

FILED & ENTERED

JUL 21 2023

UNITED STATES BANKRUPTCY COURT
Central District of California
BY Cetulio DEPUTY CLERK
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:

ALLANA BARONI,

Debtor.

Case No. 1:12-bk-10986-MB

Chapter 7

MEMORANDUM OF DECISION RE:

**[1] CHAPTER 7 TRUSTEE'S MOTION TO:
(1) APPROVE SALE OF REAL PROPERTY
FREE AND CLEAR OF ALL LIENS,
INTERESTS, CLAIMS, AND
ENCUMBRANCES WITH SUCH LIENS,
INTERESTS, CLAIMS, AND
ENCUMBRANCES TO ATTACH TO
PROCEEDS PURSUANT TO 11 U.S.C.
§ 363(b) AND (f); (2) APPROVE OVERBID
PROCEDURES; (3) HOLD HOMESTEAD
EXEMPTION FUNDS IN ESTATE
PENDING REINVESTMENT PURSUANT
TO CCP § 704.720(b); AND (4)
DETERMINE THAT BUYER IS ENTITLED
TO PROTECTION PURSUANT TO 11
U.S.C. § 363(m)
[CASE DKT. 1830]; and**

**[2] MOTION OF THE DEBTOR AND
JAMES BARONI FOR AN ORDER OF THIS
COURT COMPELLING TRUSTEE SEROR
TO ABANDON THE BARONIS'
CALABASAS RESIDENCE (3339 VIA
VERDE COURT, CALABASAS, CA) TO
BARONIS, PURSUANT TO 11 USC §554(b),
PER JAMES BARONI'S 'PAY ESTATE
\$150,000 FOR ABANDONMENT' OFFER
MADE IN JAMES' DECL. TO OPP. TO
SEROR MOTION TO SELL
[CASE DKT. 1859]**

1 The chapter 7 trustee, David Seror (the "Trustee"), has filed his *Motion to: (1) Approve Sale*
2 *of Real Property Free and Clear of all Liens, Interests, Claims, and Encumbrances with Such Liens,*
3 *Interests, Claims, and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. § 363(b) and (f);*
4 *(2) Approve Overbid Procedures; (3) Hold Homestead Exemption Funds in Estate Pending*
5 *Reinvestment Pursuant to CCP § 704.720(b); and (4) Determine that Buyer Is Entitled to Protection*
6 *Pursuant to 11 U.S.C. § 363(m) regarding the Trustee's agreement to sell property of the estate in*
7 *Calabasas (the "Sale Motion" and the "Sale Agreement").* Case Dkt. 1830. The chapter 7 debtor,
8 Allana Baroni (the "Debtor"), and her non-debtor spouse, James Baroni, oppose the Sale Motion and
9 have filed their own *Motion for an Order of this Court Compelling Trustee Seror to Abandon the*
10 *Baronis' Calabasas Residence (3339 Via Verde Court, Calabasas, CA) to Baronis, pursuant to 11*
11 *U.S.C. § 554(b), per James Baroni's "Pay Estate \$150,000 for Abandonment" Offer Made in James'*
12 *Decl. to Opp. to Seror Motion to Sell* (the "Abandonment Motion"). Case Dkt. 1859.

13 I. JURISDICTION, ADJUDICATIVE AUTHORITY & VENUE

14 The Court has jurisdiction over the Sale Motion and the Abandonment Motion because both
15 of the matters arise under provisions of title 11 of the United States Code, i.e., the Bankruptcy Code.
16 28 U.S.C. § 1334(b). For the same reason, the Court's consideration of the Sale Motion and the
17 Abandonment Motion are both constitutionally "core" matters over which the Court has the
18 adjudicative authority to enter final orders. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665
19 (2015). Venue is proper under 28 U.S.C. § 1409(a).

20 II. THE SALE MOTION

21 Bankruptcy Code section 363(b) authorizes a trustee "after notice and a hearing, [to] sell...,
22 other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). "The
23 court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the
24 circumstances." *In re Lahijani*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005). Courts also look to
25 whether there is an adequate business justification for the sale and whether it is "in the best interest
26 of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been
27 negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an
28 'arms-length' transaction." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal.

1 1991). "Ordinarily, the position of the trustee is afforded deference, particularly where business
2 judgment is entailed in the analysis or where there is no objection." *In re Lahijani*, 325 B.R. at 289.

3 Here, the record demonstrates the Trustee has exercised sound business judgment in entering
4 into the Sale Agreement, and proceeding with the sale transaction is in the best interests of the estate.
5 First, as discussed in Section IV below, the Baronis' real property located at 3339 Via Verde Court,
6 Calabasas, California (the "Calabasas Property") is community property. Because community
7 property is property of the estate, see 11 U.S.C. § 541(a)(2), the Trustee is authorized to sell it.
8 Second, the Trustee's decisions to market the Calabasas Property and enter into the Sale Agreement
9 satisfy the Trustee's contractual obligations under his settlement agreement with CIT (the "CIT
10 Settlement Agreement").¹ Among other things, the CIT Settlement Agreement provides: (i) the CIT
11 secured claim against the Calabasas property is allowed as a fully secured claim in the amount of
12 \$2,561,235.85, as of September 30, 2022,² (ii) the Trustee will market and sell the Calabasas
13 Property, (iii) upon the close of escrow, "CIT shall receive payment in the amount of \$1,800,000 and
14 a general unsecured claim in the amount of \$255,829 in full satisfaction of the CIT secured Claim,"
15 and (iv) "[t]he difference between the CIT Secured Claim and the \$1,800,000 actually paid to CIT
16 from escrow shall be deemed avoided and preserved for the benefit of the bankruptcy estate." Case
17 Dkt. 1577 at 23-24.

18 Third, the economics of the CIT Settlement—approval of which was not appealed and is now
19 final³—were very favorable to the estate. Pursuant to the CIT Settlement, CIT agreed to reduce the
20 secured portion of its claim from approximately \$2.6 million to \$1.8 million, permit the estate to
21 receive the balance of the proceeds of the sale in excess of \$1.8 million,⁴ and retain only an

22
23 ¹ The CIT Settlement Agreement is attached as Exhibit 1 to the *Chapter 7 Trustee's Motion for
Approval of Compromise with CIT Bank, N.A. etc.*, Case Dkt. 1577.

24 ² Because it appears that the value of the Calabasas Property exceeds the amount of CIT's claim, and
25 CIT alleges that the Baronis have ceased making monthly amortized payments as of January 12,
26 2023, *see* case docket 1827 at 2:5-7, additional postpetition interest is accruing on the claim. *See* 11
U.S.C. § 506(b).

27 ³ *See Order on Trustee's Motion for Approval of Compromise With CIT Bank, N.A., and LoanCare
LLC Pursuant to Federal Rule of Bankruptcy Procedure 9019.* Case Dkt. 1756.

28 ⁴ *See* Transcript of Hearing on January 25, 2023, Case Dkt. 1734 at 54:25-55:11 ("the Court finds
that the approval of the settlement results in an initial recovery to the estate of at least \$761,235,

1 unsecured claim for \$255,829. The unsecured claim will be entitled to a pro rata distribution of
2 whatever funds may be available after administration of the estate, together with the holders of all
3 other unsecured claims. *See generally* 11 U.S.C. § 726. In approving the CIT Settlement, the Court
4 found that it was "negotiated in good faith and at arm's length between the trustee and his counsel
5 and CIT and its counsel." Case Dkt. 1734 at 55:22-23. The Court also found that the CIT
6 Settlement was "in the best interest of the estate and a proper exercise of [the Trustee's] business
7 judgment." Case Dkt. 1734 at 57:7-8.

8 Fourth, the Trustee is exercising reasonable business judgment *again* by fulfilling his
9 contractual obligation to sell the Calabasas Property under the approved CIT Settlement. By
10 fulfilling his obligations under the CIT Settlement, the Trustee will avoid breaching that agreement
11 and incurring any administrative claim in favor of CIT for damages arising from that breach.
12 Further, and perhaps most importantly, the Trustee will unlock, for the benefit of the estate, the
13 substantial value promised by CIT under the agreement. The Sale Agreement, moreover, is itself
14 fair, reasonable and in the best interests of the estate. The record establishes that (i) the property was
15 adequately marketed, (ii) the transaction was negotiated and proposed in good faith, (iii) the
16 purchaser is proceeding in good faith, and (iv) the sale is an "arms-length" transaction.

17 The Trustee marketed the Calabasas Property with the assistance of Marc Shevin, a licensed
18 California real estate broker, specializing in the marketing and sale of real estate properties in
19 Calabasas and Hidden Hills markets of California. Declaration of Marc Shevin, Case Dkt. 1830 at
20 25:3-25:4. On February 5, 2023, Shevin listed the Calabasas Property on the local multiple listing
21 service ("MLS"), which feeds other cooperating regional multiple listing services, for \$3,395,000.
22 *Id.* at 25:13-16. The property also was listed on Realtor.com, Zillow.com, Redfin.com and Shevin's
23 website. *Id.* at 25:16-18. Shevin called and emailed local agents to inform them of the new listing
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25

26 _____
27 representing the difference between the full amount of CIT's secured claim on a future closing date
28 of the sale of the Calabasas property. We don't know exactly what that is, but it was, you know,
2,561 million as of September 30, 2022, and a \$1.8 million CIT agrees to accept in full satisfaction
of its secured claim. Because CIT's secured claim appears to be oversecured, interest continues to
accrue. And therefore, the estate's recovery upon a sale would be greater than \$761,235.")

