EXHIBIT 1

(ADA VIOLATIONS)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
SHERRY ANN MCGANN	)	Case No. 20-18118 TBM
SSN: XX-XXX-0788	)	
	)	Chapter 7
Debtor.	)	

MOTION FOR ORDER REQUIRING THE DEBTOR TO TURNOVER PROPERTY AND RECORDS TO THE TRUSTEE

Jeanne Y. Jagow, chapter 7 trustee, by and through her undersigned counsel, hereby moves pursuant to 11 U.S.C. § 542(a) and F.R.B.P. 4002(a)(4) for entry of an Order requiring the Debtor to turnover certain property and records to the Trustee. In support hereof, the Trustee states as follows:

1. Sherri Ann McGann ("**Debtor**" or "**McGann**") filed her voluntary petition for relief under Chapter 7 of the Bankruptcy Code on December 22, 2020 ("**Petition Date**").

2. Jeanne Y. Jagow is the duly qualified and acting trustee of the Debtor's Chapter 7 bankruptcy estate ("**Estate**").is the duly appointed Chapter 7 Trustee in the Debtor's case.

3. This case represents the Debtor's second bankruptcy case filing. On October 17, 2019, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the District of Colorado, styled "*In re McGann*, Case No. 19-1897-EEB" ("**Chapter 11 Case**").

4. The Chapter 11 Case was dismissed by Court Order dated September 1, 2020. The within chapter 7 case was filed shortly thereafter.

5. On March 31, 2021, the Debtor received her Order of Discharge in this Case ("**Discharge**") (Dkt. No. 63).

6. Property of the Estate includes the Debtor's principal residence, located at 1535 Grand Avenue, Grand Lake, CO 80447 ("**Grand Lake Property**"). Throughout the Debtor's case, she has resisted the Trustee's efforts to inspect, list, market and sell the Grand Lake Property. She has filed two Motions to Convert her case to different chapters of bankruptcy relief, refused to cease Mystic Magic Mushroom operations at the Grand Lake Property, and denied the Trustee's request to list the estate as a co-insured on Grand Lake Property insurance policy.

7. On June 19, 2022, the Debtor filed her original Motion to Convert Chapter 7 to Chapter 12 (Dkt. No. 163) ("**First Motion to Convert**"). The Court treated the First Motion to Convert as a Motion to also convert the Debtor's case to Chapter 13.

8. In the First Motion to Convert, the Debtor asserted case conversion was warranted because she sought to "protect the estate from further harm as well as in the best interests of public policy." See, First Motion to Convert, ¶2.

9. The Debtor further alleged she was eligible to proceed as a Chapter 12 family farmer, and represented that post-petition, she has engaged full time in that profession and had earned more than 50% of gross income for the past two years (most of which is post-petition). The Debtor also asserted more than 50% of total debts in her case relate to her farming operation.

10. On January 10, 2023, a trial was convened on the Motion to Convert. By Order dated May 30, 2023, the Court denied the Motion to Convert, finding the Debtor was ineligible for conversion to either chapter 12 or chapter 13.

11. Shortly thereafter, the Trustee retained Ms. Melinda Lee ("**Ms. Lee**" or "**Broker**") of the Winter Park office of Liv Sotheby International Realty to market and sell the Grand Lake Property. The Debtor filed an Objection to the Trustee's Application to Employ Ms.

Lee, in part arguing she intended to convert her case to chapter 11. While the Court denied the Objection, it suggested the Debtor get her Chapter 11 Conversion Motion filed fast. The Chapter 11 Conversion Motion followed and is pending before the Court.

12. In June and July, 2023, the Trustee sought the Debtors' cooperation in allowing herself, counsel and Ms. Lee to gain access to the Grand Lake Property for the purpose of inspecting it and determining how best to market it for sale. The Debtor was aware this would occur, as the Application to Employ Ms. Lee described a suggested a protocol for showings and access to the Grand Lake Property, intended to be as unobtrusive to the Debtor as possible.

13. Despite these efforts, the Debtor has failed to cooperate with the Trustee. The Debtor refused to provide any dates to allow the Broker to access the Grand Lake Property for inspection at any time during June and July, 2023, claiming she was too busy and not in Grand Lake most of the time to provide access to the Trustee. She also filed a Motion for an Injunction aimed at halting the Trustee's efforts to administer the Estate and at listing the Grand Lake Property for sale.

14. Fed. R. Bankr. P. 4002(a)(4) sets forth that the Debtor has an affirmative duty to cooperate with Trustee in her administration of the estate. In turn, 11 U.S.C. § 542(a) requires the Debtor to turn over property that Trustee may use, sell or lease, unless the property is of inconsequential value, as well as documents and records related to such property which the Trustee deems necessary to administration of the Estate. The Trustee has previously referenced these duties in correspondence sent to the Debtor. It appears the Debtor has opted to ignore those duties, leading the Trustee to file the within Motion.

15. The Trustee has throughout this case expressed her belief (buttressed by and as informed by the opinion of Ms. Lee, an experienced broker) that the Grand Lake Property has

significant value to the Estate. It is thus subject to turnover along with all documents and records related thereto.

16. In addition, the Debtor has a pet pit bull which she states serves as her service animal. At the last hearing convened in this case, the Debtor brought her service animal into the Courtroom, and The Honorable Judge Brown was unaware of that fact because of the height of the Courts' bench. During counsel's exam of the Debtor, the service dog crept towards counsel in a menacing fashion, more than once. The Debtor was able to command her service dog to return to its blanket. Only then did the Court become aware of the presence of the service dog. The Debtor was told not to bring her service animal back to the Courtroom in the future, as she had previously been told.

17. With potential for mishaps unknown, the Trustee does not believe it is appropriate for the Debtors' service dog to be present during inspections, repairs, and showings of the Grand Lake Property, for reasons of efficiency, lack of distraction, and safety. Given the Debtors' representations that she has not been resident in the Grand Lake Property consistently because of her schedule, this should make compliance with this request less burdensome.

18. The Trustee similarly requests that the Court order that the Debtor not be present during any inspections, showings, visits to or repairs being made to the Grand Lake Property. The Debtor has shown herself to be uncooperative and emotional, and her presence at the Grand Lake Property during those times would hamper and potentially chill the sales process. Again, since the Debtor has advised the Trustee she has not physically been at the Grand Lake Property often, the inconvenience to the Debtor should be minimal. Further, appropriate advance notice to the Debtor of any inspection, need for access or showings will be given as was described in the Motion to Employ Ms. Lee as Broker.

19. The Trustee similarly requests that the Court order that the Debtor to provide no less than three (3) concrete dates between the present and September 30, 2023, when she, her agents, counsel, and Ms. Lee may inspect the Grand Lake Property.

20. As a result, and in furtherance of Debtor's obligations to cooperate with the Trustee, the Trustee requests that the Court enter an order:

a. requiring the Debtor to turn over to the Trustee a key to the Grand Lake Property;

b. requiring the Debtor to allow the Trustee, her agents and representatives reasonable access to the Grand Lake Property to inspect, market and sell it. Those allowed access include, without limitation, the Broker, her associates and staff, other brokers showing the Grand Lake Property, the Trustee, Trustee's counsel, any repair person retained by the Trustee or Broker, and any person the Trustee deems appropriate in furtherance of her duties as Trustee;

c. requiring that the Debtor not have her service animal present during any inspections and showings of the Grand Lake Property;

d. requiring that the Debtor not be present for any inspections, repairs or showings of the Grand Lake Property, and requiring the Trustee to provide advance notice (other than in the event of emergency) of any need for access to the Property as described in the Trustee's Application to Employ Ms. Lee;

e. requiring that the Debtor allow Trustee to place a sign on the Grand Lake Property in a conspicuous place in furtherance of Trustee's efforts to market and sell the Property, and forbidding the Debtor from altering, removing, or in any way defacing any such signage;

f. requiring that the Debtor to provide no less than three (3) concrete dates between the present and September 30, 2023, when she, her agents, counsel, and Ms. Lee may inspect the Grand Lake Property.

e. compelling Debtor to turn over the following additional documents:

(i) Her complete 2022 federal tax return;
(ii) All 2022 and 2023 bank statements for any bank account upon which she is or was a signatory;
(iii) All documents related to the transfer of ownership in Mystic Mountain Mushrooms and Mystic Mountain Mushrooms, LLC; and

(iv) All 2022 and 2023 sales records and financial statements for Mystic Mountain Mushrooms, LLC.

21. The proposed form of Order tendered herewith provides that turnover must occur within fourteen (14) days from the date of entry of the Order.

WHEREFORE, Jeanne Y. Jagow, chapter 7 trustee, prays for entry of an Order requiring the Debtor to turn over the above-described property and records to the Trustee, and for such other and further relief as is just.

Dated: August 25, 2023

SPENCER FANE LLP

By: /s/ David M. Miller, Esq.

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Attorneys For Jeanne Y. Jagow, Chapter 7 Trustee

CERTIFICATE OF SERVICE

The undersigned certifies that on August 25, 2023, I served by prepaid first class mail a copy of **MOTION FOR ORDER REQUIRING THE DEBTOR TO TURNOVER PROPERTY AND RECORDS TO THE TRUSTEE**, the related notice, and proposed order on all parties against whom relief is sought and those otherwise entitled to service pursuant to the FED. R. BANKR. P. and these L.B.R. at the following addresses:

Sherry Ann McGann
PO Box 3111
Greenwood Village, CO 80155

Notice by Electronic Transmission was sent to the following persons/parties:

Trustee
Jeanne Y. Jagow
trustee@jagowlaw.us

William F. Jones
Billy.jones@moyewhite.com

Matthew D. Skeen Jr.
jrskeen@skeen-skeen.com

Allison Hester
Allison.Hester@moyewhite.com

Ilene Dell'Acqua
idellacqua@mccarthyholthus.com

/s/ Kayla Dominguez
Kayla Dominguez

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
SHERRY ANN MCGANN	)	Case No. 20-18118 TBM
SSN: XX-XXX-0788	)	
	)	Chapter 7
Debtor.	)	

ORDER REQUIRING THE DEBTOR TO TURNOVER PROPERTY AND RECORDS TO THE TRUSTEE

THIS MATTER comes before the Court upon the chapter 7 trustee's Motion for Order Requiring the Debtor to Turnover Property and Records to the Trustee ("Motion"). The Court as reviewed the Motion as well as the file in this case, and finds good cause exists to grant the Trustee the requested relief, as the relief sought in the Motion is reasonable and within the spirit and letter of F.R.B.P. 11 U.S.C. § 542(a) and Fed.R.Bankr.P. 4002(a)(4). Therefore, it is

HEREBY ORDERED that the Motion is GRANTED;

FURTHER ORDERED that within fourteen (14) days of the date of this Order, the Debtor shall turn over to the Trustee a key to the Grand Lake Property;

FURTHER ORDERED that the Debtor shall allow the Trustee, her agents and representatives reasonable access to the Grand Lake Property to inspect, market, repair, improve, monitor, visit, and sell it. Those allowed access include, without limitation, the Broker, her associates and staff, other brokers showing the Grand Lake Property, the Trustee, Trustee's counsel, any repair person retained by the Trustee or Broker, and any person the Trustee deems appropriate to access the Grand Lake Property in further of her duties as Trustee. The Debtor shall receive notice of requests for access as described in the Trustee's Application to Employ LIV Sotheby's International Realty as Listing Agent/Broker (Docket No. 265), other than in the event of any occurrence which the Trustee deems to be an emergency situation, in which case she is authorized to immediately access the Grand Lake Property;

FURTHER ORDERED that neither the Debtor, the Debtor's service animal, or any other pet residing on the Grand Lake Property shall be present at any inspection, showing, or other visit by the Trustee or her agents to the Grand Lake Property.

