtor moved to convert his case to chapter 7. Dkt. 97 ("Conversion Motion"). This Bankruptcy Court granted that motion (dkt. 99, "Conversion Order") but in the view of this Court the conversion of this case to chapter 7 did not excuse Debtor's postpetition, pre-conversion misconduct. Accordingly, that order stated, in relevant part:

> Notwithstanding the conversion of this case to chapter 7, the September 10, 2024 at 1:00 p.m. hearing on this Court's "Order Directing Debtor to Appear and Show Cause Why this Court Should not (A) Convert this Case to Chapter 7, (B) **Dismiss this case with a 180-day Bar** to Being a Debtor in Bankruptcy, (C) Expand the Powers of the Subchapter V Trustee, or (D) Impose **Other or Additional Remedies**" (dkt. 90, "OSC) (emphasis added) will go forward pursuant to 11 U.S.C. § **707(b) [sic (should have been 707(a))]** (instead of 11 U.S.C. § 1112(a)) and Debtor is directed to appear to address whether this case should be dismissed with a 180-day bar to being a Debtor in bankruptcy pursuant to 11 U.S.C. 109(g)(1).
> [Conversion Order (dkt. 99), p. 2, para. 7a (emphasis altered)]

e. Debtor's opposition to the OSC addressed whether "cause" existed to dismiss this case under section 707(a)

Debtor filed a timely opposition to the OSC acknowledging that the Conversion Order stated the OSC would still go forward pursuant to 11 U.S.C. § 707(b) (instead of 11 U.S.C. § 1112(a)) and correctly noting that section 707(b) does not apply because his debts are primarily business debts, rather than consumer debts. Opp. (dkt. 101), pp. 2:16-17, 23-3:9. Debtor also correctly noted that this Bankruptcy Court's reference to section 707(b) was likely in error and argued that dismissal was not warranted under 11 U.S.C. § 707(a) because he "had not engaged in any fraudulent behavior" or hidden assets or income. Opp (dkt. 101), pp. 3:10-4:7. Therefore, Debtor argued that "cause" did not exist to dismiss the case under section 707(a).

Debtor also responded to the OSC by filing yet another amended budget, attached to an amended budget motion (dkt. 89). Unlike some of Debtor's prior budgets, this amended budget did not include any bankruptcy Schedules I and J, and

instead lumped various income and expenses into broader categories without disclosing a breakdown of individual items (as further discussed below).

f. This Bankruptcy Court's tentative ruling for the hearing on the OSC put Debtor on notice of this Bankruptcy Court's intention to dismiss this case pursuant to section 707(a) and provided the grounds for dismissal

In advance of the September 10, 2024 hearing on the OSC, this Bankruptcy Court issued a tentative ruling that clarified this Bankruptcy Court's intent to dismiss the case with a 180-day refiling bar pursuant to 11 U.S.C. §§ 707(a) and 109(g)(1). That tentative ruling stated in relevant part:

> (a) Order to show cause (dkt. 90, "OSC"), U.S. Trustee's ("UST") response to OSC (dkt. 94), Motion to convert case (dkt. 97), Order converting case to chapter 7 (dkt. 99, "Conversion Order"), Proof of service of OSC and Conversion Order (dkt. 100), Debtor's opposition to OSC (dkt. 101), no reply on file
>
> The tentative ruling is to dismiss this case for "cause" under 11 U.S.C. 707***(a)*** [emphasis added], with a 180-day bar to being a debtor in bankruptcy pursuant to 11 U.S.C. 109(g)(1) based on Debtor's willful failure to appear in proper prosecution of the case while he was a debtor in possession in chapter 11, for the reasons set forth in this Court's adopted tentative rulings for 6/25/24, 7/16/24 & 7/30/24 (copied below), the OSC, and the additional reasons set forth below.
>
> (i) Debtor's disclosures in response to the OSC continued to be inadequate
>
> The OSC (dkt. 90) described Debtor's lack of compliance with his disclosure obligations and directed Debtor to, among other things, file an amended budget motion addressing this Court's previous concerns. On 8/6/24 Debtor filed a further amended budget motion (dkt. 89), but that motion still lacked sufficient disclosures. For instance,
>
> (A) Date/duration of proposed budget: The budget states that it is for January, 2021 (dkt. 89, PDF p. 7). This Court presumes that is a clerical error and that Debtor intended for it to state January, 2024, but (x) it is not clear why Debtor is not including more current income and expense figures, such as from August, 2024 (when his earnings prospects may have improved and also become more certain), and (y) it is typical for debtors to attach a 13 week or 3-6 month budget, rather than a snapshot in time of a single month, especially when there are reasons to believe that income and expenses have changed and will continue to change. In sum, why is Debtor limiting his disclosures to a single month long in the past, especially given this Court's previously expressed concerns?
>
> (B) Income: Debtor lists $1,000.00 in anticipated commissions, but Debtor's Amended Bankruptcy Schedule I (dkt. 80, PDF