1 and a broker's open house; he also advertised the broker's open house on the MLS. *Id.* at 25:18-21,
2 25:23-24.

3 Following the listing on the MLS, Shevin received numerous inquiries about the home and
4 began showings on February 9, 2023. Case Dkt. 1830 at 25:22-23. Shevin held his broker's open
5 house on February 14, 2023. *Id.* at 25:23-25. Before the process was over, Shevin showed the
6 house to 27 potential buyers and nine real estate agents. *Id.* at 25:22-25, 26:20-21.

7 On February 24, 2023, Shevin received, on behalf of the Trustee, the first purchase offer,
8 which was from the Purchaser.⁵ Case Dkt. 1830 at 26:1-2. The initial offer was \$3,000,000. *Id.* On
9 February 27, 2023, Shevin received additional offers from two other potential purchasers, for
10 \$2,549,000 and \$2,900,000. *Id.* at 26:1-4. Following receipt of these offers, Shevin called the
11 agents for other parties who had viewed the properties or expressed an interest to advise that the
12 Trustee had received multiple offers and would be making multiple counteroffers. *Id.* at 26:5-7.
13 Thereafter, the Trustee did not receive offers from any other potential purchaser. *Id.*

14 On February 27, 2023, the Trustee made a multiple counteroffer to the three bidders that had
15 made offers. Case Dkt. 1830 at 26:8-9. All of the Trustee's counteroffers were at the price of
16 \$3,200,000. *Id.* The following day, Shevin received responses on behalf of the Trustee. *Id.* at
17 26:10-14. The Purchaser delivered a counteroffer in the amount of \$3,115,000, which was presented
18 as a "best and final" offer. *Id.* at 26:10-11. The same day, Shevin received a counteroffer from the
19 second potential purchaser in the amount of \$3,100,000. *Id.* at 26:11-12. The third potential
20 purchaser declined to make a counteroffer, indicating informally that the maximum they would pay
21 was \$3,000,000. *Id.* at 26:12-14.

22 On March 1, 2023, the Trustee made counteroffers to the two remaining bidders, each in the
23 amount of \$3,150,000. Case Dkt. 1830 at 26:15-16. The following day, the Purchaser sent Shevin
24

25 ⁵ The purchaser is Clausen Development Co., Inc. (the "Purchaser"). Case Dkt. 1830 at 5. The
26 Magic Man Trust, through its trustee James R. Clausen, made the initial offer and subsequent
27 counteroffers and then designated Clausen Development Co., Inc. to be the purchaser. Case Dkt.
28 1841 at 46 (representative capacity signature disclosure for buyer representatives), 74 (buyer counter
offer no. 1), 77 (addendum no. 2 to February 24, 2023 purchase agreement designating Clausen
Development Company as the buyer), 92 (amended escrow instructions designating Clausen
Development Company as the assignee buyer).

1 an acceptance of the Trustee's counteroffer—notwithstanding the labeling of the Purchaser's prior
2 offer as a "best and final" offer. *Id.* at 26:16-18. The Trustee accepted the Purchaser's signed
3 acceptance and proceeded to open an escrow with the Purchaser. *Id.* at 26:18. The Trustee did not
4 receive any other offers or accepted counteroffers. *Id.* at 26:18-19.

5 The final offer of the Purchaser, which was accepted by the Trustee, was the best offer
6 received for the Calabasas Property. *Id.* at 21:10-11; 26:20-21. Shevin testified that he did not
7 believe further marketing would result in a higher or better offer. *Id.* at 26:21-22. The Trustee
8 testified that, in his business judgment, the purchase price he negotiated with the Purchaser was a
9 fair and reasonable price. *Id.* at 24:1-2. Neither Shevin nor the Trustee had any connection to the
10 Purchaser prior to engaging in the foregoing negotiations.

11 Based on the evidentiary record, the Court finds and concludes that the Calabasas Property
12 has been adequately marketed and the value of that property maximized for the benefit of the estate.
13 The marketing effort undertaken by Shevin on behalf of the Trustee was reasonably calculated to
14 yield the highest price for the Calabasas Property under the circumstances presented and did so. The
15 Sale Agreement provides optimal value to the estate for the Calabasas Property. Further, the Court
16 finds and concludes that the Trustee engaged in negotiations to sell the Calabasas Property, and
17 proposed the sale pursuant to the Sale Agreement, in good faith, following arms' length negotiations
18 with the Purchaser and other potential purchasers.

19 Under all of these circumstances, the Court concludes that entering into and consummating
20 the Sale Agreement is a reasonable exercise of the Trustee's business judgment and should be
21 approved.

22 **A. Benefit to the Estate**

23 The Baronis contend otherwise, arguing that consummation of the Sale Agreement will result
24 in a net loss to the estate. If the sale results in a net loss to the estate, they argue, the Trustee's
25 business judgment is not reasonable. The Baronis' argument, however, is wrong. Even after
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27
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deducting the estimated costs of sale and other expenses resulting directly from the sale, it is clear that the sale will yield substantial positive value for the estate.⁶

There is no dispute among the parties regarding certain deductions from the gross sales proceeds of \$3,150,000 that should be considered in evaluating the benefit to the estate of proceeding with the sale:

Sale Price	\$3,150,000
Closing Costs (estimated at 1.5% of Sale Price)	-\$47,250
Broker's Commission (5% of Sale Price)	-\$157,500
Real property tax lien (2023)	-\$10,494
Real property tax liens (2019-2020)	-\$20,085
CIT lien (per Settlement Agreement)	-\$1,800,000
Federal tax lien ⁷	-\$40,723
Debtor's homestead exemption ⁸	-\$100,000
Net Proceeds to Estate	\$973,948

See Case Dkt. 1884 at 13-14; 1830 at 9-10.

Applying the foregoing deductions to the proposed sale price yields net sales proceeds of \$973,948, which constitutes a substantial benefit to the estate and irrefutable evidence of the Trustee's reasonable business judgment. The Baronis, however, urge the Court to make additional

⁶ Relying on *In re KVN Corp., Inc.*, 514 B.R. 1 (B.A.P. 9th Cir. 2014), and various policy statements promulgated by the Office of the United States Trustee, the Baronis suggest that the Trustee must demonstrate the proposed sale will benefit unsecured creditors, rather than simply the estate. But *KVN* has no application here. By its express terms, that decision applies to the sale of *fully encumbered* assets. *In re KVN Corp., Inc.*, 514 B.R. at 6-8; *see also* Case Dkt. 1835 at 7-8 (Baroni brief referring to the United States Trustee's policy regarding "the sale of fully encumbered assets"). The Calabasas Property is not fully encumbered. The proposed sale price is \$3,150,000 and the secured claim of CIT is approximately \$2,600,000, the Los Angeles County tax lien is approximately \$30,000 and the disputed Internal Revenue Service tax lien is approximately \$41,000.

⁷ The Trustee disputes this lien and seeks to sell the Calabasas Property free and clear of it, but acknowledges it appeared on a preliminary title report obtained by the Trustee.

⁸ The Trustee argues that this exemption is subject to defeasement under California law if the funds are not reinvested into a qualifying homestead within six months of the sale. Nevertheless, the Court assumes for the sake of this analysis that the funds are properly reinvested and that this amount will not inure to the benefit of the estate.

1 deductions and reach the opposite conclusion. *See* Case Dkt. 1835 at 10-13; Case Dkt. 1884 at 13-
2 14. Ultimately, the Court concludes that doing so would be analytically incorrect and unfair to the
3 estate.⁹

4 **1. Administrative Expenses**

5 The Baronis contend that the Court should deduct \$700,000 in estimated expenses that have
6 been incurred in the administration of this chapter 7 case. Case Dkt. 1884 at 14. The Baronis do not
7 offer a breakdown of this amount and concede it is merely an estimate of certain administrative
8 expenses borrowed from the Trustee's capital gains tax analysis. Case Dkt. 1884 at 14; *see also* Case
9 Dkt. 1869 at 16.¹⁰ The Baronis establish no connection between these expenses and the proposed
10 transaction, and offer no explanation why these amounts ought to be treated as a "cost" of moving
11 forward with the proposed transaction. Indeed, irrespective of whether the Court approves or
12 disapproves the proposed sale, it appears that these administrative expenses *already* have been
13 incurred.

14 Likewise, the Court is not persuaded by the Baronis' alternative argument, i.e., that an
15 estimated \$190,000 should be deducted for professional fees specifically related to the Sale Motion
16 and the Abandonment Motion. Again, the Baronis provide no factual basis for this estimate or any
17 reason why professional fees that already have been incurred by the estate should be considered an
18 avoidable cost of not going forward with the transaction. Denying the Sale Motion will not
19 eliminate these administrative expenses.

20 Moreover, consideration of the professional fees incurred in connection with the sale would
21 unfairly reward the Baronis for their aggressive litigation tactics in opposing the sale. Pursuant to
22 the CIT Settlement Agreement, the Trustee has an obligation to market and sell the Calabasas
23

24 ⁹ The Baronis also argue how the sale proceeds should be applied and the benefit to the estate
25 should be calculated in the event James Baroni were treated as a joint tenant in the Calabasas
26 Property. *See* Case Dkt. 1884 at 14-21. It is not necessary to respond to these calculations and
arguments because, as discussed in Section IV below, James Baroni's interest in the Calabasas
Property is a community property interest.

27 ¹⁰ Ironically, although the Baronis' argument depends on the existence of this \$700,000 in
28 administrative expenses, the Baronis object to the admission of testimony regarding these
administrative expenses, complaining that the Trustee's accountant did not provide enough detail on
the nature of the expenses. Case Dkt. 1867 at 10.