FURTHER ORDERED that the Debtor shall allow Trustee to place a sign on the Grand Lake Property in a conspicuous place in furtherance of Trustee's efforts to market and sell the Property, and the Debtor is hereby forbidden from altering, removing, or in any way defacing any such signage;

FURTHER ORDERED that by no later than September 6, 2023, the Debtor shall provide to the Trustee no less than three (3) concrete dates between September 6, 2023, and October 6, 2023, when the Trustee and her agents may perform her initial inspection of the Grand Lake Property.

FURTHER ORDERED that the Debtor shall, within fourteen (14) days of the date hereof, turnover to the Trustee all property and documents identified by the Trustee in Paragraph 20(e) of the Motion.

Dated: _____

BY THE COURT:

_____
The Honorable Thomas B. McNamara
United States Bankruptcy Court Judge

UNITED STATES BANKRUTCY COURT
FOR THE DISTRIC OF COLORADO

IN RE:	)	
	)	
SHERRY MCGANN	)	Case No. 20-18118 TBM
	)	Chapter 7
Debtor	)	

RESPONSE TO ORDER REQUIRING THE DEBTOR TO TURNOVER PROPERTY AND RECORDS TO THE TRUSTEE

Sherry McGann, prose, responds to the continued harassment by the Trustee and her counsel Mr. Miller. There is a hearing in 4 days on Tuesday, August 26th, 2023, and Mr. Miller assumes that McGann will not be successful in the hearing.

1. The Trustee after nearly 4 years should have the correct spelling of Sherry McGann and the correct name of her company which has always been Mystic Mountain Mushrooms. McGann agrees she was forced to file a Chapter 7 on December 22, 2022, as previously explained throughout many filings.

2. Jeanne Y Jagow is not a "qualified" trustee in the definition of "qualified" however she does remain acting trustee until the Court converts the case and relieves McGann and allows her to remedy the few remaining items in the bankruptcy to legitimate creditors. As previously shown it is McGann who cleaned up the cleans register by over $50k and despite the Trustee removing $1.6m in fake liens and deeds of trust, she was negligent in collecting the sales of the proceeds of the property that were due McGann at $1.3m minimum for her 49% ownership of the property.

3. McGann did file Chapter 11 (not 13 as she should have been permitted to but the fake deeds and liens of trust that were removed negated that chapter). Not that it would have made a difference because the fraudulent creditor and nemesis 1450 Oka Kope locked McGann from the Maui property and refused to allow the operating plan to be put forth. The same plan that has been a proven success

and McGann will share more details of such on Tuesday, August 26, 2023. In addition, the Trustee allowed the sale of the property in Maui and did nothing to collect the proceeds due to her negligent actions and assumptions.

4. Agreed

5. Agreed – Debtor McGann has had no relief from the discharge as the Trustee holds her mortgage hostage and refuses to work with Debtor to pull equity and pay legitimate debt. This has been illustrated in detail in previous filings in addition to many other negligence of the Trustee and her counsel.

6. The Trustee has made no efforts for almost 4 years and now has the audacity to mislead this court that it was McGann that halted that process. Why didn't the Trustee file these Motions years ago? Why didn't the trustee hire an appraiser years ago when she disagreed with the value? The trustee made no effort and was invited many years ago to elicit an appraiser when they didn't agree with McGann's value obtained from local broker. The Trustee are trying to mislead this Court since the new Judge may not have complete knowledge of the past 4 years.

7. This is an absolute FALSE STATEMENT and yet another attempt to mislead this Court. In fact, there are filings (somewhere) that the Rt. Honorable Judge Brown addressed this and said there was not a conversion between the 11 and the 7. That could have been addressed to claimants 11-1 or Trustee – McGann is having difficulty finding it at the moment and due to time constraints references here. This is desperate and outrageous behavior and McGann is asking the court to note and review this falsity.

8. Yes, what the Trustee has done is against any public policy that should provide protection to any *human being* that was frauded in the manner McGann was. The Trustee witnessed these actions and had $1.6m in fake liens and deeds of trust removed from McGann's Grand Lake farmhouse. There has been no consideration for the fraud involved and the Trustee made a beeline for

the equity in McGann's home because once liens were removed because she was too lazy, busy or unskilled to collect the many other avenues of collection that were rip for collection. The public has a right to expect a trustee with authority to consider the situation in its entirety – not work against the individual and cause additional damage.

9. McGann wholeheartedly believed she would qualify for Chapter 12 because of the extensive farming for years she had done. She is not a lawyer and since the Trustee has refused any sort of conversations through the entire bankruptcy McGann has been left alone to learn and defend her estate from further harm. If the Trustee was doing her job McGann wouldn't have needed to file any type of change. After nearly 4 years and court orders ignored to communicate with McGann, it is time to take matters into her own hands and settle this bankruptcy with a new trustee and a plan that is viable and is to be discussed in full detail on Tuesday, August 26th, 2023 at the upcoming hearing.

10. McGann asks the court to note the time length of the hearing and the Order. It was not McGann's delay, and the Rt. Honorable Judge Brown was very gracious in providing the reasoning and inviting debtor McGann to file for Chapter 11 (now being the 1st Conversion).

11. Why is the Trustee retaining Ms. Melinda Lee almost 4 years after the filing and with full knowledge McGann is converting to Chapter 11 if allowed by the Court. These continual filings are an attempt to confuse and mislead the court and damage McGann to find a defense for the negligence of handling this estate.

12. In June and July, the Trustee and Mr. Miller continued their ongoing harassment, but this time demanded dates and when McGann explained the circumstances of the farm and the Alamosa farmers and training taking place Mr. Miller continued to harass and push until McGann was forced to file the notice with the courts. McGann has received no Order she is aware of to comply with Mr. Millers request and until she does, she makes no plans of doing so.

13. The trustee has made no "efforts" to do anything except harass and intimidate McGann and try to mislead this Court. McGann does not 'claim' to be busy – she is extremely busy making a difference in families lives who were abused for generations by the Mushroom Farm in Alamosa[1]. McGann has provided information and offers the court any proof it might need relating to the time McGann is spending between Grand Lake, Denver, Fort Lupton and Alamosa. The fact she must stop and respond to yet another filing from Mr. Miller is disgusting and outrageous and yet another example of how the Trustee and her attorney have no regard for the way they've mismanaged McGann's estate and caused irreparable damage.

14. Mr. Miller is very big on quoting duties of the Debtor and completely discard their duty to administer the estate to for the interest of [legitimate] creditors. McGann has complied with every demand they've made and supplied information to them that they are unable to understand and have, through the past filings, made it obvious that they have NO CLUE about McGann, people in her home, or her company. McGann refuses to provide any further documents to the Trustee and will provide all documents necessary. This is an attempt to make McGann do unnecessary work and due to the circumstance McGann is not comfortable sharing any further information with the Trustee and Mr. Miller whom she is working on the adversary filing for their negligence throughout the past almost 4 years.

15. The Trustee made no attempts to have a legitimate appraisal done. McGann offered to the Trustee and Mr. Miller for years to come on site and note the property and they refused. Now, they have the gul to offer some opinion from a broker who has not seen the property, farm and/or alterations and condition the property is in.

[1] Google the Alamosa Mushroom Farm project and familiarize with the tragedy that the Trustee and Mr. Miller have no more regard or concern for then what happened to McGann in her fraud and deceit they complemented.

16. McGann asks the court what proof Mr. Miller has that her medical alert service dog is a 'pit bull' and regardless of the breed what that has to do with anything? McGann has had her service dog in every court hearing and meeting since 2019 – without fail.

Ziggy is not a "pet" he is a medical alert service dog and has been by McGann's side in not only Judge Brown's courtroom but every other courtroom she's been subjected to. The reason Judge Brown didn't know the dog was in the courtroom was because he was lying next to McGann and never moved, extremely quiet while he carried out his duties. In Mr. Miller ignorance he does not realize the reason Ziggy approached McGann was because he detected a medical alert situation and was DOING HIS JOB. A very foreign concept for the Trustee and Mr. Miller who are to wrap up in attempts to hide their negligence and strip McGann of any securities and rights by 'suddenly' having an issue with her service dog after 4 years.

FOR THE RECORD, The Debtor was NOT told she could not bring her service dog back to the Courtroom in the future and she was never "previously" told that either and Mr. Miller is slandering this entire situation and McGann moves this court to review the transcripts if there are doubts. McGann's remembers the Judge said she should notified the court and McGann is doing so in this filing that she will have her medical alert service dog with her on Tuesday, August 26th, 2023, unless otherwise Ordered by the Court in which McGann will not be present and feels her rights are being violated having to attend via video if that is the case.

17. McGann is unsure what Mr. Miller, and the Trustee are attempting to say here... "potential for mishaps unknown". Is this because he is assumed to be a pitbull? There has never been a "mishap" in Ziggy's 6 years on this planet and he's been with McGann since he was 3 months old. The mere fact McGann is being subjected to this discrimination and having to answer is outrageous! This is a

very desperate attempt by the Trustee and Mr. Miller and McGann prays the courts take notice of such and preserve McGann's civil liberties and rights regarding her service dog.

18. McGann does not agree to allowing the Trustee, Mr. Miller or any of their representative into her home and business. This is a very sensitive environment with exotic mushrooms and outside contaminants from others could cause complete crop loss. Regardless, this filing is a form of harassment as the Trustee is fully aware there is a hearing in 4 days and they could make these requests then IF McGann were not successful in converting , for the first time, from chapter 7 to Chapter 11.

19. Not agreed until after the court decides upon McGann's Motion to convert chapters.

20. Not agreed until after the court decides upon McGann's Motion to convert chapters.

21. N/A until the Court decides upon McGann's Motion to convert chapters and the Trustee and Mr. Millers filing is highly incredible and yet another desperate attempt to cover their negligence and mislead the new Judge on the case.

WHEREFORE, Sherry McGann, prose, prays for entry on Tuesday, August 26th for conversion of Chapter 7 to Chapter 11 and relief for the Trustee who has caused sever damages to McGann's estate, and for such other and further relief as is just.

Dated: August 25, 2023

Sherry McGann

/s/ Sherry McGann

Violation of my rights and McGann is not agreeing to allowing enterance into her farmhouse and has repeatedly explained the circumstances.

United States Bankruptcy Court - District of Colorado
Online Filing Tool Submission

Submitted: 8/25/2023 7:03:20 PM

User Information

Sherry McGann
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Grand Lake
CO
80447

sherry@nalanimaui.com
303-507-7658

EXHIBIT 2

(CIVIL CONSPIRACY)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
SHERRY ANN MCGANN	)	Case No. 20-18118 EEB
SSN: XX-XXX-0788	)	
	)	Chapter 7
Debtor.	)	

TRUSTEE'S OBJECTION TO DEBTOR'S MOTION TO CONVERT CASE TO CHAPTER 11

Jeanne Y. Jagow, chapter 7 trustee ("**Trustee**"), by and through her undersigned counsel, respectfully submits the following Objection to Debtor's Motion to Convert this case to Chapter 11 ("**Chapter 11 Conversion Motion**"). In support hereof, the Trustee states as follows:

I. SUMMARY OF THE ARGUMENT

The Debtor has been under Bankruptcy Court protection since October of 2019, either in chapter 11 or in chapter 7, except for the brief period between dismissal of her first failed foray into chapter 11 and the filing of the within case. Not one penny has been repaid to creditors during that entire time. Rather, the chapter 11 case was dismissed, the Debtor still owes United States Trustee Fees from that case, a plan of reorganization was never proposed even though the case languished for almost one full year, and not all required Monthly Operating Reports were filed.