p. 3) states that he expects commissions to be much higher than $1,000.00 per month in future. Again, why did Debtor not provide a budget for a much longer period of time?

Debtor also lists $1,710.66 in monthly "payroll deductions," but it is not clear whether that includes voluntary contributions to a retirement plan, or any other discretionary deductions which may or may not be appropriate for a debtor in bankruptcy (dkt. 89, PDF p. 7). It is also not clear what exactly Debtor means by "Net rental income," because the figure listed in that line item ($758.23), does not match up with any of the figures listed on the following page (compare *Id.,* PDF p. 7 with figures on PDF p. 8).

(C) Expenses: Debtor's proposed budget lists $550.00 for utilities, but what does that include? Does that include cable tv? Premium cable? Debtor's Bankruptcy Schedule B (dkt. 22, PDF p. 13) states that he owns an F150 Raptor and a 2019 Lamborg[h]ini, but Debtor only lists $150.00 for car insurance. Is that sufficient coverage? Similarly, Debtor lists $1,096.00 in monthly car payments for those two vehicles, but are those appropriate expenses for a debtor? Debtor also lists $774.17 in monthly insurance, but what is that for? Health insurance? House insurance? Dental and vision? Long term care insurance?

(D) Conclusion as to budget motion

All of the foregoing are just examples of the vagueness and lack of disclosures in the latest budget motion. Of course, this Court notes that Debtor has converted his case to chapter 7, and this Court does not require budget motions in chapter 7 cases, so the issues addressed above are moot so far as the amended budget motion is concerned. But, the point is that this Court and creditors still do not have a clear understanding of Debtor's financials, and Debtor's continued failure or refusal to provide adequate disclosures lead to this Court's tentative ruling that Debtor has been intentionally vague - whether to give the impression that he has less income to pay creditors than he might actually have, or for some other reason - in contravention of his disclosure obligations.

(ii) Summary of grounds for potential remedies under the OSC

All of the foregoing repeated problems with Debtor's budget motion are, of course, on top of Debtor's failure to file accurate and complete MORs (*see* UST response, dkt. 94), Debtor's failure to provide accurate and complete disclosures of income and expenses in bankruptcy Schedules I and J (*see* OSC, dkt. 90, p. 2:15-25 *and* pp. 6:24-8:17); and Debtor's failure in his initial status report to provide any adequate explanations regarding his past, present, and future finances and how he expected, when he filed his bankruptcy case and today, to make proper use of bankruptcy. *See id.,* p. 6:13-23. All of those things are "cause" for dismissal (11 U.S.C. 707(a)); and they are evidence of a willful failure to appear in proper prosecution of this case.

Note: Debtor may request an opportunity to testify on these issues, subject to cross examination by the UST and any other parties in interest or by this Court, either briefly at this hearing or at a continued hearing.

Debtor is cautioned, however, that depending on whether his testimony were to be believed that could make things either better or worse for him, and might be a basis for criminal prosecution or other adverse consequences (*e.g.,* a longer bar than 180 days).

(iii) Debtor's conversion to chapter 7 does not excuse his past noncompliance

Debtor's opposition papers argue that neither 11 U.S.C. 707(a) or 707(b) apply and, alternatively, that his voluntary conversion to chapter 7 is in the best interest of creditors. Opp. (dkt. 101). Debtor is correct that this Court intended to refer to section 707(a) not 707(b) in the Conversion Order. But this Court is not persuaded by Debtor's arguments.

Debtor's reliance on *In re Padilla,* 222 F.3d 1184, 1191 (9th Cir. 2000), and *In re Sherman,* 491 F.3d 948 (9th Cir. 2007), is inapposite. First, Debtor asserts that his conduct was not intentional and, although his disclosures "did not satisfy the Court" there were "no assets or income hidden." Debtor Respon. (dkt. 101) p. 4:6-7 (emphasis added). But this Court disagrees: the tentative ruling is that, based on Debtor's repeated failures and refusals to provide information required by the Bankruptcy Code and Rules and by this Court, he did *intentionally* hide information regarding both his assets and income.