1 Property. In furtherance of that obligation, the Trustee negotiated the Sale Agreement and filed the
2 Sale Motion. The Trustee could not have done so without incurring *some* professional fees. But
3 those fees undoubtedly have multiplied exponentially because of the Baronis' fierce opposition to the
4 Sale Motion, and their additional effort to derail the sale by way of their Abandonment Motion—
5 which the Court concludes below has no merit. These efforts have included excessive briefing, a
6 barrage of meritless evidentiary objections, and an effort to conduct discovery that the Court
7 concluded was unnecessary, disproportionate, irrelevant and harassing. That the Baronis have
8 chosen to pursue this course, and thereby increase the administrative expenses of the estate, should
9 not fairly be considered in assessing the benefits of the sale transaction or the reasonableness of the
10 Trustee's business judgment. To do so would unfairly reward the Baronis for their litigation tactics.

11 **2. CIT Unsecured Claim**

12 The Baronis contend that the \$255,000 unsecured claim retained by CIT pursuant to the CIT
13 Settlement Agreement, following consummation of the sale, reduces the amount that will be realized
14 by the estate. But the argument is a non sequitur. The unsecured claim to be retained by CIT is not
15 a deduction from what will be realized by the estate from the sale. It represents an entitlement to a
16 pro rata distribution *from* the entirety of the estate, together with all other holders of unsecured
17 claims, after the estate has been fully administered. *See* 11 U.S.C. § 726. That distribution will be
18 made at the end of the case, if there are funds available, after distributions are made to the holders of
19 administrative expenses and other priority claims. *Id.* Payment of CIT's unsecured claim is not
20 guaranteed and the dividend that will be available on that claim is presently unknown. It therefore is
21 inappropriate to deduct it when assessing whether the Sale Agreement is beneficial to the estate.

22 By contrast, courts typically *do* deduct the amount of a secured claim, i.e., a claim secured by
23 a lien in the property, when assessing the benefit to the estate of a proposed sale. This is because a
24 lien constitutes an interest *in the property*. Upon the sale of property, the court is obligated to
25 "prohibit or condition such . . . sale . . . as is necessary to provide adequate protection of such
26 interest." 11 U.S.C. § 363(e). Courts typically do this by authorizing satisfaction of the lien from
27 the sales proceeds or, when a lien is disputed, by requiring the trustee to hold the funds until the
28 dispute is adjudicated. Unless the lien is ultimately determined invalid, the proceeds attributable to

1 the lien are paid to the lienholder and never realized by the estate. But again, the foregoing applies
2 to *secured* claims, not the unsecured claim that CIT will retain under the CIT Settlement Agreement
3 as a result of the sale.¹¹

4 **3. Trustee's Statutory Compensation**

5 The Baronis contend that the Court should consider the Trustee's statutory fee under
6 Bankruptcy Code section 326(a), which the Baronis estimate will be \$117,750 in respect of the sale.
7 The Baronis argue that this fee should be deducted from the sale proceeds in assessing whether the
8 sale is beneficial to the estate. Case Dkt. 1884 at 14. The Court disagrees. Bankruptcy Code
9 section 330 provides that a court "may award to a trustee . . . reasonable compensation for actual,
10 necessary services rendered by the trustee. . . ." 11 U.S.C. § 330(a)(1)(A). The statute further
11 instructs that in determining such reasonable compensation, the court "shall treat such compensation
12 as a commission, based on section 326." *Id.* at 11 U.S.C. § 330(a)(7).

13 Bankruptcy Code section 326(a) is a "fee cap statute," describing the *maximum* fee that may
14 be awarded to a chapter 7 trustee. *See Matter of East Coast Foods, Inc.*, 66 F.4th 1214, 1217 (9th
15 Cir. 2023). The statute calculates this maximum based on the aggregate amount distributed or
16 turned over by a trustee to parties in interest *over the course of the entire case*:

17 In a case under chapter 7 or 11, other than a case under subchapter V
18 of chapter 11, the court may allow reasonable compensation under
19 section 330 of this title of the trustee for the trustee's services, payable
20 after the trustee renders such services, not to exceed 25 percent on the
21 first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but
22 not in excess of \$50,000, 5 percent on any amount in excess of
23 \$50,000 but not in excess of \$1,000,000, and reasonable compensation

24
25 ¹¹ The Baronis' argument also elides over the fact that CIT's agreement to accept a \$1.8 million
26 payment and a \$255,000 unsecured claim, in satisfaction of its claims, is contingent on
27 consummation of the proposed sale. Under the CIT Settlement Agreement, CIT will retain the
28 entirety of its lien, in excess of \$2,561,235.85, if a sale is not approved. This is likely a far worse
outcome than CIT's retention of a \$255,000 unsecured claim, which may or may not ever be paid.
Because CIT already has been granted relief from the automatic stay with respect to the Calabasas
Property, Case Dkt. 908, CIT has the option to exercise its rights under state law to foreclose on the
property, leaving absolutely nothing for the estate.

1 not to exceed 3 percent of such moneys in excess of \$1,000,000, upon
2 all moneys disbursed or turned over in the case by the trustee to parties
3 in interest, excluding the debtor, but including holders of secured
4 claims.

5 11 U.S.C. § 326(a). As the foregoing illustrates, a trustee's compensation is not calculated with
6 reference to any particular transaction, but rather the overall results of the case in terms of moneys
7 disbursed and turned over.

8 With the exception of payments authorized at the time of an asset sale (e.g., in satisfaction of
9 liens and transaction costs), disbursement to parties in interest typically occurs at the conclusion of
10 the case, after submission of the trustee's final report and proposed distribution of funds (the
11 "Trustee's Final Report"). The Court usually considers the trustee's final compensation application
12 in connection with the Trustee's Final Report. *See generally* LBR 2016-2(c)(4). This enables the
13 Court to assess the trustee's compensation request in light of the overall results of the case.

14 The Ninth Circuit Bankruptcy Appellate Panel has held under Bankruptcy Code sections 326
15 and 330, unless "extraordinary circumstances" are present, "a trustee's request for compensation
16 should be presumed reasonable as long as the amount requested does not exceed the statutory
17 maximum calculated pursuant to § 326." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015)
18 (citing *In re Salgado-Nava*, 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012). Thus, although the fee cap
19 amount is presumed reasonable, courts retain the discretion to determine whether there are
20 extraordinary circumstances present and whether the compensation requested by the trustee is
21 reasonable.

22 Ultimately, consummation of the Sale Agreement will increase the base amount on which the
23 Trustee's maximum fee is calculated under section 326(a). If the Trustee collects more on behalf of
24 the estate, he will eventually disburse more. But at this point, the amount the Trustee will actually
25 request as compensation for this case, and the amount the Court will award, are uncertain. If past is
26 prologue, the Debtor is likely to object to the Trustee's final fee request—whatever the amount—and
27 the Court will consider the request and any objection at the appropriate time. Given these
28 uncertainties, the Court is not persuaded that its assessment of whether the Sale Agreement is a

1 reasonable exercise of business judgment and beneficial to the estate must "deduct" from anticipated
2 sales proceeds any portion of the compensation that ultimately may be awarded to the Trustee under
3 Bankruptcy Code section 326(a).

4 **4. Capital Gains Tax Liability**

5 The Baronis argue that the Trustee is not exercising reasonable business judgment because
6 consummation of the sale would result in \$667,740 in capital gains tax liability to the estate. Case
7 Dkt. 1884 at 13. Together with their other asserted "deductions," the Baronis contend that this
8 renders the transaction a net negative to the estate. But their argument is unavailing for two
9 independently adequate reasons.

10 First, even if the Court assumes the Baronis' tax analysis is correct, the estate will still realize
11 a net benefit of \$306,208 from the sale of the Calabasas Property (i.e., \$973,948 in net sale proceeds
12 minus \$667,740 in alleged capital gains tax liability) because the other asserted "deductions"
13 (discussed above) are meritless. A net recovery of over \$300,000 is a substantial benefit and more
14 than adequate to demonstrate reasonable business judgment.

15 Second, the Court finds (i) the Trustee's reliance on the tax analysis of his accountant, Sam
16 Leslie, of LEA Accountancy, LLP, is reasonable, and (ii) such reliance supports the finding that the
17 Trustee is exercising reasonable business judgment. The Trustee testified that he was informed by
18 Leslie "that there will be no adverse tax consequences as a result of the sale (i.e., no tax will be owed
19 by the Estate)." Case Dkt. 1830 at 23-25 (Seror Declaration). In two expert witness declarations,
20 Leslie describes his qualifications, the documents he reviewed (all of which were made available to
21 the Baronis), the methodology he employed, his calculations and the reasons for his conclusions.
22 See Case Dkt. 1830 at 28-31 (Leslie Declaration); Case Dkt. 1848 (Supplemental Leslie Declaration)
23 & Exhibit 2 thereto. Leslie's analysis acknowledges a gross capital gain on the sale of the Calabasas
24 Property of \$1,972,500, but demonstrates offsets that would render the gain a loss and result in no
25 tax liability. The Court finds Leslie's testimony and analysis persuasive.

26 The Baronis challenge the Trustee's reliance on Leslie's analysis by attempting to
27 demonstrate that the analysis is incorrect, relying on expert and non-expert testimony and legal
28 argument. But the Court is not persuaded. As discussed below, it appears that the flaws alleged by

1 the Baronis in Leslie's analysis are based on incorrect legal and factual assumptions. Moreover,
2 assuming for the sake of argument that there is some uncertainty about whether the estate might owe
3 tax as a result of the sale transaction or precisely how much, the Court is nevertheless satisfied that
4 both Leslie's analysis of that potential liability, and the Trustee's reliance on that analysis, are
5 reasonable. It is not the role of the Court to adjudicate the estate's tax liability under Bankruptcy
6 Code section 363(b), but rather to assess the Trustee's *business judgment*.