The Debtor's tax returns do not reflect the Debtor can support plan payments, she had negative income in 2021 and 2022, and the Debtor has not been servicing her second mortgage since November of 2022.

The Debtor has spent the entirety of this case fighting the Trustee's efforts to administer the estate and seeks to stop the Trustee from liquidating her real property in Grand Lake,

Colorado. The Trustee was able to create significant equity in that real estate, via settlement of litigation, to which settlement the Debtor strongly objected. The Debtor contends the Trustee should ignore the equity in her real property in Grand Lake, Colorado, which she has characterized as "low hanging fruit" and instead, maintains the Trustee should instead satisfy creditor claims by pursuing the Debtor's litigation and collection claims which the Trustee considers either specious, speculative or expensive to pursue (or all).

This latest Motion to Convert is an extension of the Debtor's long-standing goal to thwart the Trustee's efforts to fulfill her duties of repaying creditors by liquidating that Grand Lake property, which constitutes property of the estate. The Debtor previously delayed that liquidation by seeking conversion to chapters 12 and chapter 13. Resolution of that prior Motion to Convert took considerable time, and after evidentiary hearing, was denied.

Now, the Debtor seeks to convert to chapter 11 to serve as a debtor-in-possession once again, ostensibly so she can repay creditors. In reality, to satisfy the best interest of creditors test would require large monthly payments and the Debtor appears to lack the income necessary to propose or support a feasible plan, her effort to convert appears not to have been filed in good faith, and conversion does not appear to be in the best interests of the Debtor's creditors, the estate, or the Debtor herself. The Debtor has not serviced the second mortgage on the Grand Lake Property in years. The Debtor has had ample time in this chapter 7 and her prior case to attempt to refinance or sell the Grand Lake property to satisfy estate claims but has not done so. It is time to cease these delays which only increase administrative costs of the estate, and to allow the Trustee to administer the estate and fulfill her duty to repay creditors.

II. BACKGROUND

1. Sherri Ann McGann ("**Debtor**" or "**McGann**") filed her voluntary petition for relief under Chapter 7 of the Bankruptcy Code on December 22, 2020 ("**Petition Date**").

2. Jeanne Y. Jagow is the duly qualified and acting trustee of the Debtor's Chapter 7 bankruptcy estate ("**Estate**").is the duly appointed Chapter 7 Trustee in the Debtor's case.

3. This case represents the Debtor's second bankruptcy case filing. On October 17, 2019, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the District of Colorado, styled "*In re McGann*, Case No. 19-1897-EEB" ("**Chapter 11 Case**").

4. The Chapter 11 Case was dismissed by Court Order dated September 1, 2020. The within chapter 7 case was filed shortly thereafter. Almost three (3) years into this case, the Debtor seeks conversion to Chapter 11 via her latest Chapter 11 Conversion Motion.

5. On March 31, 2021, the Debtor received her Order of Discharge in this Case ("**Discharge**") (Dkt. No. 63).

6. After a contested hearing which occurred on May 3, 2022, the Trustee received Court authority approving the settlement reached with the Debtor's nemesis, 140 Oka Kope, LLC and Gan-Bei-La LLC, in Adversary Proceeding No. 21-1132 EEB ("**Settlement**").

7. In part, that Settlement resulted in the release of over $850,000 (excluding accrued interest which increased that amount substantially) in Deeds of Trust which encumbered the Debtor's principal residence, located at 1535 Grand Avenue, Grand Lake, CO 80447 ("**Grand Lake Property**").

8. In her Motion to Approve the Settlement the Trustee advised the Debtor and the Court that after approval of the Settlement, significant equity would be created in the Grand Lake

Property, and that she would attempt to sell the Grand Lake Property to satisfy creditor claims. The Debtor was infuriated.

9. Shortly after the Settlement was approved and on June 19, 2022, the Debtor filed her original Motion to Convert Chapter 7 to Chapter 12 (Dkt. No. 163) ("**First Motion to Convert**"). It was refiled on July 7, 2022, in response to a Compliance Order issued by the Court. The Court opted to treat the First Motion to Convert as a Motion to also convert the Debtor's case to Chapter 13.

10. In the First Motion to Convert, the Debtor asserted case conversion was warranted because she sought to "protect the estate from further harm as well as in the best interests of public policy." See, First Motion to Convert, ¶2.

11. The Debtor further alleged she was eligible to proceed as a Chapter 12 family farmer, and represented that post-petition, she has engaged full time in that profession and had earned more than 50% of gross income for the past two years (most of which is post-petition). The Debtor also asserted more than 50% of total debts in her case relate to her farming operation. The Court found these allegations to lack merit, as those representations just were not true.

12. On January 10, 2023, a trial was convened on the Motion to Convert, and by Order dated May 30, 2023, the Court denied the Motion to Convert.

13. Shortly thereafter, the Trustee retained Melinda Lee of the Winter Park office of Liv Sotheby International Realty to market and sell the Grand Lake Property. The Debtor filed an Objection to the Trustee's Application to Employ the Broker, in part arguing she intended to convert her case to chapter 11. While the Court denied the Objection, it suggested the Debtor get her Chapter 11 Conversion Motion filed fast. The Chapter 11 Conversion Motion followed.

14. The Debtor has throughout this case argued that the Trustee should not pursue sale of the Grand Lake Property with the equity created by the Settlement and rather, she should focus her efforts on pursuing claims the Trustee has determined possess little or no merit, some of which would also be cost-prohibitive to pursue, as the Estate lacks the funds to do so. On the other hand, the Trustee believes the sale of the Grand Lake Property creates a clear path to creditor repayment.

15. The gist of the Chapter 11 Conversion Motion is that the Debtor believes her mushroom business, "MMM" (Mystic Mountain Mushrooms, LLC), might very well be successful in the future, and the Debtor seeks conversion to use MMM's business to fund a chapter 11 plan.

16. Even though MMM was a sole proprietorship when this case was filed, the Debtor has transferred its assets to MMM, LLC, formed with the Colorado Secretary of State in January, 2022. The Debtor has previously represented that it is not her who operates MMM financially and rather, those matters are the responsibility of an entity called Toy Box, LLC, run by the Debtor's friends, who lived with her for a period at the Grand Lake Property, and work with her as partners in her mushroom business.

17. The Debtor has supplied no financial information, budgetary or otherwise, to reflect that Mystic Mountain Mushroom, LLC will generate sufficient income for the Debtor to fund a Plan.

18. The Trustee asserts the Chapter 11 Conversion Motion was filed in bad faith, the Debtor cannot meet the requirements to serve as a chapter 11 debtor, and that the Debtor should not be entitled to convert her case to Chapter 11, as the case would be reconverted back to chapter 7.

III. STANDARD OF REVIEW

Bankruptcy courts possess "broad discretion to make conversion decisions under § 706(b)." *In re Kearney*, 625 B.R. 83, 99 (B.A.P. 10th Cir. 2021) (citations omitted). "In making its discretionary conversion determination under § 706(b), courts consider the following factors: (1) the debtor's ability to repay the debt; (2) whether there are immediate grounds for reconversion; (3) likelihood of a Chapter 11 plan's confirmation; and (4) whether the parties in interest would benefit from conversion." *In re Johnson*, 2023 WL 1464018 (D. Colo. 2023) (Slip Copy) (citing *In re First Connecticut Consulting Grp., Inc.*, 579 B.R. 673, 683 (Bankr. D. Conn. 2018) (quotations omitted); *In re Hardigan*, 517 B.R. 374, 379 (S.D. Ga. 2014) (same)). These factors are intended to assist a bankruptcy court's determination of "what will most benefit all parties in interest," including debtors. *In re Kearney*, 625 B.R. at 99–100 (quotation omitted).

IV. ARGUMENT

A. The Debtor Does Not Have an Absolute Right to Convert this Case to Chapter 11.

The Debtor does not possess an absolute right to convert her case to chapter 11. *In re Johnson*, 634 B.R. 806, 813 (Bankr. D. Colo. 2021). In *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007), the Supreme Court affirmed the denial of a debtor's motion to convert a Chapter 7 case to Chapter 13, holding:

> [T]he broad authority granted to bankruptcy judges to take any action that is necessary or appropriate "to prevent an abuse of process" described in § 105(a) of the Code, 12 is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

Id. at 375.

As explained by the *Kearney* Court, this means that under § 706:

> [W]e are not saying conversion to chapter 7 from an individual chapter 11 is the same as conversion to chapter 13 from chapter 7. What we are saying is that bankruptcy courts are directed by § 1112(f) to look at the standards for debtors under the chapter to which the debtor is hoping to convert, and if that debtor could not be a debtor under that chapter because the bankruptcy court would exercise its discretion to immediately reconvert the case, then there is no reason to convert the chapter 11 just to dismiss or re-convert thereafter. We do not think that is an extension of *Marrama*.

Kearney, 625 B.R. at 99.

B. The Debtor Does Not Have The Ability To Repay Her Indebtedness.

In her Chapter 11 Conversion Motion, the Debtor asserts that she has a successful organic mushroom business that is thriving and expanding after years of hard work. The Trustee does not doubt the Debtor has worked hard on her mushroom business but there is no evidence, in the Motion or otherwise, that suggests the Debtor is actually earning income sufficient to repay her creditors in chapter 11.

First, the Debtor previously filed chapter 11 and never proposed a plan in that case. At the time, she was earning a six-figure income as an insurance broker. Subsequently and in 2021, the Debtor left that position to focus on the mushroom business, MMM. Now that insurance income is gone and upon information and belief, it has not been replaced.

The Debtor filed the within case in December 2020. Her 2020 federal income tax return reflects that in that year, the Debtor earned $133,123.00 from wages, salaries, and tips. That tax return also indicates that with respect to MMM, rather than generating income, MMM 2020 gross receipts were $14,070, with total expenses of $64,240, creating a net 2020 loss from MMM operations of $50,170.

Her 2019 federal tax return disclosed that in that year, the Debtor earned $155,842.00 from wages, salaries, and tips. No net income for MMM appears on that tax return.

The Trustee also notes that in her 2019 Chapter 11 Case, the Debtor's Schedule I indicates she earned income only from her job as a Commercial Insurance Agent (gross monthly wages of $12,965.37). In response to Schedule I, Part 8, which requires a debtor to disclose all other income regularly received (specifically including net income from operating a business, profession or farm), the Debtor responded by disclosing "0" (Case No. 19-18971-EEB, Dkt.14). In the case at bar, the Debtor's Schedule I again indicates she earned income only from her job as a Commercial Insurance Agent (gross monthly wages of $11,235.53). As to regular farm income, the Debtor's Schedule I states no income is generated. Instead, she claims those activities generate a regular monthly loss of $332.39 per month.