Second, Debtor's acts and omissions fall within one of the specific statutory examples of "cause," namely "unreasonable delay by the debtor that is prejudicial to creditors." 11 U.S.C. 707(a)(1). Debtor unreasonably delayed - in fact he *never* provided - adequate financial disclosures. That was prejudicial to creditors by preventing them from knowing Debtor's true ability to pay any dividend to creditors (or at least preventing creditors from obtaining such knowledge without the expense and delay of attempting to extract discovery out of Debtor, which for most creditors would mean throwing good money after bad, given the high cost and low present value of any discovery in attempting eventually to collect their claims).

Third, as Debtor acknowledges, the term "including" is not limiting, so the examples in 11 U.S.C. 707(a) are not the only circumstances in which "cause" can be found. *See* Debtor Resp. (dkt. 101) p. 3:20-23 (citing 11 U.S.C. 102(3)).

Fourth, this Court's OSC was not premised on whether Debtor *filed* this bankruptcy case or his motion to convert to chapter 7 in good faith. Rather, as highlighted in the OSC and the rest of this tentative ruling, it is Debtor's *post-petition* and *pre-conversion* conduct - *i.e.* his failure to comply with his disclosure obligations - that, in this Court's tentative ruling, establish "cause" for dismissal and that he willfully failed to appear in proper prosecution of this case.

The tentative ruling is that Debtor's conversion to chapter 7 does not excuse his prior bad acts. The tentative ruling is also that, in this Court's view, Debtor should not be permitted to escape the consequences of those bad acts by simply converting his case to chapter 7. In other words, ***Debtor should not be permitted to obtain the benefits of the automatic stay and receive a discharge without providing the quid***

> ***pro quo of timely, accurate, and complete financial disclosures.*** Moreover, the tentative ruling is that Debtor has willfully failed to appear in proper prosecution of this case. Accordingly, the tentative ruling is to dismiss this case under 11 U.S.C. 707(a), with a 180-day bar under 11 U.S.C. 109(g)(1). [Emphasis added.]

g. At the hearing on September 10, 2024 Debtor contested the tentative ruling and addressed on the record whether sufficient "cause" existed to dismiss his case under section 707(a)

Debtor appeared at the hearing on the OSC, individually and through his attorneys, and argued on the record that his past conduct did not constitute "cause" under section 707(a) warranting dismissal. After considering Debtor's oral arguments, this Bankruptcy Court was not persuaded to deviate from its tentative ruling, so this Bankruptcy Court adopted the tentative ruling as the actual ruling and orally dismissed this case with a 180-day bar to being a debtor in bankruptcy.

On September 12, 2024 this Bankruptcy Court issued the Dismissal Order (dkt. 106), which incorporated this Bankruptcy Court's findings of fact and conclusions of law set forth on the record and this Bankruptcy Court's adopted tentative rulings for June 25, 2024, July 16, 2024, July 30, 2024, and September 10, 2024, which were also attached to the Dismissal Order as Exhibit A. Put differently, the Dismissal Order did not recite new grounds for dismissal, but merely incorporated the reasons previously articulated for the dismissal.

h. Debtor belatedly sought to stay the effectiveness of the Dismissal Order

On September 25, 2024 Debtor filed a timely notice of appeal (dkt. 111) to the Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals (the "BAP"). Dkt. 112. On October 3, 2024, three weeks *after* this Bankruptcy Court dismissed Debtor's case, Debtor filed the Stay Motion arguing that he did not learn of the reasons for the dismissal of his case until after his case was dismissed and, therefore, the Dismissal Order was an unfair surprise. Stay Motion (dkt. 117), pp. 2:2-6 & 4:18-5:1.

On October 10, 2024, this Bankruptcy Court held a hearing on the Stay Motion on shortened notice. After hearing oral argument, this Bankruptcy Court set forth its oral findings of fact and conclusions of law on the record.