7 Relying on the testimony of Scott Brown, an attorney specializing in tax consulting and tax
8 issues, the Baronis argue that the estate is unable to utilize suspended passive activity losses against
9 the capital gain resulting from the sale of the Calabasas Property, because the Calabasas Property is
10 not itself a passive-income property. Case Dkt. 1835-2 at 1-4. As Leslie explains in his second
11 declaration, however, his analysis does not assume the Calabasas Property is passive-income
12 property. Case Dkt. 1848 at 28:8-21. Although typically passive losses may be offset only against
13 passive gains, Internal Revenue Code section 469 "unlocks" those losses upon the disposition of any
14 interests in passive activity, thereby permitting the passive losses to be applied against non-passive
15 gains. See 26 U.S.C. § 469(g)(1); *Langille v. C.I.R.*, 2010 WL 1009979, at *12 (U.S. Tax Ct. Mar.
16 18, 2010) *aff'd* 447 Fed. Appx. 130, 134 (11th Cir. 2011). The triggering event here was the sale of
17 the last of the estate's passive-income properties, the Camarillo Property, which sale occurred earlier
18 this year. See Case Dkt. 1774 (sale order); 1802 (Trustee's sale report).

19 Relying on the testimony of A. Lavar Taylor, an experienced tax attorney, the Baronis argue
20 that passive activity losses are not available to the estate to offset capital gains because those tax
21 attributes belong to the Baronis, not the estate. Case Dkt 1835-3 at ¶¶ 8-24. Under the Internal
22 Revenue Code, the estate of the debtor succeeds to the tax attributes of the debtor. 26 U.S.C.
23 § 1398(g). The debtor may thereafter succeed to the tax attributes of the estate, but only if the estate
24 is terminated. 26 U.S.C. § 1398(i); see also Treasury Regulation § 1.1398-1(e). The Baronis appear
25 to concede that the estate succeeded to the Debtor's tax attributes in 2012, when this case was
26 commenced. They contend, however, the Debtor succeeded to the estate's tax attributes in 2013,
27 when the Debtor confirmed her chapter 11 plan. Further, they argue these attributes remain with the
28

1 Debtor because the Trustee never sought "turnover" of those tax attributes, as the Trustee did with
2 respect to the rental properties the Debtor managed in Carmel and Camarillo.

3 The Baronis' arguments are based on a false legal premise. The Baronis contention that the
4 estate terminated upon confirmation of the Debtor's plan is in direct conflict with an opinion of the
5 Ninth Circuit Court of Appeals *in this case*. See *In re Baroni*, 36 F.4th 958, 970-71, 973 (9th Cir.
6 2022). The Debtor argued in that appeal that confirmation of the plan vested "all property of the
7 Chapter 11 estate in her, leaving the Chapter 11 estate terminated or empty," such that upon
8 conversion of the case six years later, the chapter 7 estate had no assets. *Id.* at 971. The Ninth
9 Circuit rejected this argument, holding "that the assets did not revest in Baroni at plan confirmation"
10 and that she did not receive those assets "'free and clear of all claims and interest of creditors' at
11 confirmation." *Id.* at 973. The only inference compatible with this holding is that the estate's tax
12 attributes (like all other estate assets) did not revest in the Debtor upon confirmation, but instead
13 remained in the estate. Thus, there is no need for the Trustee to seek or obtain "turnover" of any tax
14 attributes from the Debtor.

15 Taylor attempts to bolster the Baronis' argument by citing to *Benton v. Comm'r of Internal*
16 *Revenue*, 122 T.C. 353 (2004), *supplemented by* 92 T.C.M. (CCH) 280 (T.C. 2006). But the case is
17 inapposite. The debtor in *Benton* argued the estate in his case terminated for purposes of section
18 1398(i) when his chapter 11 plan was confirmed, he was discharged, and nearly all of his assets were
19 transferred to a liquidating trust for the benefit of creditors. *Id.* at 353. Emphasizing that its holding
20 was specific to the facts presented, the tax court concluded that the estate terminated for purposes of
21 section 1398(i) when all but two of the estate's assets were transferred to a liquidating trust pursuant
22 to the confirmed chapter 11 plan. *Id.* at 364-65. At that point the estate lacked the "potential for the
23 incidence of tax or use of tax losses" and the debtor was "being released for the purpose of
24 rehabilitation." *Id.*

25 The circumstances presented in this case are significantly different than those in *Benton*. At
26 the time *Benton* was decided, individual debtors in chapter 11 were eligible for a discharge upon
27 plan confirmation. Thus, upon plan confirmation, the debtor in *Benton* was discharged and
28 "released" into the world unencumbered by the debtor's prepetition liabilities. In 2005, Congress

1 enacted the Bankruptcy Abuse Prevention and Consumer Protection Act, which introduced the
2 concept of a delayed discharge in individual chapter 11 cases. *See First Nat'l Bank of Oneida, N.A.*
3 *v. Brandt*, 597 B.R. 663, 667 (M.D. Fla. 2018); 11 U.S.C. § 1141(d)(5)(A) ("confirmation of the plan
4 does not discharge any debt provided for in the plan until the court grants a discharge on completion
5 of all payments under the plan"). Unlike the debtor in *Benton*, the Debtor here was not discharged
6 upon confirmation of her chapter 11 plan and has yet to receive a discharge. Moreover, the plan here
7 did not divest the estate of all interest in the assets treated under the plan. The Debtor argued here
8 that all assets were transferred to her upon plan confirmation without the estate retaining any interest
9 in them. The Ninth Circuit disagreed. *Benton*, therefore, is simply not persuasive.

10 Finally, relying on the testimony of Richard Antognini, one of their lawyers in this
11 bankruptcy case, the Baronis offer their own calculation of the estate's capital gains tax liability
12 resulting from the sale, which Antognini estimates will be at least \$666,068. Case Dkt. 1835-6 at 1-
13 2. The Baronis contend that Antognini's calculation of this liability is correct and Leslie's
14 calculation (i.e., zero) is wrong. There are multiple problems with this argument. As a threshold
15 matter, Antognini provides no foundational testimony to qualify him as an expert witness under
16 Federal Rule of Evidence 702. His testimony is therefore not admissible.

17 But even if the Court considers Antognini's calculation in the nature of legal argument, the
18 Court does not find it persuasive. As explained in Leslie's second expert declaration, which the Court
19 does find persuasive, Antognini's calculation fails to: (i) deduct cost-of-sale expenses that are
20 allowed as an expense to reduce capital gain, (ii) apply the \$500,000 exclusion applicable to the sale
21 under 26 U.S.C. § 121 because the Calabasas Property is the Baronis' primary residence, they are on
22 title, and have lived there for at least two of the last five years, (iii) consider the deduction available
23 to the estate for incurred but not yet deducted administrative expenses available pursuant to IRS
24 Publication 908 (estimated at \$700,000), and (v) account for the standard deduction of \$12,950. *See*
25 Case Dkt. 1848 at 28:22-29:22. These adjustments to the capital gain resulting from the proposed
26 sale *are* reflected in Leslie's calculation, which shows a resulting *negative* taxable income of
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1 \$393,605. Case Dkt. 1848 at 59 (Exhibit 2). In other words, after applying these adjustments, Leslie
2 concludes that there will be no taxable capital gain, and therefore no tax owing.¹²

3 The Baronis fail to persuade the Court that Leslie's analysis is wrong, or that the Trustee's
4 reliance on that analysis is unreasonable. A projection of potential tax liability is, like all
5 projections, subject to some level of uncertainty. But the Court is persuaded that Leslie's approach
6 to analyzing the estate's potential liability for capital gains taxes resulting from the sale, and his
7 conclusion that the estate likely will not have such liability, are sound. Moreover, the Court finds
8 that the fact that the Trustee sought and obtained professional advice on the potential tax
9 consequences of the sale is further evidence that he is exercising reasonable business judgment.

10 **B. Miscellaneous Objections**

11 The Baronis raise several other objections, separate and apart from whether there is a benefit
12 to the estate from proceeding with the sale. First, the Baronis argue that the Court should not
13 approve the sale because the Trustee has not provided admissible evidence that the Purchaser (i) has
14 placed into escrow the \$94,000 earnest money deposit required by the real estate sales contract, or
15 (ii) has obtained a loan commitment to fund the balance of the purchaser price.

16 These arguments are a red herring. Nothing in Bankruptcy Code section 363(b) or case law
17 requires the Trustee to prove that a deposit or any other condition to closure of a sale agreement has
18 been satisfied as a condition to approval of the sale. The Trustee is required to submit the terms and
19 conditions of the proposed sale to the Court for approval, which the Trustee has done. The issue
20 presented is whether the terms of the sale transaction should be approved under section 363(b). The
21 Trustee has represented to the Court that he believes the deposit is in escrow, Case Dkt. 1830 at 6:8-
22 9, but he is under no legal obligation to prove that fact in order to obtain approval of the transaction.