At her 11 U.S.C. § 341 Meeting of Creditors, the Debtor also testified she did not receive any of the revenue generated from MMM operations. Instead, she has represented and testified that all of the funds generated from MMM operations are directed to and controlled by an entity "Toy Box Solutions, LLC" ("**Toy Box**"), operated by Serif Toy and Andrea Caflisch, both of whom work with the Debtor. The Debtor testified that Toy Box controls all money related to MMM through their bank account alone.

Two years later and on January 13, 2022, the Trustee requested information related to the Debtor's operation of MMM at the Grand Lake Property. Those requests sought to have the Debtor provide proof of insurance and all documents related to MMM bank accounts, financial statements, profit and loss statements, operating budgets, and agreements with Toy Box or its principals.

In response, and via email dated January 20, 2022, the Debtor stated that with respect to MMM:

> MMM was a dba of Celestial Properties

> In December 2019 I moved it to Sherry McGann personally and filed that way with the SOS.
>
> All operations from the beginning have run through Toy Box Solutions – not me. Toy Box is an independent contractor with other clients besides my farm. I am not a part of their company and/or bank accounts and do not feel it appropriate to request information when they are not a part of the bankruptcy. Any expense or income personally generated by me was included on my 2020 tax return and detailed on the schedule C or F.
> ALL bank statements have been released, including June, July, August, and September of 2020. I am agreeable to sign a release so she can obtain statements from Bank of the West from January 5, 2019 through the March 2021 date of the discharge of the bankruptcy.
>
> MMM is a dba of ME. No separate accounts that were not fully disclosed 100% and Toy Box Solutions is meaningless because I am not a part of it. It simply managed the farm and generated invoices, collected income and paid taxes on that via Toy Box. Again, any income SHERRY MCGANN as MMM was included on my 2020 tax return that she has requested twice.

A full copy of the January 20, 2022 email is attached hereto as Exhibit 1.

Thereafter, the Trustee made a demand on the Debtor to either list her as a loss payee with respect to MMM insurance policies, or cease MMM operations, which constituted a sole proprietorship and which constitutes property of the estate. Via email dated January 24, 2022, the Debtor refused to do so. In part, her then-counsel stated that "After discussion with Ms. McGann she is not willing to add the trustee as a loss payee on the insurance policy. She also is not willing to cease functioning of Mystic Mountain Mushrooms."[1] The Trustee then demanded the Debtor cease all MMM operations at the Grand Lake Property.

Upon information and belief, the Debtor did not comply. Instead, and while these exchanges were occurring and on January 22, 2022, the Debtor apparently filed Articles of Organization for MMM, in an apparent attempt to transfer MMM and its assets to her newly formed Colorado limited Liability Company called "Mystic Mountain Mushrooms, LLC"

[1] The Trustee was subsequently able to obtain her own insurance to protect the Estate.

("**MMM LLC**"). A copy of the Colorado Secretary of State Summary reflecting this fact is attached hereto as Exhibit 2.

As a result, it does not appear that even if MMM, LLC generates sales and net income in the future, it appears it is not the Debtor that earns any income from MMM individually. Rather, that income appears to belong to either Toy Box, given it solely controls the MMM, LLC finances or, belongs to the new entity itself, MMM LLC. When these issues arose during the first Motion to Convert, they were not rebutted by the Debtor at trial. The Debtor appears to lack disposable income to fund a plan.

B. It Does Not Appear a Chapter 11 Plan Could Be Confirmed.

1. The Best Interests of Creditors Test.

To confirm a plan in chapter 11 the Debtor would have to meet the terms of 11 U.S.C. § 1125(a)(7), commonly known as the "best interest of creditors" test. That test requires that to have a plan confirmed, creditors must receive under the plan no less than they would receive if the debtor's assets were liquidated in a Chapter 7 case. 11 U.S.C. § 1129(a)(7).

The Trustee and her broker believe the Grand Lake Property is worth no less than approximately 1.2 million dollars (that figure has dropped from approximately 1.6 million given economic developments which occurred during the pendency of the Debtor's case). Allowed pre-petition unsecured creditor claims total $236,965.23. Administrative expenses exceed $135,000, exclusive of any amounts due to the trustee. The Grand Lake Property is secured by two deeds of trust. Cenlar FSB holds the first Deed of Trust, and its last known loan balance in late 2022 was $454,253.92. The second deed of trust is held by Elevations Credit Union. The

Debtor listed this claim in the amount of $144,467. The two cumbrances total $598,720.92.[2] The Debtor is entitled to a $105,000.00 homestead exemption.

At a sales price of 1.2 million dollars, after deducting the two Deeds of Trust and homestead exemption, and accounting for 6% sales commission ($72,000), there would be $424,279.08 in available funds. It is possible unsecured creditors would be paid in full if such a sale were to occur.

In contrast, if the Debtor were to retain the Grand Lake Property and propose a plan that requires her to make monthly disposable income payments to unsecured creditors over a five (5) year time period, payments would be no less than $3,949.42 per month. This figure excludes the Debtor's requirement to pay administrative expenses in full as well, which if considered would add at least $135,000 to this total. It does not appear the Debtor has the ability or income to satisfy the terms of 11 U.S.C. § 1129(a)(7) without first selling or refinancing the Grand Lake Property, which she has refused or been unable to do during the past four years while under the umbrella of Bankruptcy Court protection.

2. The Debtor Lacks The Income Necessary To Propose A Feasible Plan.

Given that no known net income is being generated by the Debtor from MMM, LLC, it does not appear any plan not involving the sale of the Grand Lake Property would succeed, as the Debtor appears unable to generate such income from MMM, LLC, and has not yet been able to do so since filing this case. She could not feasibly propose a plan, as required by 11 U.S.C. § 1129(a)(5). Given the Debtors' past history in her prior Chapter 11 Case and in light of the totality of the circumstances, the Trustee contends that conversion of the Debtor's case to chapter

[2] Upon information and belief, the Debtor has not serviced the Elevations Credit Union indebtedness since October of 2022.

11 would be shortly filed by reconversion back to chapter 7, requiring that the Chapter 11 Conversion Motion be denied.

3. Lack of Good Faith.

Marrama makes it clear that if the Debtor is not proceeding in good faith, conversion to another chapter may be denied. *Marrama,* 549 U.S. at 372-74, 127 S.Ct. 1105. Here, the Debtor does not appear motivated by a good faith desire to repay her creditors. In fact, there has been no unsecured creditor repayment in either of her cases to date, and the Debtors' panoply of actions reflect her aim has been solely to thwart the Trustee's efforts to sell the Grand Lake Property, actions undertaken by the Trustee in order to achieve maximum creditor repayment. Instead, the Debtor has insisted the Trustee pursue claims which are speculative, and which she herself never sought to pursue the Chapter 11 Case. She proposed no plan in her Chapter 11 Case, she failed to file three (3) Monthly Operating Reports in the Chapter 11 Case, and she still owes the United States Trustee its quarterly fees (See, Claims Register, Claim #17, Amt: $1,950), in violation of 11 U.S.C. § 1129(a)(12)). The Debtor also has no known income. The idea that under these circumstances the Debtor should be afforded the opportunity to convert her case to chapter 11 and be under Bankruptcy Court protection for another five (5) years (for a total of nine possible years under bankruptcy protection), is not emblematic of good faith or of the way the Bankruptcy system is supposed to operate.

There is a clear path to swift creditor repayment, where creditors do not have to wait for up to five more years for that repayment to occur, and the Trustee's successful efforts to create equity in the Grand Lake Property have made that possible. This anticipated sale the best chance to achieve creditor repayment, and the Court should deny the Debtor's Motion. Conversion to chapter 11 would produce an unfair result for the Debtor's creditors. The Debtor is acting in bad

faith, solely in her own interests, and her Chapter 11 Conversion Motion indicates she continues to ignore the interests of her creditors.

4. The Debtor's own Interests and the Possibility of Reconversion.

In determining whether to convert a case to from chapter 7 to chapter 11, the Court should also consider the effects of conversion on the Debtor, and whether conversion is in the interests of the creditors and the debtor. *In re (Alexander) Johnson*, 2023 WL 1464018, at *6. Here, the Debtor has already received her discharge. The Trustee submits that it is not in the Debtor's best interests to attempt once again to seek chapter 11 relief. She does not have the income necessary to support any plan, she has shown she will not pay United States Trustee's Fees or file required Monthly Operating Reports, and any Plan would require her to make burdensome monthly payments of her disposable income to her creditors for many years even though at the present time, such income does not appear to exist and she has no such present obligation. The Debtor would be better off keeping her income for herself as she and Toy Box attempt to move MMM, LLC towards potential profitability, and while she attempts to cure the amount due on her second deed of trust to Elevations Credit Union (which debt has not been serviced since the fall of 2022). It appears the Debtors' own interests would be best served by denying her Chapter 121 Conversion Motion.

V. CONCLUSION

The Motion to Convert to Chapter 11 is nothing more than a procedural defense to the Trustee's efforts to administer this estate. The Debtor is not eligible for relief under Chapter 11, ground do not exist to grant the Chapter 11 Conversion Motion, and it should be denied.

WHEREFORE, Jeanne Y. Jagow, trustee, prays that the Court will enter an order denying the Debtor's Motion to Convert Case to Chapter 11.

Dated: July 18, 2023

SPENCER FANE LLP

By: /s/David M. Miller, Esq.

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ATTORNEYS FOR JEANNE Y. JAGOW, TRUSTEE

CERTIFICATE OF SERVICE

The undersigned certifies that on July 18, 2023, I served by prepaid first class mail a copy of the foregoing trustee's **OBJECTION TO DEBTOR'S MOTION TO CONVERT CASE TO CHAPTER 11** on all parties against whom relief is sought and those otherwise entitled to service pursuant to the FED. R. BANKR. P. and these L.B.R. at the following addresses:

Sherry Ann McGann
PO Box 3111
Greenwood Village, CO 80155

Notice by Electronic Transmission was sent to the following persons/parties:

Trustee
Jeanne Y. Jagow
trustee@jagowlaw.us

William F. Jones
Billy.jones@moyewhite.com

Matthew D. Skeen Jr.
jrskeen@skeen-skeen.com

Allison Hester
Allison.Hester@moyewhite.com

Ilene Dell'Acqua
idellacqua@mccarthyholthus.com

/s/ Kayla Dominguez
Kayla Dominguez

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:	)	
	)	
SHERRY ANN MCGANN	)	Case No. 20-18118-TBM
	)	
	)	Chapter 7
Debtor.	)	

1450 OKA KOPE, LLC, AND GAN-BEI-LA, LLC'S RESPONSE TO DEBTOR'S MOTION TO VOLUNTARILY DISMISS CHAPTER 7 CASE FOR CAUSE

COMES NOW 1450 Oka Kope, LLC, and Gan-Bei-La, LLC (collectively, "**Respondents**") for their response (the "**Response**") to *Debtor's Motion to Voluntarily Dismiss Chapter 7 Case for Cause* (Docket No. 324) (the "**Motion**"). In support of the Response, Respondents state as follows:

Background

A. Background Regarding Respondents' Settlement Agreement and Approval Thereof.

1. On October 7, 2021, the Trustee filed her *Motion to Approve Settlement Agreement with 1450 Oka Kope, LLC and Gan-Bei La, LLC Pursuant to Fed. R. Bankr. P. 9019* (Docket No. 93) (the "**Settlement Motion**"). The Settlement Motion sought approval of a heavily negotiated settlement agreement (the "**Settlement Agreement**") between the Trustee, on behalf of the Debtor's estate, and Respondents.