The same day this Bankruptcy Court issued the Stay Order (dkt. 125) memorializing its indicative ruling that, pursuant to Rule 8008 (Fed. R. Bankr. P.), if this Bankruptcy Court had jurisdiction to vacate the Dismissal Order, it would do so, because that would enable this Court to stay the dismissal long enough for Debtor to request that the BAP grant a further stay pending resolution of the merits of the appeal. To be clear, this Bankruptcy Court was not having second thoughts about the merits of its Dismissal Order. The only point is that this Bankruptcy Court believes that a temporary stay would be appropriate (and would have been granted if it had been timely requested) for the reasons discussed below – primarily because of (i) the serious consequences of dismissal and (ii) the fact that dismissal had been initiated on this Court's own motion (albeit with later support by the UST about Debtor's lack of proper prosecution of this case).

The Stay Order outlined some procedures that Debtor might use to accomplish a stay pending appeal. Debtor could (a) seek a remand from the BAP to this Bankruptcy Court to vacate the dismissal order and grant a temporary stay or (b) seek some action by the BAP that would accomplish the same effect without a remand – *e.g.,* if the BAP could effectively, without remanding, vacate the actual dismissal of this case but leave in place the Dismissal Order and impose a stay on dismissal of this case pending the BAP's decision whether or not to affirm the Dismissal Order. *See* Stay Order (dkt. 125). (This Court expresses no opinion whether any such action by the BAP would be possible. This Court is merely illustrating that, at least hypothetically, there might be alternatives to remanding.) The Stay Order also stated that this Bankruptcy Court would issue a written supplement that elaborates on this Bankruptcy Court's oral findings of fact and conclusions of law set forth on the record.

Based on the foregoing, this Memorandum Decision provides further explanation in support of this Bankruptcy Court's Dismissal Order, and in support of this Bankruptcy Court's indicative ruling set forth in the Stay Order.

2. JURISDICTION, AUTHORITY, AND VENUE

This Bankruptcy Court has jurisdiction, and venue is proper, under 28 U.S.C. §§ 1334 and 1408. This is a "core" proceeding in which this Bankruptcy Court has the authority to enter a final judgment or order under 28 U.S.C. § 157(b)(2)(A). *See generally Stern v. Marshall*, 131 S. Ct. 2594 (2011); *In re Deitz*, 469 B.R. 11 (9th Cir. BAP 2012) (discussing *Stern*); *In re AWTR Liquidation, Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (same).

3. LEGAL STANDARD FOR A STAY

Pursuant to Rule 8007(a)(1)(A) (Fed. R. Bankr. P.), a bankruptcy court may issue a stay of a judgment, order, or decree pending appeal. In determining determining whether to grant a stay pending appeal, courts generally consider the following four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
> (2) whether the applicant will be irreparably injured absent a stay;
> (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
> (4) where the public interest lies.
> [*Nken v. Holder*, 556 U.S. 418, 433 (2009).]

Courts have discretion to grant a stay pending appeal based on the facts and circumstances of the particular case. *Nken*, 556 U.S. at 433. For example, in this case, this Court has considered that the OSC was initiated on this Court's own motion as a circumstance that weighs in favor of granting a stay pending appeal.

Debtor bears the burden of establishing grounds for a stay. As the Supreme Court has explained, a stay pending appeal:

> "is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co.,* 272 U.S., at 672, 47 S.Ct. 222. It is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.,* at 672–673,

> 47 S.Ct. 222; *see Hilton, supra,* at 777, 107 S.Ct. 2113 ("[T]he traditional stay factors contemplate individualized judgments in each case"). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion….
>
> The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be "better than negligible." … By the same token, simply showing some "possibility of irreparable injury," *Abbassi v. INS,* 143 F.3d 513, 514 (C.A.9 1998), fails to satisfy the second factor.
>
> [*Nken v. Holder*, 556 U.S. 418, 434–35.]

To be entitled to a stay pending appeal, the moving party must make a "minimum permissible showing" with respect to each of the four factors. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (citing *Nken*, 556 U.S. at 434). Provided the moving party meets a minimum threshold as to each factor, this Bankruptcy Court may "balance the various stay factors once they are established." *Id.* at 965. Under this balancing approach, a stronger showing of irreparable harm can offset a weaker showing of likelihood of success on the merits, and vice versa – provided that the minimum threshold with respect to each factor has been established. *Id.* at 965-66; *see also id.* at 964 ("Petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of hardships tips sharply in petitioner's favor. These standards represent the outer extremes of a continuum, with the relative hardships to the parties providing the critical element in determining at what point on the continuum a stay pending review is justified.").