23
24
25 ¹² The Baronis contend that the \$500,000 capital gains exemption provided under 26 U.S.C. § 121 is
26 a "one time exemption" that is not available to the estate. They also argue that there is no basis to
27 use James Baroni's "half" of that exemption because the Calabasas Property is not community
28 property. Case Dkt. 1867 at 7. Both of these contentions are incorrect. The section 121 exemption
was changed years ago from a "once-in-a-lifetime provision . . . to once-every-two years." *In re St. Francis*, 232 B.R. 518, 520 (Bankr. N.D. GA 1999)) *citing* H.R. Rep. 105-148, 105th Cong., 1st
Sess. 1997. Moreover, as discussed in Section IV below, the Calabasas Property is community
property.

1 Likewise, it is not necessary for the Trustee to prove the Purchaser's wherewithal to close the
2 transaction. Any loan contingency that may have been part of the sale transaction has since been
3 removed. *See* Case Dkt. 1830 at 18:10 (Seror Declaration); Case Dkt. 1841 at 6 (¶ 3) (agreement of
4 the parties contemplating that the Sale Motion would be filed after all contingencies had been
5 removed). If the conditions to closing are satisfied, and the Purchaser is unable to close, the
6 Purchaser risks losing a substantial earnest money deposit. Under the totality of the circumstances,
7 it is within the Trustee's reasonable business judgment to seek approval of and proceed with the sale
8 transaction, irrespective of whether the Purchaser has obtained (or proven that it has obtained) a loan
9 commitment.

10 Second, the Baronis argue that notice of the sale was inadequate because the Notice of Sale,
11 Local Rules Form F 6004-2.NOTICE.SALE with respect to this transaction was allegedly not posted
12 on the Court's website. Under Local Bankruptcy Rule 6004-1(f), whenever a trustee is required to
13 give notice of a sale under Fed. R. Bankr. P. 6004 and 2002(c), the trustee is required to submit a
14 completed F 6004-2.NOTICE.SALE to the clerk for purposes of posting the notice on the Court's
15 website. The Court posts these notices to help increase exposure of pending estate property sales, in
16 addition to all of the other efforts undertaken by trustees and debtors in possession to market estate
17 assets.

18 The Baronis' argument is without merit. The Trustee complied with Local Bankruptcy Rule
19 6004-1(f) by filing an F 6004-2.NOTICE.SALE and an amended F 6004-2.NOTICE.SALE with the
20 Clerk of the Court. Case Dkt. 1832, 1865. The Court has reviewed its electronic records of sale
21 notices posted to its website and confirmed that the Trustee's first sale notice, Case Dkt. 1832, was
22 posted to its website by Court staff on May 3, 2023. The second notice, Case Dkt. 1865, was posted
23 to the Court's website on May 19, 2023. *See* Exhibit 1 to this Memorandum. On each of those
24 dates, the posting of the sale notice also was announced through the Court's official Twitter account,
25 with links to each notice. *Id.* Notices of sale typically are removed from the Court's website the
26 evening of the specified sale date (i.e., the hearing date), although it is not clear when these
27 particular notices were removed.
28

1 More importantly, irrespective of whether the notices were posted on the website (which is in
2 the exclusive control of Court staff), the Trustee complied with the rule by filing the notices of sale
3 on May 3, 2023 and May 19, 2023. The posting of the notice on the Court's website is out of the
4 Trustee's control and not itself a prerequisite to approval of a sale under any provision of the
5 Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. In the end, the record here amply
6 demonstrates the property was adequately marketed prior to the filing of the Sale Motion, potentially
7 interested parties were advised of the overbid opportunity, and the Court supplemented these efforts
8 by advertising the bidding opportunity on its website and Twitter account.

9 **C. Sale Free and Clear of Liens under Section 363(f)**

10 The Bankruptcy Code provides that the "trustee may sell property under subsection (b) or (c)
11 of this section free and clear of any interest in such property of an entity other than the estate," if at
12 least one of five specified conditions is satisfied. 11 U.S.C. § 363(f). Here, the Trustee seeks relief
13 under section 363(f) with respect to two liens of record against the Calabasas Property. For the
14 reasons set forth below, this relief is appropriate.

15 The first lien is the deed of trust held by CIT. Pursuant to the Settlement Agreement, CIT
16 will receive \$1.8 million of the purchase price, the estate will receive the balance, and CIT's lien will
17 be deemed satisfied. It is not entirely clear that the Trustee needs "free and clear" relief under
18 section 363(f), although it is not uncommon for a trustee to request it under these circumstances. To
19 the extent this relief is necessary, it is appropriate for two reasons. First, CIT has consented. 11
20 U.S.C. § 363(f)(2). Second, the CIT deed of trust "is a lien and the price at which such property is to
21 be sold is greater than the aggregate value of all liens on such property." 11 U.S.C. 363(f)(3). The
22 sale price of \$3,150,000 is far in excess of the CIT lien of approximately \$2,600,000 and the
23 disputed tax lien (discussed below) in the approximate amount of \$40,000.

24 The second lien is a tax lien that turned up in the Trustee's preliminary title search. It was
25 not previously disclosed by the Debtor. The lien appears to have been recorded by the Internal
26 Revenue Service ("IRS") on October 29, 2018 and is being investigated by the Trustee. As set forth
27 in the Sale Motion, which was served on the IRS, the Trustee disputes the validity of the tax lien.
28 Under section 363(f)(4), a trustee may sell property free and clear of an interest that is subject to a

1 bona fide dispute. No one has challenged the Trustee's position that the IRS lien is the subject of a
2 bona fide dispute and the Court so finds. Moreover, the Court finds that the IRS is deemed to have
3 consented pursuant to section 363(f)(2) because it was served with the Sale Motion, given notice that
4 the Trustee intends to sell the Calabasas Property free and clear of the IRS lien, and provided an
5 opportunity to object and be heard. The IRS did not object.¹³

6 **D. Overbidding Procedures**

7 The Sale Motion proposed a series of routine procedures for parties interested in offering an
8 overbid for the Calabasas Property to do so in advance of the hearing on the Sale Motion. Case Dkt.
9 1830 at 12-13. Among other things, the procedures required any overbidder to provide notice by
10 email of their intention to do so no later than one day before the commencement of the hearing on
11 the Sale Motion, along with a deposit of \$94,500 and evidence of the bidder's financial wherewithal.
12 The procedures required (i) the initial overbid be at least \$3,200,000 with subsequent bidding
13 increments of \$10,000, and (ii) the successful bidder be bound to close the transaction on the same
14 terms as the Purchaser (other than the sale price, which would be subject to a 5% commission),
15 subject to a liquidated damages provision. Although there were no overbidders for the Calabasas
16 Property, the Court finds that these procedures were reasonable, appropriate, and reasonably
17 calculated to provide parties with an interest in overbidding on the Calabasas Property an
18 opportunity to do so.

19 **E. Good Faith Purchaser Under Section 363(m)**

20 The Trustee requests a finding that the Purchaser is a "good faith" purchaser within the
21 meaning of Bankruptcy Code section 363(m). This provision states:

22 The reversal or modification on appeal of an authorization under
23 subsection (b) or (c) of this section of a sale or lease of property does
24

25 ¹³ Although there was no objection by the IRS, and no request by the IRS for adequate protection
26 under Bankruptcy Code section 363(e), the Court will order the IRS' lien to attach to the proceeds of
27 sale, in the amount of such lien outstanding at the time the sale is closed, pending the adjudication or
28 consensual resolution of the dispute. *See* 11 U.S.C. § 363(e). The IRS lien shall remain subject to
any and all potential defenses and grounds for avoidance. The Court finds that the attachment of the
IRS lien to the proceeds of sale will provide the IRS with adequate protection of the IRS' interest in
the Calabasas Property, if any.

1 not affect the validity of a sale or lease under such authorization to an
2 entity that purchased or leased such property in good faith, whether or
3 not such entity knew of the pendency of the appeal, unless such
4 authorization and such sale or lease were stayed pending appeal.

5 11 U.S.C. § 363(m).

6 The Court finds there is ample evidence to support the conclusion that the Purchaser is a
7 "good faith" purchaser. The record reflects the Purchaser did not have any prior connection to the
8 Trustee or his real estate broker. The Purchaser came to the attention of the real estate broker
9 through a comprehensive marketing process involving multiple listing services, online advertising,
10 open houses and showings. These efforts generated substantial interest and ultimately multiple bids.
11 The Purchaser ultimately was selected by the Trustee because the Purchaser increased its proposed
12 purchase price more than the other competing bidders. The process was fair, competitive, and
13 conducted at arms' length. The winner in that process, the Purchaser, is a good faith purchaser for
14 purposes of section 363(m).

15 **F. James Baroni's Matching Right Under Section 363(i)**

16 Bankruptcy Code section 363(i) provides as follows:

17 Before the consummation of a sale of property to which subsection (g)
18 or (h) of this section applies, or of property of the estate that was
19 community property of the debtor and the debtor's spouse immediately
20 before the commencement of the case, the debtor's spouse, or a co-
21 owner of such property, as the case may be, may purchase such
22 property at the price at which such sale is to be consummated

23 11 U.S.C. § 363(i).

24 As discussed in Section IV below, the Calabasas Property is community property.
25 Accordingly, section 363(i) applies and James Baroni, as the Debtor's spouse, has the right to match
26 the purchase price of \$3,150,000. In the Sale Motion, the Trustee requested that James Baroni be
27 required to (i) appear at the hearing, (ii) express his intent to exercise his section 363(i) right at the
28 hearing, (iii) provide the Trustee and the Court with evidence that he has the ability (via readily

1 available funds) to close at the final sale price, and (iv) provide a cashier's check to the Trustee in the
2 amount of the Deposit, \$94,500.00.