2. The Settlement Agreement resolved causes of action the Trustee filed against Respondents relating to alleged fraudulent transfers arising under Sections 544, 548, 550 and 551 of the Bankruptcy Code, and under C.R.S. § 38-8-101 *et seq.* (Adv. Pro. No. 21-1132 at Docket No. 1).

3. As set forth in the Settlement Agreement, Respondents agreed to: (a) withdraw four proofs of claim filed against the Debtor's estate, and (b) release two deeds of trust encumbering the Debtor's residence. In exchange, the Trustee agreed, on behalf of the Debtor's estate, to grant Respondents a global release of all claims and causes of action of any kind the estate may hold.[1]

4. Critically, Section 18 of the Settlement Agreement, titled "Parties in Interest," conspicuously states "***For the avoidance of doubt, this Settlement Agreement shall be binding upon the Debtor and Debtor's estate.***" (Docket No. 93-1 at § 18) (emphasis added).

5. The only person to object to the Settlement Motion was the Debtor. (*See* Docket No. 97).

6. On May 3, 2022, after a full day evidentiary hearing, Judge Brown granted the Settlement Motion and approved the terms of the Settlement Agreement upon the Debtor's consent. (*See* Docket Nos. 145-147). The Minute Order approving the Settlement Motion states:

> ***With the Debtor's consent***, the Court overruled the Debtor's objection to the motion to approve the settlement agreement.
>
> (*Id.*) (emphasis added).

7. Since the Court granted the Settlement Motion, Respondents have performed under the required terms of the Settlement Agreement and have waived their claims and released their deeds of trust against the Debtor's residence.

[1] This general summary of the Settlement Agreement is entirely qualified by the exact terms and conditions set forth in the Settlement Agreement filed at Docket No. 93-1.

B. Background Regarding Necessity for Global Release Binding Upon Debtor in the Settlement Agreement.

8. One of the principal reasons for seeking a global release of all claims held by the estate from the Trustee—and to expressly bind the Debtor thereto—is that the Debtor is extremely litigious, hostile and combative, filing frivolous lawsuits against Respondents and individuals affiliated therewith. Prior to the commencement of this Chapter 7 case, the Debtor was engaged in three actions with Respondents, each of which were dismissed:

- The Hawaii Action. On October 21, 2019, the Debtor filed a frivolous action against individuals affiliated with Respondents in the Second Circuit Court for Maui, Hawaii, Case No. 19-1-0365(2), *McGann v. Knutson et al.* (the "**Hawaii Action**").[2] The Hawaii Action was eventually dismissed in September of 2020 for want of prosecution by the Debtor but not without great cost, time and frustration to those being sued.

- The Chapter 11 Case. On October 19, 2019, the Debtor filed her voluntary petition for relief under Chapter 11 (the "**Chapter 11 Case**"). (*See* Bankr. D. Colo., Case No. 19-18971). The Debtor failed to comply with her legal obligations as a Chapter 11 debtor and, eventually, in August of 2020, Respondents filed a very detailed and factually supported motion to dismiss which the Debtor consented.[3] (*Id.* at Docket Nos. 170, 173 and 176).

[2] The Debtor filed the Hawaii Action subsequent to her prior Chapter 11 Case and even hired counsel (along with paying a retainer) without any approval from, or notice to, Judge Brown under Section 327(e) of the Bankruptcy Code. (*See* Bankr. D. Colo., Case No. 19-18971 at Docket No. 170 at ¶ 4).

[3] The Debtor was combative and obstructive during the entirety of her Chapter 11 Case—especially with Court-authorized discovery. (*See* Bankr. D. Colo., Case No. 19-18971 at Docket No. 170 at ¶¶ 14-18).

Respondents incurred substantial costs, delay and uncertainty in the Chapter 11 Case in order to protect their rights.

- The District of Colorado Action. On December 15, 2020, the Debtor filed a frivolous complaint against Respondents and affiliated individuals therewith, largely repackaging the unsubstantiated allegations from the Hawaii Action and Chapter 11 Case, in the United States District Court for the District of Colorado, *McGann v. 1450 Oka Kope, LLC, et al*, D. Colo. 20-cv-3625 (the "**District of Colorado Action**"). The District of Colorado Action was dismissed in January of 2021 albeit with costs and great frustration to those being sued.

9. Furthermore, the Debtor is a serial litigant who repeatedly involves herself in protracted litigation with others to no logical end when she perceives there has been "fraud." As the Court has heard in the Debtor's numerous pleadings and prior testimony, the Debtor believes that the Trustee should pursue litigation in other parts of the world including prosecuting an appeal in Hawaii (the "Volk" claim), and collecting a judgment in Canada against her "conman" ex-husband (the "Swany" claim). (*See* Docket No. 311 at p. 10). This is even ***after*** the Trustee has exercised her business judgment that such pursuits are not feasible. As a third example, and most recently, the Debtor has determined that appealing a fee award entered against her—on account of a ***prepetition*** judgment for attorneys' fees—to the Hawaii Court of Appeals as a result of purported fraud is a worthwhile pursuit. (*Id.* at p. 4-5). Each time the Debtor laments that she has been defrauded, in one way or another, in order to justify continued pursuit of each of these actions.

10. Accordingly, at the time Respondents negotiated and entered into the Settlement Agreement with the Trustee, it was imperative that Respondents obtain as broad of release of as possible from the Trustee and that the terms of the Settlement Agreement be binding upon the Debtor. Otherwise, absent such relief, the Respondents and individuals affiliated therewith face

the risk of being entangled with the Debtor in further frivolous litigation.[4] The same concerns still apply as the Debtor continues to perceive Respondents as her "nemesis." (*Id.*).

Response

11. Section 349(b) of the Bankruptcy Code provides:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> (1) reinstates—
>
> (A) any proceeding or custodianship superseded under section 543 of this title;
>
> (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
>
> (C) any lien voided under section 506(d) of this title;
>
> (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
>
> (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

12. "The basic purpose of § 349(b) 'is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement

[4] Respondents have witnessed the continuous unsubstantiated narratives regarding a purported fraud Debtor is perpetuating against Respondents in this case. Simply put, Respondents disagree with all of Debtor's allegations because they are false and do not merit a response.

of the case.'" *Viper Servs., LLC v. Fora Fin. Bus. Loans, LLC (In re Viper Servs., LLC)*, 2017 Bankr. LEXIS 3922, *9 (Bankr. D. N. M. 2017). As set forth above, the Settlement Agreement resolved the Trustee's claims against Respondents which were alleged under Sections 544, 548, 550 and 551 of the Bankruptcy Code, and under C.R.S. § 38-8-101 *et seq*. thereby, potentially, making Section 349(b) applicable.

13. Respondents oppose the Debtor's Motion to the extent that any dismissal, in conjunction with Section 349(b) of the Bankruptcy Code, operates to set aside, prejudice, or otherwise impair the order approving the Settlement Agreement and Respondents' bargained for global releases. As set forth above, Respondents waived significant claims against the Debtor which were secured by the Debtor's residence in exchange for their global release. The global releases, to which Debtor consented, prevents Debtor from ever re-litigating the frivolous claims she previously asserted against Respondents. Respondents request that, if the Court dismisses this Chapter 7 case, that the Court reaffirm the binding nature of the Settlement Agreement upon Debtor, and specifically instruct Debtor that this Court—***and no other court***—retains jurisdiction over the interpretation, enforcement, or implementation of the Settlement Agreement including the scope of releases contained therein.

14. However, to the extent that the Court grants the Motion and the order granting the Settlement Motion and Settlement Agreement are set aside, Respondents request that their claims and deeds of trust against the Debtor's residence be reinstated as of the petition date so that Respondents may pursue an immediate foreclosure thereof. If the Debtor desires dismissal (and the Court grants the Motion), then the Debtor must also realize that the prepetition rights of her creditors will be restored to their fullest extent, *i.e.*, Respondents' claims totaling over $1 million and deeds of trust against her residence spring back to life. Without reinstating Respondents' deed

of trusts the Debtor will have received the benefits of the Bankruptcy Code, *e.g.*, removal of liens, obtaining a discharge *etc.*, without having to be subject to its obligations, *e.g.*, liquidation of non-exempt home equity, and being subject to the global releases to which she consented. Such a scenario is a transparent abuse of the bankruptcy code.

15. Finally, should Respondents be forced back into the role of a Creditor, Respondents do not believe that dismissal is in their best interests (for the reasons stated herein) let alone the best interests of the Debtor's remaining creditors.[5]

WHEREFORE, Respondents request that the Court deny the Motion, or that if the Motion is granted an order be entered which either (a) reaffirms the binding nature of the Settlement Agreement upon the Debtor and that the Court retains jurisdiction over the Settlement Agreement, or (b) Respondents' deeds of trust be reinstated effective as of the petition date.

Dated: November 17, 2023.

Respectfully submitted,

By: */s/ Timothy M. Swanson*

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Counsel for 1450 Oka Kope, LLC

[5] The Settlement Agreement paved the way for the Trustee to be able to liquidate the non-exempt equity in the Debtor's residence for the benefit of the Debtor's creditors. The Debtor has continually frustrated the Trustee's ability to carry out such task and her efforts have prevented administration of the estate. Moreover, the Debtor has presented no evidence that she actually has the means to pay ***all*** creditors' claims in the event the case is dismissed—not just only those creditors who she believes are "legitimate." Whereas, the Trustee has carved a path for the Debtor's creditors to be repaid, perhaps in full, when the Debtor ceases interfering with the Trustee's exercise of her duties.

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2023, I filed a true and correct copy of the foregoing with the Court's electronic CM/ECF filing system and notice of the filing was served upon all parties who have entered their appearance and who are receiving electronic notice, including debtor.

/s/ Timothy M. Swanson
Timothy M. Swanson (47267)

UNITED STATES BANKRUTCY COURT

FOR THE DISTRIC OF COLORADO

IN RE:	)	
	)	
SHERRY MCGANN	)	**Case No. 20-18118 TBM**
	)	**Chapter 7**
Debtor	)	

DEBTORS RESPONSE TO 1450 OKA KOPE LLC, AND GAN-BEI-LA, LLC'S RESPONSE TO MOTION TO VOLUNTARILY DISMISS CHAPTER 7 CASE FOR CAUSE

Debtor McGann files this response to 1450 Oka Kope, LLC and Gan-Bei-La LLC's Response to Debtor's Motion to Voluntarily Dismiss Chapter 7 Case for Cause. The Respondents throughout their Response use this opportunity to attempt to negate language specifically added to the Settlement Agreement that would allow debtor McGann to pursue her claims against them. They are fully aware that once the bankruptcy is dismissed, they face the consequences of their actions upon the debtor[1].

Background

A. Background Regarding Respondent' Settlement Agreement and Approval Thereof.

1. The 'heavily negotiated' settlement agreement was accompanied by an adversary filing by debtor's counsel, objecting to the Settlement Agreement because it was burying fraud and the perpetrators, Respondents, were not being punished whatsoever for the wrongdoing of presenting forged documents and filing the false claims against the debtor in the first place.

2. The Settlement Agreement did remove the fraudulent transfers and fake liens and deeds of trust filed upon the debtor; however, it did not resolve the debtor's claim for 49% of the sales proceeds. The trustee had an obligation to collect those assets for the estate. Neither the Trustee nor Respondents have produced the original DocuSign documents negating the collection of proceeds due.

---

[1] The debtor has requested release of this claim, and others, since March of 2022. Denied by the trustee.