4. ANALYSIS

a. Debtor has not cited any authority that he can belatedly stay the Dismissal Order

The Dismissal Order became effective immediately because Debtor did not seek a stay pending appeal prior to its entry. *See In re Townley*, 2011 Bankr. LEXIS 4797, at *16-17 (9th Cir. BAP Nov. 7, 2011). Upon dismissal of this case, the bankruptcy estate terminated and all property of the estate revested in the entity in which such property was vested immediately before the commencement of the case. 11 U.S.C. § 349(b)(3).

Debtor has not cited any authority that this Bankruptcy Court may retroactively stay the effectiveness of the Dismissal Order and this Bankruptcy Court has not been able to find any legal authority authorizing this Bankruptcy Court to grant that relief through its own independent research. In fact, relevant legal authority provides that an order vacating the dismissal of a case can only provide *prospective* relief, not *retroactive* relief. *See, e.g., In re Sewell*, 345 B.R. 174, 180 (9th Cir. BAP 2006) ("To vacate all of the effects of a dismissal order retroactively could have far ranging, unintended consequences").

b. Debtor's appeal divests this Bankruptcy Court of jurisdiction to vacate or modify the Dismissal Order but this Bankruptcy Court can issue an indicative ruling

Debtor's appeal of the Dismissal Order divested this Bankruptcy Court of jurisdiction to vacate or modify the Dismissal Order. *See Sherman*, 491 F.3d 948, 967 (A timely-filed notice of appeal divests a bankruptcy court of jurisdiction "over those aspects of the case involved in the appeal"); *see also In re Marino*, 234 B.R. 767, 769 (9th Cir. BAP. 1999) ("A pending appeal divests a bankruptcy court of jurisdiction to vacate or modify an order which is on appeal"). As such, this Bankruptcy Court lacks jurisdiction to vacate the Dismissal Order to enter an amended order that includes a temporary stay.

Nevertheless, notwithstanding this Bankruptcy Court's general lack of jurisdiction, the rules have been amended to permit "indicative rulings":

> **Rule 8008. Indicative Rulings**
> (a) **Relief Pending Appeal** If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:
> (1) defer considering the motion;
> (2) deny the motion; or
> (3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue. [Rule 8008(a), Fed. R. Bankr. P.]

Accordingly, pursuant to Rule 8008, this Bankruptcy Court issued the Stay Order with its indicative ruling on October 10, 2024 and now issues this written Memorandum Decision supplementing and elaborating on this Court's oral findings of fact and conclusions of law set forth on the record (per Rule 52(a)(1), Fed. R. Civ. P., incorporated by Rules 7052 and 9014(c), Fed. R. Bankr. P.).

c. If this Bankruptcy Court had jurisdiction it would vacate the Dismissal Order and grant in part the Stay Motion

As set forth in the Stay Order, and as further supplemented below, pursuant to Rule 8008(a)(3) (Fed. R. Bankr. P.), if the BAP were to remand the issue back to this Bankruptcy Court to rule on the Stay Motion, this Bankruptcy Court would vacate the current version of the Dismissal Order and grant in part Debtor's request for a stay pending appeal by amending that order to include a twenty-eight day stay pending the Debtor's appeal so as to provide the BAP with time to determine whether to grant a further stay pending resolution of the merits of the appeal.

d. Likelihood of success on the merits

As the Ninth Circuit has explained:

> The first showing a stay petitioner must make is "a strong showing that he is likely to succeed on the merits." *Id.* at 1761 (quoting *Hilton,* 481 U.S. at 776, 107 S.Ct. 2113) (quotation marks omitted). There is some uncertainty as to the exact degree of likely success that stay petitioners must show, due principally to the fact that courts routinely use different formulations to describe this element of the stay test. What is clear, however, is that to justify a stay, petitioners need not demonstrate that it is more likely than not that they will win on the merits….
>
> There are many ways to articulate the minimum quantum of likely success necessary to justify a stay — be it a "reasonable probability" or "fair prospect," as *Hollingsworth,* 130 S.Ct. at 710, suggests; "a substantial case on the merits," in *Hilton*'s words, 481 U.S. at 778, 107 S.Ct. 2113; or, as articulated in *Abbassi,* 143 F.3d at 514, that "serious legal questions are raised." We think these formulations are essentially interchangeable, and that none of them demand a showing that success is more likely than not. Regardless of how one expresses the requirement, the idea is that in order to justify a stay, a petitioner must show, at a minimum, that she has a substantial case for relief on the merits. [*Leiva-Perez*, 640 F.3d 962, 967–68.]

Debtor advances two arguments in the Stay Motion as to why he is likely to succeed on the merits.