3 James Baroni has not indicated any intention to exercise his section 363(i) rights, but objects
4 to these proposed procedures, arguing they are inconsistent with the plain language of the statute.
5 Relying on the language of the statute providing that a non-debtor spouse may match the purchase
6 price "before the consummation of" the sale, James Baroni contends that he should not be required to
7 exercise his section 363(i) rights any sooner than the statute permits. The Trustee disagrees, arguing
8 that the language of the statute leaves room for the Court to fashion procedures to facilitate a smooth
9 and orderly sale closing process.

10 The Court agrees that the statute leaves room for the Court to fashion procedures to make the
11 exercise of section 363(i) rights orderly. *See, e.g., In re Alisa Partnership*, 14 B.R. 54 (Bankr. D.
12 Del. 1981). The Court approved such procedures earlier in this case, with respect to the sale of the
13 Carmel Property. But the Court declines to approve here the same sort of procedures that it adopted
14 in connection with the sale of the Carmel Property. First, James Baroni did not appear and timely
15 object to the proposed procedures with respect to the Carmel Property. Here, although he stops short
16 of indicating any intention to match the purchase price of \$3,150,000, he has appeared through
17 counsel and requested that he have the period of time provided by the statute to do so. The Court
18 concludes that the deadlines and procedures proposed by the Trustee would unduly and
19 unnecessarily curtail his statutory rights.

20 However, to avoid confusion and facilitate an orderly closing process, the Court adopts the
21 following instructions and procedures for how section 363(i) should be applied in this case:

22 a. The purchase price that James Baroni must match is \$3,150,000 (the "Matching
23 Amount").

24 b. In order to exercise his right to purchase the Calabasas Property, he must transmit to
25 the Trustee, and the Trustee must receive before consummation of the sale to Purchaser,
26 funds in the full Matching Amount. The Trustee shall promptly provide James Baroni wire
27 instructions to one of the Trustee's accounts for this purpose.
28

1 c. The term "consummation of the sale to Purchaser" means the commencement of the
2 closing process.

3 d. Unless the Court's order granting the Sale Motion is stayed, the escrow company
4 may close the sale to Purchaser. In commencing the closing process, the escrow company
5 may rely on the Trustee's certification that, as of the date and time of such certification, the
6 Trustee has not received the Matching Amount.

7 e. If, as and when the Trustee receives the Matching Amount, the Trustee shall
8 immediately notify the escrow company.

9 (i) If the escrow company already has commenced or completed the closing process
10 at the time it receives such notification, the escrow company shall so advise the Trustee.
11 The Trustee, in turn, shall advise James Baroni and return to him the Matching Amount.
12 If the escrow company has commenced the closing process at the time it receives
13 notification of the Trustee's receipt of the Matching Amount, it should nevertheless
14 complete the closing process.

15 (ii) If the escrow company has not commenced the closing process at the time it
16 receives such notification, the escrow company shall not do so. Instead, it shall return to
17 the Purchaser its deposit. Additionally, the Trustee shall open a separate escrow for the
18 purpose of transferring the Calabasas Property to James Baroni and transmit the
19 Matching Amount into that separate escrow.

20 Under the foregoing procedures, as the text of section 363(i) contemplates, James Baroni
21 bears the risk of any delay in the receipt of the Matching Amount by the Trustee. The funds must be
22 received by the Trustee, and notice of such receipt by the Trustee received by the escrow company,
23 before the process of closing the transaction *begins*.¹⁴ Otherwise, the transaction will close. The
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25

26 ¹⁴ The Court recognizes that the closing of a sale transaction involves multiple steps, such as the
27 transfer of funds and the recordation of instruments. Although typically described as simultaneous,
28 these steps may not actually all happen at the same moment in time. To provide clarity and avoid
future disputes, the Court's procedure contemplates that the escrow company will not be required to
stop the process of closing if it has already commenced the closing process when it receives
notification from the Trustee that the Matching Amount has been received.

1 Court believes this is a reasonable accommodation of both James Baroni's right to match the price
2 under section 363(i), and the need for an orderly process.¹⁵

3 **G. Distribution of the Sales Proceeds and the Debtor's Homestead Exemption**

4 The Sale Motion requests that the Court approve certain distributions upon the closing of
5 escrow, as follows:

6 (1) Payment of normal closing costs to the parties entitled thereto, including but not limited
7 to, the seller's share of escrow charges, the cost of a standard coverage title insurance
8 policy, recording fees, documentary transfer taxes, and other normal and customary
9 charges, prorations, costs and fees;

10 (2) Payment of all outstanding real property taxes (including prorated real property taxes)
11 and any delinquent homeowners' association dues;

12 (3) Payment to the real estate brokers of a commission equal to 5% of the sale price;

13 (4) Payment of \$1,800,000 to CIT pursuant to the CIT Settlement Agreement;

14 (5) The payment of the Debtor's \$100,000 homestead exemption to the Trustee, pending
15 reinvestment by the Debtor in a qualified homestead investment;

16 (6) Payment of the balance of the funds to the Trustee, on behalf of the estate.

17 The Baronis contend that the Trustee's proposed treatment of the Debtor's \$100,000 homestead
18 exemption amount is inappropriate.

19 The parties agree that the Debtor is entitled to a homestead exemption of \$100,000 upon the
20 sale of the Calabasas residence. They also agree California law provides that the exemption may be
21

22 ¹⁵ As noted, James Baroni has not indicated his intention to match the purchase price of
23 \$3,150,000. Nevertheless, if James Baroni intends to exercise his right under section 363(i), the
24 Court respectfully suggests that he do so as soon as possible. Pursuant to the Court's forthcoming
25 order on partial summary judgment for turnover of the Calabasas Property, the Court intends to give
26 the Baronis 30 days to vacate the Calabasas Property. Pursuant to the Sale Agreement, a condition
27 to the Purchaser's obligation to close the transaction is that the Calabasas Property be vacant. The
28 Court finds that this condition is reasonable and appropriate. As a practical matter, this means that if
James Baroni waits too long to tender the Matching Amount, the Baronis may be obligated to vacate
the Calabasas Property before James Baroni's matching right under section 363(i) expires. If James
Baroni exercises his 363(i) rights after vacating the premises, he and his family can certainly return
to the premises, but the disruption will already have occurred. Ultimately, it is within James
Baroni's power to avoid this scenario by transmitting the Matching Amount to the Trustee well
before the Baronis are required to vacate the property.

1 lost if the Debtor does not reinvest this amount in a new homestead property within six months. *See*
2 *In re Jacobson*, 676 F.3d 1193, 1193-1202 (9th Cir. 2012). The dispute is over *who* will hold the
3 funds in the meantime. The Trustee contends that the Debtor cannot be trusted to return the funds if
4 she ultimately loses the exemption. He cites to several outstanding judgments he holds against the
5 Debtor that are unpaid and overdue. The Debtor counters that there is no authority for the Trustee to
6 maintain control of funds that are exempt and therefore not property of the estate.

7 On this issue, the Court concludes that the Debtor has the better of the arguments. Neither
8 *Jacobson* nor any other authority cited by the Trustee specifically authorizes the Trustee to hold the
9 exempt funds pending reinvestment. Although the Court recognizes the Trustee holds a contingent
10 reversionary interest in the funds, in the event they are not timely and properly reinvested, the Court
11 is not persuaded it has the jurisdiction or authority to order retention of those funds by the Trustee in
12 the interim because they are not property of the estate. *See* 28 U.S.C. § 1334(e) (bankruptcy
13 jurisdiction over property of the estate). Upon the closing of the sale, therefore, the homestead
14 exemption funds will not be property of the estate and should be remitted to the Debtor. If the
15 Debtor does not timely and properly reinvest the homestead funds, the estate will have a claim for
16 repayment of the \$100,000 amount.

17 Accordingly, the Court will approve the proposed distribution of sales proceeds as requested
18 by the Trustee and summarized above, with the exception of the Trustee's proposed distribution of
19 the Debtor's \$100,000 homestead exemption amount. That amount must be remitted to the Debtor
20 upon the closing of escrow. However, the Court will order the Debtor to file with the Court
21 documentation of the reinvestment of \$100,000 homestead amount no later than 10 days after the
22 closing of the transaction in which such funds are reinvested. This is a modest procedural
23 requirement to impose upon the Debtor, rather than requiring the Trustee to obtain such information
24 through formal discovery.

25 **III. ABANDONMENT MOTION**

26 In an effort to derail the Trustee's sale process, and retain the Calabasas Property without
27 having to match the Purchaser's purchase price under Bankruptcy Code section 363(i), i.e.,
28 \$3,150,000, the Baronis filed the Abandonment Motion. The Abandonment Motion seeks an order

1 compelling the trustee to abandon the Calabasas Property under Bankruptcy Code section 554(b).
2 That statute provides: "On request of a party in interest and after notice and a hearing, the court may
3 order the trustee to abandon any property of the estate that is burdensome to the estate or that is of
4 inconsequential value and benefit to the estate." 11 U.S.C. § 554(b).

5 "In order to approve a motion to abandon property, the bankruptcy court must find either that
6 (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential
7 benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000) (citing 11 U.S.C. §
8 554(b) and *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 245
9 (6th Cir.1987)). Further, inconsequential value and inconsequential benefit are two separate
10 elements that must both be satisfied. *In re K.C. Mach. & Tool Co.* 816 F.2d at 245. Critically, "an
11 order compelling abandonment is the exception, not the rule." *In re Viet Vu*, 245 B.R at 647.
12 (*quoting Morgan v. K.C. Mach. & Tool Co.*, 816 F.2d at 246).