In fact, they don't address it and completely ignore the demands of debtor to produce the document. For the record, the debtor has respectfully asked the court to order production of the document, if it is allowed, and debtor believes some court will require the original document to make a determination as to its authenticity.

This was a major point in the adversary hearings and the Settlement Agreement, that was ultimately filed DOC#93-1, included language that allowed the debtor (Page 7 of 12) to proceed with a claim to recover against the Respondents.

However, the trustee remains in control of the claim and refuses to release it to debtor despite being promised it would do so **IF** she would just 'concede' and withdraw from the adversary hearing. The debtor was represented by counsel at that time and was advised that once these claims were removed, she could 'convert' and settle the claims.

3. Respondents described the agreed upon terms as (a) withdraw four proofs of claim filed against the Debtor's estate. For the Record, these claims were fraudulently filed against debtor, and it forced McGann into a Chapter 11 instead of the 13 costing an additional $14,000 to file in 2019. (b) release two deeds of trustee encumbering the Debtor's residence. The Respondent's now introduce a new "phrase" regarding the Settlement Agreement that has never been used or referenced anywhere, that the Trustee agrees to, on behalf of the Debtor's estate, to grant Respondents a "global release" to all claims and causes of action of any kind the estate may hold adding a footnote about the general summary of the Settlement Agreement is entirely qualified by the exact terms and conditions set forth in the agreement....

There was no 'global release' and debtor McGann, through her counsel, made certain she would have the opportunity to collect proceeds from the sale of the property as well as damages from the breach of contract and operating agreement between the parties.

The trustee, through her actions, have stepped into the judge's shoes and reviewed documents making a determination to not "put her hand out and demand the proceeds by stepping in the shoes of the debtor" as stated, on the record, by the Rt. Hon. Judge Brown in 2022.

4. This settlement agreement was reviewed by the debtor's prior counsel. IF there is language included that now damages the debtor, she is unaware but feels confident her documentation around this subject is superior. The same "avoidance of doubt" language is used on page 7 #5, last paragraph detailing how the 'release' **shall not apply to any claims.....whatsoever Celestial, 1450 and GBL may hold against each other including, without limitation, any claims which arise out of or are related to Note 1, Note, 11, the LOI, the Maui Property or the Membership Transfer.**

5. The debtor was negatively impacted by the Settlement Agreement outside of the believed equity created by the removal of the FRAUDULANT claims/liens/deeds filed upon the debtor with no consequences to the Respondent for those actions. In fact, the trustee now works in unison with Respondent[2]. However, the trustee tricked the debtor saying the claim would be released to pursue and has refused to release the claim.

6. The debtor McGann was present on May 3rd, 2022, and the record will show she 'complied', relying to her detriment, of the promise the trustee would release the claim to debtor to pursue, which she did not. The Respondent is leaving out a lot of important facts regarding what was said throughout the May 3rd hearing including a somewhat escalated confrontation between the Rt. Hon Judge Brown and the trustee and Mr. Miller regarding collection of proceeds due the debtor's estate and not "demanded' by the trustee. These facts are part of the record and will be available in the

[2] As well as claimant 11-1. The only two parties who would be impacted by the Motion to Dismiss. The trustee for disputed fees and the claimant whose claim is in a court of appeals and directly related to the Judgment/Order not collected by the trustee from Swany. There were viable means to collect that debt in 2020 and again proven in 2021 and 2022 by submission of proof of equity in a condo in Vancouver that could have been 'force sold' and debtor had an attorney, Mr. Hobbs, ready to move forward for less than $5k and begin with a lien on the property. All this evidence remains in the courts through filings and documents submitted as exhibits and offered at hearings.

transcripts. The Respondents highlight the court overruled the objection 'with the debtors consent' and debtor has explained throughout she conceded when the language on page 7 #5 of the Settlement Agreement was added and the trustee promised to release the claim immediately and did not and debtor was ultimately tricked by the trustee, manipulated by her vulnerable emotional state and held in a bankruptcy longer than necessary. The trustee also refused to settle in 2022 when debtor offered all claims settled except 11-1, as well as offering $75,000 in administrative fees.

7. The claims were ultimately released, but not timely, and the Respondents did release the fake deeds and liens filed in Grand County recorder's office.

B. Background Regarding Necessity for Global Release Binding Upon Debtor in the Settlement Agreement.

8. Here the Respondent again introduces this 'global release' that is "binding upon debtor" in the Settlement Agreement. There is no 'global release' that was ever presented to debtor or her counsel, that she is aware of ,or that she could find referenced to in the Settlement Agreement. The adversary filing from debtor in opposition to the Settlement Agreement was to preserve debtor McGann's remedies to collect the proceeds of the sale of the property, and damages caused by Respondents as defined in #5 on page 7 of Settlement Agreement, last paragraph.

The Respondents then accuse the debtor of filing frivolous lawsuits. The debtor was given $500,000 in 2018 by Respondents and then she spent an enormous amount of time finishing and maintaining the property in Hawaii, at the debtor's expense[3]. The Respondents have breached an Operating Agreement that was developed in unison with Respondents and operating a farm and building a main house.

[3] There are emails and documents between Knutson and McGann that clearly show debtor paying maintenance and other expenses of the property after the supposed Redemption Agreement.

The Hawaii Action was filed by debtor when Respondent locked her from the property and *all of a sudden* refused to honor the Operating Agreement while distributing forged documents to the HOA in Hawaii and others claiming McGann gave her 49% ownership rights away. Debtor McGann says "all of a sudden" because Kathy Knutson, of 1450 Oka Kope just 10 days before she flew to Maui and locked debtor from the property hosted her entire family that stayed at McGann's Grand Lake house for a week to attend a wedding.

The Chapter 11 Case filed October 19, 2019; Debtor was represented by counsel at this time. Debtor was told by counsel this was the best course as they planned to file for Chapter 7 due to the actions of Respondents shutting down her Maui farm and breaching the Operating Agreement.

The District of Colorado Action was filed by debtor that was 'largely repackaged" very substantial allegations from the Hawaii Action and Chapter 11 Case. This was not frivolous but was an attempt to seek damages caused by Respondents who completely ignored the Operating Agreement and filed false claims, documents and more. It was filed in the United States District Court for the District of Colorado. The debtor learned January 13, 2021, after telephonic status conference, the claim was filed in the wrong civil court and there was no 'great frustration' or efforts whatsoever from the Respondents regarding this claim. It was voluntary dismissed, same day, and debtor did not refile the claim believing the trustee would fulfil her duty and prosecute the Respondents. Instead, it appears an alliance has developed to the detriment of the debtor.

These malicious activities have been reported to the Department Of Justice and the debtor filed lawsuits having no other recourse from the Respondents actions. To characterize the debtor as litigious, hostile and combative, filing frivolous lawsuits is simply not true. Debtor in many desperate attempts tried to avoid litigation reaching out to Dan Wolfe, the Respondents counsel at the time, asking for clarification and saying she would do anything to avoid litigation.

The record will reflect it was the Respondents filing numerous documents and forcing repeated meetings and depositions from the debtor. It was during COVID, and they forced the debtor to fly from Arizona to Colorado to attend a meeting in person refusing telephonic communication when the entire world was shifting to that platform. They harassed the debtor throughout the entire bankruptcy and thankfully at that time the debtor was represented by counsel. Rt. Judge Brown was witness to these proceedings and when the Respondents sought attorney fees they were denied.

9. Here the Respondents accuse the debtor of being a "serial litigant" who repeatedly involves herself in protracted litigation with others to no logical end when she perceives there has been "fraud". The debtor is not a 'serial litigant' other than the fact she has been forced to protect herself from the numerous repeated attacks of the Respondent, and others since 2016.

Here the Respondents claim, "no logical end". The debtor McGann has done nothing but try to end this and move on with her life and rehabilitate from the damages imposed upon her. This attack from Respondents is a desperate attempt to lay some foundation to protect themselves from the fraud committed. It is a fact the Respondents committed fraud. It is undisputed. It has also gone unpunished, buried in the Settlement Agreement and it has caused incredible damage to the debtor.

The debtor believes a jury trial would disagree with Respondents opinions that the debtor has no "logic" when she "perceives" there has been "fraud".[4] The debtor, without doubt, has been frauded by the Respondents and repeatedly. The Respondents refused to produce the purported signed DocuSign Redemption Agreement. They filed false liens/deeds upon debtor's home. They filed false claims in Chapter 11 and then again in Chapter 7 bankruptcy. They breached an Operating Agreement. They basically stole the property and sold it keeping all proceeds of the $3m plus sale. The court should take judicial notice that the Respondents advised the debtor on all of the legal matters for the court case with claimant 11-1 as well as with debtor's personal legal battle with Swany. Until days before debtor showed

[4] The debtor has a right to a jury trial and has demanded one.

up in Maui, for required court hearing with claimant 11-1, the debtor was lead to believe she was operating the farm in Maui and was actually working for the Respondent meeting builders, architects and the like on site in Hawaii, at her expense, sharing plans for their 'main house' that was supposed to be built on the top lot of the property with an infusion of $2.5m capital. The facts cannot be hidden and certainly have not been disputed by the Respondents.

a. They breached the Operating Agreement.

b. There is no DocuSign document from the debtor giving away her 49% interest in the property for no consideration whatsoever.

c. The Respondent, specifically Kathy Knutson, befriended McGann and pretended to be protecting her and her half of the property. McGann offered other investors and Knutson refused saying 'she didn't want her taken advantage of'.

d. They never funded nor built a main house - instead taking over the portion McGann developed.

Fraud is the only word that accurately describes what happened and it is an ACTUAL event not one 'perceived' by the debtor. She lives it and Respondents have stolen the property in the plain site of this court and kept all proceeds and now apparently worked out some deal with the trustee, in their 'heavily negotiated' settlement, to not pay the proceeds due the estate.

The debtor is baffled how this has gone on this long with no retribution and the Courts simply disregard the debtor and allow the proceeds to be voided with no questions asked[5]. No demand of seeing the DocuSign document they claim to have which negated the collection of

[5] Exact same situation with the property, art, and equipment in Maui, listed on her assets list on both bankruptcies, which has been completely ignored. There was an original oil painting worth $250,000 in which debtor was required, by prior counsel, to have valuation documents sent and nothing was ever pursued by the trustee. During their 'heavy negotiations' towards settlement it is not unreasonable to demand the property of the debtor be returned or liquidated and paid to creditors. This could have occurred many years ago and the debtor has repeatedly, through counsel and directly by asking the court to demand a response from the trustee and/or Respondents....all ignored in true fashion for the debtor.

$1.3m in sales proceeds. For the record, the debtor is again respectfully demanding these documents be produced OR the proceeds of the sale be Ordered to be paid to the debtor's estate. For the court to remain silent on this issue is an miscarriage of justice.

NOTE: It was argued during these adversarial hearings surrounding the 'Settlement Agreement' that debtor McGann lacked standing due to being in the chapter 7. The Rt. Hon. Judge Brown disagreed and allowed the debtor many graces in her attempts as prose to rehabilitate.

The 'Volk' claim in Hawaii has tremendous amounts of work done with lawyers and much evidence surrounding the viability of that claim has been provided. For the Respondent to simplify the value of a $2m insurance policy that was ripe for collection is pure ignorance.