(i) Debtor is not likely to succeed on appeal on the grounds that he purportedly was denied due process

First, Debtor argues that he was denied due process because he first learned that this Bankruptcy Court intended to dismiss his case under section 707(a) after this Bankruptcy Court dismissed his case. Stay Motion (dkt. 117, p. 4:9-5:1). Although Debtor is correct that the OSC initially required Debtor to address whether dismissal was appropriate under 11 U.S.C. 1112(a) (dkt. 90) and inadvertently referred to 11 U.S.C. 707(b) (rather than 707(a)) in the Conversion Order (dkt. 99), Debtor is not likely to succeed on the merits on this argument because, as discussed in Sections (1)(e)-(g) above, Debtor had an opportunity to (and did) address whether dismissal was appropriate under 11 U.S.C. 707(a). Debtor (x) filed written papers (dkt. 101) and (y) appeared at the hearing on the OSC and made arguments on the record addressing whether dismissal was warranted under section 707(a). Accordingly, Debtor was not deprived of an opportunity to present arguments in opposition to dismissal under section 707(a). There was no violation of due process.

(ii) Debtor is not likely to succeed on appeal on the grounds that dismissal was improper under section 707(a)

Second, Debtor argues that he is likely to succeed on appeal because section 707(a) was not the proper tool for this Bankruptcy Court to dismiss Debtor's case because under that section bad faith does not constitute "cause" in the Ninth Circuit. Stay Motion (dkt. 117), p. 5:14-16. Debtor argues, citing out-of-circuit cases, that conversion to chapter 7 eliminates all rights and obligations stemming from chapter 11 proceedings and that acts taken while a debtor is in chapter 11 may be considered but should not be determinative in deciding whether to dismiss a chapter 7 case. *Id.* pp. 5:24-7:6 (citations omitted). This Bankruptcy Court is not persuaded that Debtor is likely to succeed on this issue appeal, for the following reasons.

(A) Legal standard for dismissal under section 707(a)

Under section 707(a), a "court may dismiss a case under this chapter only after notice and hearing and only for cause, including" three enumerated grounds. 11 U.S.C. § 707(a). The grounds set forth in section 707(a)(1)-(3) are illustrative and not exhaustive. *In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000) (citations omitted).

In the Ninth Circuit, courts evaluate whether "cause" exists to dismiss a case by applying a two-part inquiry. *Sherman*, 491 F.3d 948, 970 (citing *Padilla*, 222 F.3d at 1194). First, this Court must consider whether the circumstances asserted to constitute "cause" are "contemplated by any specific Code provision applicable to Chapter 7 petitions." *Sherman,* 491 F.3d 948, 970 (citation omitted). If the asserted "cause" is contemplated by a specific Code provision, then it does not constitute "cause" under section 707(a). *Id.* If, however, the asserted "cause" is not contemplated by a specific Code provision, then this Court must further consider whether the circumstances asserted otherwise meet the criteria for "cause" for dismissal under section 707(a). *Id.*

(B) Debtor's case was properly dismissed for "cause" under section 707(a)(1)

Debtor is not likely to succeed on the merits on appeal, because, as set forth in this Bankruptcy Court's Dismissal Order (dkt. 106), which incorporates this Bankruptcy Court's adopted tentative ruling from the OSC hearing, Debtor's repeated failures and refusals to provide information required by the Bankruptcy Code and Rules and by this Bankruptcy Court and his intentional hiding of information regarding both his assets and income constitutes an "unreasonable delay by the debtor that is prejudicial to creditors" that is specifically designated as sufficient "cause" for dismissal under section 707(a)(1). As this Bankruptcy Court's adopted ruling explained:

> Debtor unreasonably delayed - in fact he ***never*** provided - adequate financial disclosures. That was prejudicial to creditors by preventing them from knowing Debtor's true ability to pay any dividend to creditors (or at least preventing creditors from obtaining such knowledge without the expense and delay of attempting to extract discovery out of Debtor, which for most creditors would mean throwing good money after bad, given the

> high cost and low present value of any discovery in attempting eventually to collect their claims). [Dkt. 106, PDF p. 6 (emphasis in original).]