13 The Baronis do not really argue or demonstrate that the Calabasas Property is burdensome to
14 the estate. They do argue, however, that the sale of the Calabasas Property will generate
15 inconsequential value for the estate. Relying on the same unpersuasive mathematics they rely upon
16 to oppose the Sale Motion, the Baronis contend that the sale of the Calabasas Property will generate
17 a net loss to the estate. They contend that after all of their proposed deductions are applied,
18 approximately \$974,000 in net sales proceeds that the Trustee is expected to receive from escrow
19 will become a net liability of several hundred thousand dollars.

20 Further, the Baronis make what can best be described as a "settlement offer." They propose
21 that in exchange for an order of abandonment with respect to the Calabasas Property, they will
22 (i) pay CIT the sum of \$1.8 million (i.e., the amount CIT will receive pursuant to the CIT
23 Settlement) and (ii) pay the estate the sum of \$150,000. The Baronis argue that this offer is better
24 for the estate than the proposed sale, and urge this Court to order abandonment on these terms rather
25 than approve the sale. They even offer evidence that they have lined up a mortgage loan in the
26 amount of approximately \$2.3 million to effectuate this proposal.

27 The Baronis' arguments, however, lack merit. First, for all the reasons discussed in Sections
28 II.A.1-4 above, none of the Baronis' proposed deductions to the net sales proceeds are appropriate in

1 assessing the value to the estate of consummating a sale of the Calabasas Property. There is a buyer
2 and a signed sale agreement under which the estate will receive approximately \$974,000 from the
3 sale. The Baronis' contentions that the Court should deduct from that sum amounts on account of
4 administrative expenses in the chapter 7 case, the CIT Unsecured Claim, the Trustee's compensation,
5 and capital gains tax liability are all without merit. The Calabasas Property is clearly of
6 *consequential* value to the estate and this requirement of abandonment cannot be satisfied.

7 Second, the Baronis' arguments ignore the separate requirement that the subject property be
8 of inconsequential "benefit" to the estate. They undoubtedly elide over this requirement because
9 they cannot satisfy it. By virtue of the CIT Settlement Agreement, which was approved pursuant to
10 an order that is now final, sale of the Calabasas Property is the key to unlocking the value promised
11 by CIT under that agreement. By selling rather than abandoning the Calabasas Property, the estate
12 succeeds to the difference in value between CIT's secured claim of approximately \$2.6 million and
13 the negotiated sum of \$1.8 million. Further, by selling the Calabasas Property, the Trustee will
14 satisfy his contractual commitment to CIT to do so and avoid breaching the CIT Settlement
15 Agreement (and incurring unknown administrative damage liabilities). These are clearly
16 *consequential* benefits to the estate—demonstrating that the other requirement for abandonment is
17 not satisfied.

18 Third, the Baronis' arguments are premised on the fanciful notion that they have a right to
19 compel CIT (and the estate) to accept their "settlement offer." Nothing in Bankruptcy Code section
20 554(b), or any other statute, authorizes the Court to impose this arrangement over CIT's (or the
21 estate's) objection. CIT is under no legal obligation to accept \$1.8 million from the Baronis in
22 exchange for the estate's abandonment of the Calabasas Property. Pursuant to the CIT Settlement
23 Agreement, CIT agreed that it would accept \$1.8 million and permit the estate to receive the balance
24 of the value to which CIT is entitled on its secured claim, *only if* the Trustee sold the property.
25 Absent consummation of the kind of transaction contemplated in the Settlement Agreement (e.g., the
26 sale proposed in the Sale Motion), CIT's allowed secured claim will remain in an amount in excess
27 of \$2.6 million. The Court has no authority to force CIT to accept payment other than in the manner
28 to which it agreed in the CIT Settlement Agreement. Likewise, the Court cannot force the estate to

1 accept \$150,000, where it would otherwise receive approximately \$974,000 from the sale. That's
2 just not how abandonment works under section 554(b). There is a standard to compel abandonment
3 and the Baronis have not met the standard. Accordingly, the Abandonment Motion will be denied.

4 **IV. THE CALABASAS PROPERTY IS PROPERTY OF THE ESTATE**

5 The Baronis contend in their opposition to the Sale Motion (and in the Abandonment
6 Motion) that they hold the Calabasas Property as joint tenancy property, rather than as community
7 property. Case Dkt. 1835 at 19:21-22 Based on this premise, they argue: (i) only 50% of the
8 Calabasas Property is property of the estate, (ii) the Trustee must satisfy the requirements of
9 Bankruptcy Code section 363(h) in order to sell the Calabasas Property, (iii) the Trustee must initiate
10 an adversary proceeding in order to do so, in accordance with Federal Rule of Bankruptcy Procedure
11 7001(3), and (v) the distribution of the sale proceeds under the circumstances of a joint tenancy
12 generates no net proceeds and therefore no benefit to the estate.

13 These arguments, however, are a collateral attack on multiple orders entered in this eleven-
14 year-old case and an attempt to litigate a legal issue that already has been settled. As detailed below,
15 the status of the Calabasas Property as community property: (i) is res judicata, binding on both the
16 Debtor and James Baroni, pursuant to the Second Amended Plan of Reorganization of Allana Baroni
17 (the "Plan"), Case Dkt. 376, and the *Order Confirming Debtor's Second Amended Plan of*
18 *Reorganization* (the "Plan Confirmation Order"), Case Dkt. 423, and (ii) is law of the case, by virtue
19 of the *Order Granting Trustee's Turnover Motion* (the "Turnover Order"), Case Dkt. 1148, and a
20 subsequent appellate decision declaring the Turnover Order to be law of the case. For these and
21 other reasons, the Baronis are barred from now contending that the Calabasas Property is anything
22 other than community property.

23 **A. The Plan and Plan Confirmation Order**

24 A confirmed chapter 11 plan is binding on the debtor and all interested parties with notice
25 and an opportunity to participate in the plan confirmation process. *See* 11 U.S.C. § 1141(a); *Trulis v.*
26 *Barton*, 107 F.3d 685, 691 (9th Cir. 1995) ("Once a bankruptcy plan is confirmed, it is binding on all
27 parties and all questions that could have been raised pertaining to the plan are entitled to res judicata
28 effect"); *In re Pardee*, 193 F.3d 1083, 1086 (9th Cir. 1999) ("If a creditor fails to protect its interests

1 by timely objecting to a plan or appealing the confirmation order, it cannot later complain about a
2 certain provision contained in a confirmed plan, even if such a provision is inconsistent with the
3 Code . . . This court has recognized the finality of confirmation orders even if the confirmed
4 bankruptcy plan contains illegal provisions"); *see also Espinosa v. United Student Aid Funds, Inc.*,
5 553 F.3d 1193, 1199 (9th Cir. 2008) ("Were the rule otherwise, no judgment would ever be
6 conclusive, as a party aggrieved by it could endlessly re-litigate errors supposedly committed by the
7 trial court"), *aff'd*, 559 U.S. 260 (2010).

8 The Plan implicitly and explicitly treats 100% of the Calabasas Property as property of the
9 estate (i.e., community property). First, the liquidation analysis in the Plan lists the full \$2,275,000
10 value of the Calabasas Property as available to a chapter 7 trustee in the event of a hypothetical
11 liquidation. Plan, Case Dkt. 376, Exh. 3 at 58. This necessarily implies that the Calabasas Property
12 is community property and that James Baroni's interest is a community property interest. If held in
13 joint tenancy, only 50% the value would be available to the chapter 7 trustee in a liquidation.
14 Second, the Plan's list of encumbrances on the Calabasas Property includes "\$71,705.40 (Husband's
15 community property interest)," which explicitly and unequivocally describes James Baroni's interest
16 as a community property interest. *Id.* Third, the very same valuation and language appears in each
17 of the Debtor's prior versions of the plan, demonstrating the characterization was intentional and not
18 a mere oversight or scrivener's error. Case Dkt. 155, Exh. 3 at 10; Case Dkt. 222, Exh. 3 at 16; Case
19 Dkt. 283, Exh. 3 at 59.¹⁶

20
21 ¹⁶ The characterization of the Calabasas Property as community property in the Plan is
22 consistent with the characterization of that property in the Debtor's amended Schedules of Assets
23 and Liabilities ("Amended Schedules"). Case Dkt. 160, 161. Although the Amended Schedules do
24 not expressly state the Calabasas Property is community property, they list the value of the
25 Calabasas Property as \$2,275,000, see Case Dkt. 161 at 6, and the value of the Debtor's interest in
26 the property as \$2,275,000. Case Dkt. 160 at 2. This can only be possible if the property is the sole
27 separate property of the Debtor under Bankruptcy Code section 541(a)(1) (which would leave James
28 Baroni with no interest—something no one contends), or if the property is community property
under Bankruptcy Code section 541(a)(2). Further, if the Baronis held the Calabasas Property as
joint tenants, the Schedules would have listed the value of the Debtor's interest at 50% of the total
value of the property, or \$1,137,500. They did not. Because the Amended Schedules were the
schedules on file and in effect when the Plan was confirmed, the Debtor is now estopped from
contradicting them. *In re Gadbois*, 2023 WL 4234388, *4 (B.A.P. 9th Cir. Jun. 28, 2023)
(confirmation of a plan is based on the debtor's schedules of assets and liabilities in effect at the time
of confirmation; post-confirmation, debtor cannot assert facts regarding his assets that are
inconsistent with those schedules).