Regarding the judgment/order in favor of debtor for $144,833 it is a direct result of the actions Claimants 11-1 took by placing Swany on the stand in the Hawaii court to testify on made up intentions of the debtor. It was done intentionally and maliciously by Claimants 11-1 and the Respondents have enormous amounts of information relating to this claim because they legally counselled her throughout the entire proceeding until the final hearing when they locked debtor from the Hawaii property and hired a lawyer to show up in court with Claimant 11-1 to advise the court of McGann being removed from the Hawaii property. The records of the proceeding will show their appearance at the table with Claimants 11-1.

The fraud was proven in a court of law that Swany is a conman and he acted in unison with Mr. Nussbaum and stopped the construction project as Respondents have firsthand knowledge of all details.

In addition, its Canada, not Italy. The USA and Canada have very liberal jurisdiction to enforce the order and debtor McGann had engaged with an attorney to lien the property in Vancouver that had equity in it at the time. This information was sent to the Trustee and her

attorney Mr. Miller claimed they were 'negotiating' in 2021 but they never followed through and refused to release the claim to the debtor to collect.

The Respondents defend the trustee for not collecting the Swany claim and boast the trustee has exercised her business judgment and that such pursuits are not feasible. The feasibility was ignored by the trustee. It's unclear why the Respondent is going to such great lengths to speak of the trustee's pursuits toward claims they are, or should be, unfamiliar with unless it was part of their 'heavily negotiated' discussions surrounding the Settlement Agreement.

Finally, the debtor is completely justified in pursing collection when the trustee failed to do her duty and she was found to have standing to do so by the Rt. Hon. Judge Brown. Now, it is unclear to the debtor what 'global agreements' the trustee made with the Respondents that were not disclosed or uncovered until now. It does resonate now with the debtor that perhaps the trustee made a deal to 'not collect' the proceeds and to 'pretend' they had reason, since the court has not demanded such proof, as of yet. The debtor went to great lengths, though her counsel, to preserve her right to "purse collection". The Trustee was also offered, through debtors counsel, mountains of documents and proof of the work, time, money and energy that had already gone into protecting the estate and making it easy for the trustee to finalize the process.

10. This is a mischaracterization of the facts. Debtor McGann, through her counsel, made certain before she conceded to the Settlement Agreement that wording was in place so McGann could mitigate her damages through the legal system. What other means does the Respondent suggest the debtor employ to protect her rights?

The footnote: unsubstantiated narratives regarding purported fraud debtor is perpetuation against Respondents. Yes, simply put, please provide the DocuSign document Mr.

Wolf represented on October 16, 2019 (EXH 1) that McGann signed and / or pay the 49% proceeds due.

It really is that simple and it is the Respondent that has ignored the request they feel doesn't merit a response.

Respondents point out debtors agreed reference to the name given to them by the Trustee. Does the Respondents claim they are not a 'nemesis' to the debtor? The Respondents were most certainly an inescapable agent of debtor's downfall and now a long-standing rival to the debtor. What they did to her and her property she solely designed, financed, and built has no words to describe the actual depth of the deception that took place.

Response

11. Section 349(b) of the Bankruptcy code provisions are quoted here by the Respondent and the debtor assumes they are correct.

12. The debtor has not asked for anything regarding claimant 13-16 except to be released to pursue in another court as agreed upon in the Settlement Agreement , page 7 of 12 states "**The release shall not apply to any claims (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment, and defenses), actions, causes of action, suits, debts, accounts, interest, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever Celestial, 1450 and GBL may hold against each other including, without limitation, any claims which arise out of or are related to Note I, Note, II, the LOI, the Maui Property or the Membership Transfer.**"

13. The Respondents again use the words 'global release' and the debtor is certain, considering she had counsel at the time and the very nature of the adversarial hearings

regarding the Settlement Agreement surrounded the FRAUD, that debtors rights to pursue are preserved. This fact was confirmed by the trustee to the debtor's prior counsel.

The debtor again points out that the claims waived were not legitimate and fraudulent in the fact the documents themselves filed in Grand County by the Responded were switched from Celestial Properties to McGann's personal name.

The Respondents, desperate the fraud could be exposed, request the Court to reaffirm the binding nature of the Settlement Agreement upon debtor and prevent the debtor from ever re-litigation what they claim to be frivolous claims asserted against Respondents. That is absolutely not the way it was explained by debtor's prior counsel that handled the adversarial filings, nor the trustee. The language provided on page 7 of the agreement, as quoted above, clearly states the 'release' in the settlement agreement "shall not apply to..... any claims which arise out of or are related to Note I, Note II, the LOI, the Maui Property or the Membership Transfer."

How inappropriate for the Respondents to use this court to attempt to 'bind' something in the Settlement Agreement that bar the debtor from filing a claim to recover damages as agreed upon in #5 of the Settlement Agreement. The Settlement Agreement, page 7 #5 Release of Claims... is broad and does not contain any ambiguous wording regarding the 'shall not apply' terms of the Settlement Agreement relating to claims debtor has against the Respondent in some fictitious 'global release'.

14. When the Respondents filed the liens and deeds, in 2019, they were fraudulent and not the documents signed by the debtor. It is absurd for the Respondent to now ask this Court to "restore" claims and "spring them back to life" when they were filed in bad faith and fraudulent claims from the start. The Respondents are fully aware if debtor proceeds with a new case, outside of bankruptcy court, they will be required to produce the DocuSign documents,

liens and deeds forged and account for the other debts incurred outside the Operating Agreement that was breached. It would be in Respondents best interests to settle this claim instead of trying and hide deeper in the bankruptcy court with a trustee that is negligent to their benefit while claiming some 'global release' was given, when it was not; unless it was negligently part of the 'heavy negotiation' that took place between the parties.

The debtor has received no relief or benefits from this Bankruptcy. The debtor has contacted all creditors on the matrix and intends to settle claims as outlined in debtors Moton to Dismiss.

The debtor believes it is important for the Court to note the only reason there is believed equity in the home is BECAUSE of the fraudulent claims the Respondents filed were released. The trustee is negligent in not collecting proceeds from the sale of the property and collecting viable claims available to the estate.

The abuse of the bankruptcy code is happening with the Respondent's attempt to some 'global release' being introduced now and 'binding' request. The Settlement Agreement is clear on **"For the avoidance of doubt, this release shall not apply to any claims..... as stated above and on page 7 of 12 of the Settlement Agreement DOC#93-1** (emphasis added)

15. The debtors dismiss will resolve the remaining creditors that have waited nearly 4 years as the Respondent, claimant 11-1 and the trustee intentionally stall the settling of claims and debtors right to a fresh start. And now the Respondents are interfering, delaying the rehabilitation of the debtor, attempting to protect itself from its wrongdoings by claiming that because debtor referenced in her filings her intentions to pursue her claims against 1450 Oka Kope and GBL they seek the opportunity to negate what was specifically added to the Settlement Agreement to preserve her rights and collect what the trustee was negligent in doing so.

WHEREFORE, Debtor request that the Court deny the Respondents request for (a) reaffirmation of the binding nature of the Settlement Agreement upon the debtor or the new 'global release' associated with the Settlement Agreement being introduced by the Respondents.

That the Court does not retain jurisdiction over the Settlement Agreement, or (b) Respondents' deeds of trust be reinstated without a jury trial on the documents involved surrounding the reinstatement request. The debtor is prepared to present the evidence and has already submitted it through the courts in numerous filings in both Hawaii and Colorado surrounding the legitimate nature of claims 13-16 and the actions of the Respondents.

The Respondents are fully aware they will be unable to show any transfers of money or DocuSign documents of giving the 49% away with no consideration and use this opportunity to file a 'responsive and somewhat of an objection' to debtors' rehabilitation efforts and attempts to hamper the ability for the debtor to proceed with a claim against Respondents if and when the bankruptcy is dismissed and the trustee is no longer protecting them holding the claim and debtor hostage in this bankruptcy.

The Motion to Dismiss requested by the debtor should be give no weight to the Respondent's Response filing, as they are not an active creditor, any longer, and theoretically, are not an 'interested party' to the bankruptcy by their own evidence and the Settlement Agreement.

DATED: November 20, 2023

Sherry McGann

/s/ Sherry McGann

CERTIFICATE OF SERVICE

I hereby certify that on **November 20, 2023**, I filed a true and correct copy of the foregoing with the Court's electronic CM/ECF filing system and notice of the filing was served upon all parties who have entered their appearance and who are receiving electronic notice.

Sherry McGann

/s/ Sherry McGann

EXHIBIT 1

EXHIBIT 1

Sherry McGann

From: Dan Wolf <dwolf@mountainlawgroup.com>
Sent: Monday, October 14, 2019 7:23 PM
To: Sherry McGann
Cc: Dan Wolf
Subject: RE: Oct 16th arrival
Attachments: transmittal emails from Sherry 05-14-19.pdf; FW: 1450 Oka Kope - Ownership Change; FW: 1450 Oka Kope - Ownership Change; FW: 1450 Oka Kope - Ownership Change

Ms. McGann:

You know full well that you signed the Redemption Agreement and Assignment. Attached are your emails of May 14 whereby you transmitted those signed documents to Mike, and the email thread between you and Kathy regarding the change in ownership of Oka Kope and your execution of the documents. As you know and as reflected in the attached, you signed the documents electronically via DocuSign which is why your signature appears that way it does. These corporate documents are not required to be notarized and normally are not notarized.

It is unfortunate that you are now resorting to being untruthful. Be advised that knowingly making false statements (including to law enforcement) can potentially result in both civil and criminal liability. I urge you to consult with a lawyer before you take any further actions or make further false statements that could have serious consequences for you. Also in view of your actions, you should not hope for cooperation from Oka Kope in connection your bankruptcy filing. The liens filed on your Grand Lake property is a matter of public record and that information is readily available through the County Recorder and any local title company.

I see little value in engaging in further back and forth with you given your refusal to recognize the undeniable fact that you no longer have any interest in the property and your continued threats to unlawfully take matters into your own hands and to forcibly break and enter the property.

Daniel F. Wolf, Esq.
MOUNTAIN LAW GROUP
Phone (970)476-8865; Cell (970)376-5605
e-mail: dwolf@mountainlawgroup.com
website: www.mountainlawgroup.com

From: Sherry McGann <Sherry@nalanimaui.com>
Sent: Monday, October 14, 2019 3:19 PM
To: Dan Wolf <dwolf@mountainlawgroup.com>
Subject: RE: Oct 16th arrival

Dear Mr. Wolf,
I hope I am replying quick enough to catch you before you are gone.

I did not sign the attached documents nor do I have anything on my email forwarding anything of this nature to anyone. Why isn't this notarized? Why does the signature not match any of my other signatures?
Kathy testified at a hearing with Swany, under oath, May 2019 that I was a 49% owner. Should I forward the Order and transcript?

Nothing has changed and I will be phoning the police in Lahaina myself; and sending the documents I have of the partnership and tax returns, K-1s etc.
You do not have a right to keep me from property I have occupied and paid taxes on for years – since 2014.

And to be clear, I still don't understand what the issue is or why I would be barred. I don't need a "host of reasons" - one would be ok. What "latest troubling and threatening behavior" are you referring to? I have had no incidents threatening or troubling since you removed the Project Manager whom threatened me years ago.
I've not had any issue with anyone and would appreciate more specific information than general vague statements that make absolutely no sense.

I did ask Liz my bankruptcy attorney to contact you because she said based on the information she understands the deed and quitclaim would be turned over anyhow. This all started because I've demanded to know what liens are filed on my Grand Lake property. I cannot be charged for money that was given to me to deed the property to the llc to begin with.. and now I understand this an attempt to cease the property and I will exercise my same rights.