Debtor was given four opportunities to file proper Bankruptcy Schedules I and J, but repeatedly filed incomplete and internally inconsistent schedules and missed other deadlines ordered by this Bankruptcy Court. He filed bare bones "profit and loss" projections based on a snapshot of income and expenses averaged over the six-month period pre-petition, rather than future projected income and expenses. He omitted typical expenses like income taxes, property taxes, insurance, utilities, and HOA dues without addressing why those expenses were not included. He failed to address with any meaningful specificity any anticipated increase or decrease in income or expenses within the year of the Petition Date. His lack of disclosures left this Bankruptcy Court with the impression that he was hiding the ball and/or intentionally trying to minimize his income and, despite being afforded numerous opportunities to cure his deficient disclosures, he failed to do so. In addition, he failed to explain adequately how a high-income earner with multiple rental properties and a Lamborghini ended up with minimal income and dependent on food stamps and general assistance with no projections of substantially increased income to pay creditors in future. Debtor delayed forever any such disclosures, which is certainly an unreasonable delay.

Debtor's past omissions and inconsistencies could not be cured by conversion to chapter 7. In addition, Debtor's lack of financial disclosures made it impossible for this Bankruptcy Court and creditors to rely on anything he did disclose, and among other things that made it impossible determine whether Debtor even qualified to be a Debtor in chapter 7.

For all of the forgoing reasons, this Bankruptcy Court was and is persuaded that dismissal of this bankruptcy case is proper under section 707(a)(1).

(C) Alternatively, there are no specific Code provisions applicable to Chapter 7 that would provide a more appropriate remedy for Debtor's failure to comply with his disclosure obligations

Additionally and alternatively, even supposing for the sake of discussion that section 707(a)(1) were not a proper vehicle for dismissal (which it is), there are no specific Code provisions that would provide an appropriate remedy for Debtor's evasive conduct.

Debtor's response to the OSC cited *Sherman*, 491 F.3d 948, in support of his contention that bad faith and/or a lack of good faith cannot constitute "cause" for dismissal. Response (dkt. 101), pp. 3:23-4:5. But that argument misconstrues this Bankruptcy Court's reasons for dismissing his case and reads *Sherman* far too broadly.

First, as discussed in detail above, this Bankruptcy Court dismissed Debtor's case because of his repeated failure to comply with his reporting and disclosure obligations and not because he acted in bad faith.

Second, as this Bankruptcy Court interprets *Sherman*, bankruptcy courts should not use the blunt tool of dismissal under 11 U.S.C. § 707(a) when there are other, more appropriate, tools that are "contemplated" by the Bankruptcy Code as the most appropriate tool to remedy the precise misconduct at issue. *Sherman*, 491 F.3d 948, 970 ("If the asserted 'cause' is contemplated by a specific Code provision, then it does not constitute 'cause' under § 707(a) … [and if not then courts must] consider whether the circumstances asserted otherwise meet the criteria for 'cause' for discharge under § 707(a)") (internal citation and quotation marks omitted). But this Bankruptcy Court does not believe the Ninth Circuit intended for bankruptcy courts to deny dismissal under section 707(a) because, *theoretically*, creditors *could* pursue an expensive, time-consuming, and less comprehensive alternative course, when dismissal under section 707(a) would be a more appropriate way to deal with a debtor who fails and refuses to provide meaningful financial disclosures to even determine whether the debtor qualifies

to be a debtor under chapter 7 or whether there are assets to justify pursuing an action under section 727 to deny the debtor his discharge. As the *Sherman* court articulated, when considering whether relief from the automatic stay under § 362(d) provided a better alternative to dismissal under § 707(a):

> The remedy in the 'cause' provision of § 362(d)(1) is a ***considerably more direct way*** to deal with a debtor who is improperly using bankruptcy as a refuge from the jurisdiction of another court than the remedy in the "cause" provision of § 707(a). Preventing a debtor from taking advantage of the stay is a remedy ***tailored*** to the problem of improper avoidance of jurisdiction of another court. In contrast, § 707(a)'s remedy – the dismissal of the bankruptcy petition altogether – is ***too powerful a medicine*** for the problem at hand, as it precludes adjudication of the bankruptcy even where there are debts aside from pending litigation that exceeds assets. [*Sherman*, 491 F.3d at 971-72 (emphasis added).]

For example, creditors theoretically could pursue a denial of Debtor's discharge (under 11 U.S.C. § 727) but that would be expensive, it would take a long time, and it would leave Debtor with all the other benefits of bankruptcy such as the automatic stay and the ability to avoid certain liens (as he has sought to do), which would reward Debtor despite his belated, incomplete, and inconsistent financial disclosures. Nor is there any indication that dismissal of this case would harm creditors by insulating potentially avoidable transfers from avoidance, or for any other reason.

Put differently, the Bankruptcy Code requires debtors to abide by numerous disclosure and reporting obligations, but when a debtor fails to provide enough disclosures about his financial condition to allow creditors to conduct even a basic cost-benefit analysis about whether to file a complaint under 11 U.S.C. § 727, creditors must then unfairly choose between incurring the substantial costs of litigation and/or discovery (without the ability to make an informed decision about whether doing so would be prudent) or doing nothing and allowing that debtor to reap all of the benefits of bankruptcy without having provided the quid pro quo of timely, accurate, and complete financial disclosures. This Bankruptcy Court does not read *Sherman* as preventing dismissal of this bankruptcy case in these circumstances.

To the contrary, dismissal under section 707(a) is a more appropriate tool and protects the integrity of the bankruptcy system.

(D) Conclusion as to Debtor's likelihood to succeed on the merits

For the foregoing reasons, this Bankruptcy Court believes Debtor is unlikely to succeed on the merits of his appeal. But this Court acknowledges that there could be other interpretations of Sherman's admonition to determine whether the circumstances proffered as "cause" for dismissal are "contemplated by any specific Code provision applicable to Chapter 7 petitions." *Sherman,* 491 F.3d 948, 970 (citation omitted, emphasis added). Therefore, keeping in mind that Debtor "need not demonstrate that it is more likely than not that [he] will win on the merits" (*Leiva-Perez*, 640 F.3d 962, 967–68), this Court concludes that the "likelihood of success" factor weighs only slightly against granting a temporary stay.

e. Irreparable harm

To obtain a stay pending appeal, Debtor must show that "irreparable harm is probable if the stay is not granted." *Leiva-Perez*, 640 F.3d 962, 968. Debtor's burden "with regard to irreparable harm is higher than it is on the likelihood success prong": Debtor must show "that an irreparable injury is the more probable or likely outcome." *Id.*

Debtor argues that he will face irreparable harm if a stay is not granted because he could lose his home to foreclosure while he is waiting for his appeal to play out. It is widely accepted that real property and its attributes is unique and loss of real property through foreclosure constitutes irreparable harm. *See, e.g., Signal Hill Serv. V. Macquarie Bank, Ltd.,* 2011 U.S. Dist. LEXIS 165858, at *49-50 (C.D. Cal. June 29, 2011) (collecting cases).

This factor weighs in favor of granting a temporary stay.

f. Balancing of the hardships

The balance of the hardships weighs in favor of granting a temporary stay because, as discussed above, the automatic stay cannot be reinstated retroactively so

Debtor's risk of losing his home to foreclosure while the appeal is pending outweighs any prejudice to Debtor's creditors in having to wait to resume and/or pursue collection efforts against Debtor under nonbankruptcy law until the BAP can rule on the merits of Debtor's appeal. True, if the dismissal of Debtor's bankruptcy case were to be vacated, and if the Dismissal Order were to be temporarily stayed by this Court (long enough for Debtor to seek a longer stay from the BAP), then the automatic stay (11 U.S.C. § 362(a)) might frustrate some creditors. In addition, although they could always seek relief from the automatic stay, that would entail some cost and some delay. But on balance the hardships are more on Debtor's side than creditors' side.

g. Public interest

"There is a great public interest in the efficient administration of the bankruptcy system." *In re Smith*, 397 B.R. 134, 148 (Bankr. D. Nev. 2008). On the one hand, Debtor's abuse of the bankruptcy system and delays are contrary to the public interest. But on the other hand, because the OSC was initiated on this Bankruptcy Court's own motion and not at the request of a creditor, and because only the United States Trustee and Debtor responded to the OSC, this Bankruptcy Court is persuaded that it is slightly more in the public's interest to maintain the status quo and avoid a potential race by Debtor's creditors to collect against any available assets while the Dismissal Order is on appeal.

The public interest weighs slightly in favor of granting a temporary stay.

//

5. CONCLUSION

For the reasons set forth above, this Court's indicative ruling is that if it had jurisdiction, it would grant the Stay Motion in part by vacating the dismissal of this case and amending the Dismissal Order to include a twenty-eight day stay to allow time for the BAP to determine whether to impose a longer stay while it determines the merits of Debtor's appeal.

###

Date: December 3, 2024

Neil W. Bason
United States Bankruptcy Judge