Thank you,
Sherry

From: Dan Wolf <dwolf@mountainlawgroup.com>
Sent: Monday, October 14, 2019 3:01 PM
To: Sherry McGann <Sherry@nalanimaui.com>
Subject: RE: Oct 16th arrival

Sherry, see my attached letter with enclosure. I will be out of the office and unavailable all day tomorrow.

Daniel F. Wolf, Esq.
MOUNTAIN LAW GROUP
Phone (970)476-8865; Cell (970)376-5605
e-mail: dwolf@mountainlawgroup.com
website: www.mountainlawgroup.com

From: Sherry McGann [mailto:Sherry@nalanimaui.com]
Sent: Monday, October 14, 2019 11:42 AM
To: Dan Wolf
Cc: Kathy - 1450 Oka Kope; Mike - 1450 Oka Kope
Subject: Oct 16th arrival

Hello Mr. Wolf,
It is less than 48 hours from my departure to Maui. I have not received a reply or response since last week when I notified you I was not represented.
I sent the HOA another request to add me back to the directory (attached) and gate access.

It appears Ouster is occurring here since I am a person entitled to possession of the property and for some unknown and undisclosed reason Kathy and Mike are preventing me from entering and using the property. Each state apparently has different requirements and since I am not an attorney nor represented by one I am not sure if it is Colorado law or Hawaii law. Reality is I still am unclear what is happening here??

As a corollary to the right of possession, each co-tenant has the right to not be "ousted" by the other party. "Ouster" occurs when one party physically prevents the other party from gaining or remaining in possession of the property. Changing locks, removing me from security cameras, removing me from gate access, taking the gate entry

device unauthorized from my car all are definitely physically preventing me from gaining access. If one co-tenant "ousts" the other co-tenant, the victim of the ouster can sue for wrongful ejectment. Please don't do this. I have no desire to sue for anything. I just want to come and go peacefully taking care of the things I am forced to deal with. And please answer my repeated questions regarding what you expect me to leave at the cottage for the long term renter since everything in the cottage & barn is my personal property.

I am again begging you to please send me the gate remote and keys or stop instructing the HOA to refuse my entrance; which legally they can't! I have a driver's license and auto ID card with the 1450 Oka Kope address..... Why was authorization to remove me, unbeknownst to me and with no reason or notice, ever given in the first place to the HOA/LOA? Kathy has known I was going to Maui for months and not a word was said about no access to the cottage until a week before I am leaving.....

Can you please communicate what is going on and work with me to find a painful quick solution so I can come and go from Maui?
We can all figure out what the issues really are upon my return.

Please, I again am notifying you of the tremendous stress and unnecessary anxiety this is causing me. I've done nothing to be barred from the property and there has been nothing served up me tell me I have been.

Please respond.

Thank you,
Sherry
303-507--7658

EXHIBIT 3

(APRIL 26, 2022 EMAIL FROM MILLER/TRUSTEE)

From: Miller, David
To: Sherry McGann
Cc: Jeanne Yendrek Jagow (Work)
Subject: In re McGann
Date: Tuesday, April 26, 2022 2:06:56 PM

Dear Ms. McGann:

Thank you for your recent email letter of April 18, 2022, regarding a proposed settlement agreement. I was unable to open your email until yesterday, as a result of malware warnings appearing whenever I tried to review it. While the Trustee appreciates your response to her offer of March 16, 2022, she is unable to accept it, as the terms are inconsistent with the Trustee's duties to the estate, and the provisions of the Bankruptcy Code.

At the outset, the Trustee notes that none of your suggested terms can be accomplished absent approval of the pending settlement agreement. It is only through that settlement that the 1450 liens will be released on the Grand Lake Property. If this agreement is not approved, the 1450 liens will not be released.

The Trustee instead proposes that you withdraw your pending objection to the proposed settlement agreement with 1450 Oka Kope, LLC and Gan-Bai-La, LLC, so estate administration can move forward. Your objection has forced the estate to incur significant fees and costs, reducing the possibility that creditors will be paid in full, or that there would be any excess funds available to you once all legitimate estate debts have been satisfied.

If the Trustee is able to reach a settlement with you and you agree to withdraw your objection to the pending settlement agreement with 1450 and GBL, the house need not be sold. However, $70,000 is not a sufficient amount to resolve this matter. The Trustee believes she could reasonably resolve this matter for the reduced sum of $380,000.00. This amount may not result in full payment to creditors. The Trustee will proceed to address claim issues and determine whether objections should be filed. If you have documents which support your objections to certain claims, please send them to us.

With respect to your "Corrected Claims Register", your suggestions are unfortunately unworkable and inconsistent with how bankruptcy cases operate, and what the United States Bankruptcy Code requires. There is no way to correct a claims register. It exists, and objections may be filed to specific claims, if appropriate. As to your disputed claims, the fact that you are a co-signor on a student loan which is being serviced by your daughter does not make the claim invalid whatsoever. You have liability on the claim, and the creditor filed a timely claim. Further, the fact that a creditor sent you a 1099 does not negate the validity of a claim filed to recover on that debt. As to the Citibank claim, you sent the Trustee a copy of an email you sent to Ms. Elizabeth German, your former counsel, wherein you stated you did not receive credit for returns or improperly installed goods from years ago. However, no supporting documents were attached. Your statements alone cannot form the basis for a claim objection, and the fact that this took place so many years ago, with the goods apparently used for the Maui residence, would make such a claim objection difficult. I note some of the items you mentioned, such as the dishwasher, were not

returned to Home Depot. Again, if there are any documents which support your contentions, please send them and the Trustee will review them to determine if a claim objection is warranted.

Like you, the Trustee does want to incur more fees and costs to proceed to trial, but she believes she has no choice, in light of the continued pursuit of your objection. We hope you reconsider.

Sincerely,

David

David Miller Attorney
Spencer Fane LLP

1700 Lincoln Street | Suite 2000 | Denver, CO 80203
O 303-592-8332
dmiller@spencerfane.com | spencerfane.com

EXHIBIT 4

(January 22, 2024 letter to bankruptcy judge regarding attack in home of Petitioner in August of 2023)

THE Senseless Peace PROJECT
Healing Trauma Restoring Lives

January 22, 2024

The Honorable Thomas B. McNamara,
My name is Kenny Dennis. I am a Licensed Professional Counselor in the state of Colorado specializing in trauma. It is in this capacity that I have been working with Sherry McGann. Miss McGann is scheduled to appear before you on February 12, 2024. I am writing on her behalf to request accommodations for her to appear via online technology. I do not believe that Miss McGann is able to be physically present because of acute Post-Traumatic Stress she has been experiencing since being assaulted August 20, 2024. I am briefly highlighting these circumstances for your consideration.

Miss McGann was wrongfully and physically assaulted by Grand County Sheriff Deputies in her home on August 20 after phoning to request officer assistance. The deputies unlawfully assault and arrested Ms McGann. She was taken to the county jail where she was unjustly detained overnight under a great deal of duress and hardship. In the morning, she was forced to appear before the judge in inmate clothing and was humiliated and ridiculed.

Based on the illegal nature of her arrest and detainment, one of the deputies has since been dismissed and is being charged with assault as well as other charges. This can be verified by contacting the Grand County Undersheriff, Wayne Schafer and referencing case number two. The DA case number is C0252023M 00186.

As a result of this experience, Miss McGann has severe PTSD that has led to general agoraphobia, and she often struggles to leave her home. She is also terrified of any police contact. As I have worked with her, the thought of appearing in a courtroom right now evokes extreme terror. If she were able physically able to walk into the courthouse, which I believe is unlikely, her degree of dysregulation and fear would render her unable to address any questions or provide helpful information. I do believe that she will be able to testify via technology and am requesting that she be permitted to do so.

If there are any further questions or clarification I can provide, please feel free to contact me at kenny.dennis.lpc@gmail.com or 719 321 1976.

Respectfully Submitted,

LPC

Kenny Dennis, MA, LPC, NCC

PO Box 1077, Grand Lake, CO 80447
719-321-1976 fax 866-384-1465

United States Bankruptcy Court - District of Colorado
Online Filing Tool Submission

Submitted: 2024/01/24 11:20:32

User Information

Sherry McGann
1535 Grand Avenue
Grand Lake
CO
80447

sherry@nalanimaui.com
303-507-7658

explained that it based these claims on two different promissory notes executed by Celestial, which Oka Kope asserted was the Debtor's "wholly owned alter ego." The Debtor was not a maker, nor did she personally guarantee Celestial's obligations on either promissory note.

Oka Kope's $499,000 claim says that the promissory note is secured by a deed of trust recorded in Grand County Colorado. Its $449,000 claim does not specify where the deed of trust securing the note was recorded. The promissory notes for both claims indicate that they are secured by Celestial's property in Hawaii. Oka Kope did not attach a copy of either deed of trust to its proofs of claim. The Debtor never disputed, however, that Oka Kope recorded the deeds of trust in Grand County and her schedules acknowledge that they encumbered her residence there. In various hearings, however, the Debtor asserted these deeds of trust were "fake." In her brief on the eligibility question, the Debtor reiterates that they were "false." She attached to her brief in this matter a letter from her prior attorney stating that the Debtor executed the deeds of trust at the request of the GBL principals in order to allow them to refinance the Hawaii property and that they agreed they would not record them in Grand County.

In addition to the Oka Kope secured debts, the Debtor listed a first mortgage owed to Cenlar Loan and a second mortgage owed to Elevations Credit Union. The total amount of the secured debts she listed was $1,416,394. The trustee and Menehune argue that the Debtor's secured debts are clearly above the § 109(e) limit, making her ineligible for chapter 13. But Oka Kope's claims were secured only by third and fourth priority deeds of trust on the Debtor's home in Grand Lake. In determining eligibility for chapter 13, the vast majority of courts have applied the definition of "secured claim" in § 506(a), such that a claim is a secured claim only to the extent of the value of the creditor's interest in the property, with the remainder of the claim added to the debtor's other unsecured claims. *In re Scovis*, 249 F.3d at 983; *In re Garcia*, 520 B.R. 848, 850-52 (Bankr. D. N.M. 2014) (collecting cases). Applying this analysis, the Court must deduct the amounts the Debtor owed on the first and second mortgages from the Grand Lake property's value on the petition date and will consider Oka Kope's claims as secured claims only to the extent of any remaining equity.

The Debtor scheduled the value of Grand Lake property at $719,000. This may have been based on the $699,000 value that a special master attributed to the property in the Debtor's 2019 divorce arbitration. *See* Trustee's Exh. 34 from the May 3, 2022 hearing on the Motion to Approve Settlement Agreement. Based on an August 2021 comparative market analysis, the trustee claimed the home is now worth more than $1.3 million. *See* Trustee's Exh. 37 from the May 3, 2022 hearing. But the Court has received no evidence that suggests the Debtor arrived at the petition date value of $719,000 in bad faith. Moreover, the market analysis is not an appraisal, the broker who prepared the market analysis did not testify, so neither the Court nor the Debtor was able to question her to determine the reliability of the market analysis, and the Debtor's testimony that the home needs substantial repairs was credible. The home would need to be worth $1,257,850 or more on the December 2020 petition date for the Debtor's secured claims to exceed the secured debt limit of § 109(e). The Court finds this very unlikely.