1 Upon confirmation, the Plan became binding on both the Debtor (who proposed it) and
2 James Baroni (who had actual notice of the plan but did not object to it). That James Baroni had
3 actual notice of the Plan is clear from the fact that he filed *three* declarations pledging his financial
4 support for the Plan. Case Dkt. 285, 325, 378; *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S.
5 260, 272 (2010) ("Here, United received actual notice of the filing and contents of Espinosa's plan.
6 This more than satisfied United's due process rights"). None of his declarations state any objection
7 to or disagreement with the Plan's characterization of the Calabasas Property as community property.
8 The Court ultimately confirmed the Plan containing those characterizations and James Baroni did
9 not appeal. Case Dkt. 423. *See, e.g., In re AVC Villa Del Lago at Ocotillo Devco, L.L.C.*, 2009 WL
10 3488369, at *8 (Bankr. D. Ariz. Oct. 27, 2009) ("[Section 1141(a)] is clear and unambiguous. In
11 addition to the statute, the Ninth Circuit has, on more than one occasion, held that an interested party
12 is bound by the plan, even if the plan contained language which might not have passed a legal
13 challenge. In other words, if a party has sufficient notice, but elects not to voice an objection, and a
14 plan which is detrimental to that party's rights is confirmed, that party will be legally bound by the
15 plan").

16 Accordingly, the Plan's characterization of the Calabasas Property as community property is
17 res judicata and bars both the Debtor and James Baroni from arguing to the contrary.

18 **B. The Turnover Order**

19 Following conversion of the case to chapter 7, the Court entered the Turnover Order, which
20 expressly held "the real property located at 3339 Via Verde Ct., Calabasas, California 91302 is
21 property of the estate." Case Dkt. 1148 at 2:12-13. The Baronis now argue that only 50% of the
22 Calabasas Property is property of the estate. This argument directly contradicts the Turnover Order
23 and related findings, which constitute the settled "law of the case."

24 As a threshold matter, the Court notes that the District Court already has admonished the
25 Debtor for seeking to collaterally attack the holding of the Turnover Order that the Calabasas
26 Property is property of the estate. After numerous appeals by the Debtor, the Ninth Circuit affirmed
27 the Turnover Order. *In re Baroni*, 36 F.4th 958 (9th Cir. 2022), *cert. denied sub nom. Baroni v.*
28 *Seror*, 2022 WL 16909177 (U.S. Nov. 14, 2022). Shortly after the Supreme Court denied the

1 Debtor's petition for certiorari and the Turnover Order became final, the Debtor and her counsel
2 sought an emergency stay from the United States District Court to prevent the Trustee from
3 marketing the Calabasas Property. Case 2:22-cv-06867-MWF, Dkt. 5. In denying that request, the
4 District Court rejected the Debtor's arguments regarding James Baroni's ownership in the Calabasas
5 Property as a collateral attack on the Ninth Circuit's decision affirming the Turnover Order:

6 Appellants seem to be operating under the fantasy that they may
7 collaterally attack the Ninth Circuit's ruling affirming the earlier
8 turnover order in this action, which confirmed that the Calabasas
9 residence was an asset of the estate. *In re Baroni*, 36 F.4th 958, 966
10 (9th Cir. 2022), *cert. denied sub nom. Baroni v. Seror*, 2022 WL
11 16909177 (U.S. Nov. 14, 2022). They may not. And given the
12 Calabasas residence is part of the estate, Appellant Baroni cannot
13 claim "irreparable injury" based on its future sale. (See Opposition at
14 16) ("Here, the injury—i.e., the Debtor's loss of her house—was the
15 direct result of the Debtor's defaults under her chapter 11 plan, the
16 conversion of her chapter 11 to a chapter 7, and the resulting turnover
17 of the Debtor's assets to the chapter 7 estate. To the extent the Debtor
18 suffered irreparable injury, it occurred years ago and was the product
19 of her own malfeasance.").

20 *In re Baroni*, 2022 WL 18277987, at *1,*2 (C.D. Cal. Dec. 9, 2022).

21 Despite the District Court's express holding that the Debtor may not collaterally attack the
22 holding of the Turnover Order that the Calabasas Property is property of the estate, the Baronis have
23 redoubled their attack. The Baronis now insist that only 50% of the Calabasas Property is property
24 of the estate because the Baronis hold the property as joint tenants. The Baronis, however, offer no
25 legal justification for why their collateral attack on the Turnover Order is suddenly permissible in
26 connection with the proposed sale of the Calabasas Property, when it was impermissible on the
27 Debtor's emergency motion to stay the marketing of the Calabasas Property. The Court is not aware
28 of any such legal justification.

1 As the parties will recall, the Trustee's motion for turnover ("Turnover Motion") required the
2 Court to determine what property interests of the Debtor became property of the chapter 7 estate
3 following conversion of the case. Case Dkt. 991. The Trustee originally sought an order requiring
4 turnover of the rents collected by the Debtor from the rental properties in Camarillo and Carmel, and
5 the sale proceeds from a third rental property sold by the Baronis on the eve of conversion of the
6 case to chapter 7. Case Dkt. 991 at 14:11-14. The Debtor opposed the Turnover Motion, arguing
7 that turnover was improper because none of her property became property of the chapter 7 estate,
8 "including all of her community property." *Debtor's Opposition to Trustee's Motion [for] Turnover,*
9 *etc.* Case Dkt. 1004 at 6:17-18. The Court thereafter required supplemental briefing on the issue of
10 whether *any* of the Debtor's property became property of the chapter 7 estate upon conversion. *See*
11 *Hearing Transcript for July 17, 2019, Case Dkt. 1020 at 87:25-89:1.*

12 In his supplemental brief, the Trustee expressly argued the chapter 7 estate included, among
13 other things, "the Carmel Property, the Camarillo Property and the Calabasas residence." *Chapter 7*
14 *Trustee's Supplemental Brief in Support of His Motion for Turnover, etc.,* Case Dkt. 1032 at 16:10-
15 11; *Chapter 7 Trustee's Response to Debtor's Supplemental Brief of the Effect of Conversion on the*
16 *Property of the Estate,* Case Dkt. 1047 at 11:1-2. The Debtor's supplemental brief argued the "home
17 and two rental properties" remaining on the conversion date never became property of the chapter 7
18 estate. *Supplemental Brief Addressing Issue of the Effect of Conversion on Property of the Estate,*
19 *Case Dkt. 1034 at 4:7-18 & 16-16; 6:20-22; 13:5-6; Debtor's Reply to Supplemental Brief of the*
20 *Trustee re Turnover, etc.,* Case Dkt. 1046 at 11:14-15 ("As to the Debtor's home, the two rental
21 properties, and the funds in her corporation bank account, those assets are not property of the chapter
22 7 estate"). At no point did the Debtor contend, as she does now, that she and her husband held title
23 to the Calabasas Property as joint tenants, or that his interest in the Calabasas Property therefore
24 could not have become property of the estate.

25 The Court's *Amended Findings of Fact and Conclusions of Law regarding Order Granting*
26 *Trustee's Turnover Motion* (the "Amended F&C re Turnover") found and concluded that the
27 "Calabasas Property, the Camarillo Property (and rents derived therefrom) and the Carmel Property
28 (and the rents derived therefrom) are property of the chapter 7 estate." Case Dkt. 1158 at 7, ¶ K and

1 at 10, ¶ 12. Likewise, the final Turnover Order expressly ruled that "the real property located at
2 3339 Via Verde Ct., Calabasas, California 91302 is property of the estate." Case Dkt. 1148 at 2:12-
3 13. Significantly, the Court ruled that the *Calabasas Property* was property of the estate, not that
4 the *Debtor's interest in* the Calabasas Property was property of the estate. The latter language might
5 have left open the possibility of the Debtor holding a 50% joint tenancy interest in the Calabasas
6 Property, but that was not the language of the rulings.

7 The Turnover Order is now law of the case. The law of the case doctrine generally precludes
8 reconsideration of "an issue that has already been decided by the same court, or a higher court in the
9 identical case." *Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940, 951 (9th Cir. 2019)
10 quoting *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) and *Thomas v. Bible*, 983
11 F.2d 152, 154 (9th Cir. 1993). A "lower court is precluded from reconsidering the issue [decided by
12 a higher court] and abuses its discretion in doing so except in limited circumstances." *Askins v. U.S.*
13 *Dept. of Homeland Sec.*, 899 F.3d 1035, 1042 (9th Cir. 2018). The doctrine "is grounded in the need
14 for litigation to come to an end" and a recognition that courts cannot operate efficiently "'if a
15 question once considered and decided by it were to be litigated anew in the same case upon any and
16 every subsequent appeal.'" *Disimone v. Browner*, 121 F.3d 1262, 1266 (9th Cir. 1997) quoting
17 *Kimball v. Callahan*, 590 F.2d 768, 771 (9th Cir. 1979) quoting *Lehrman v. Gulf Oil Corp.*, 500 F.2d
18 659, 662-63 (5th Cir. 1974). The doctrine applies to issues "decided explicitly or by necessary
19 implication in the previous disposition." *United States v. Jingles*, 702 F.3d 494, 499 (9th Cir. 2012);
20 *In re Delannoy*, 615 B.R. 572, 583 (B.A.P. 9th Cir. 2020), *aff'd*, 852 F. App'x 279 (9th Cir. 2021).

21 The BAP has already held that the Turnover Order is law of the case. In connection with the
22 Debtor's appeal from the Court's order approving a sale of the Carmel Property, and prior to the
23 Ninth Circuit's affirmance of the Turnover Order, the Ninth Circuit Bankruptcy Appellate Panel
24 expressly held that the Turnover Order was law of the case on the issue of whether the Carmel
25 Property was property of the chapter 7 estate:

26 As far as the bankruptcy court is concerned, its finding that the
27 property at issue belongs to the estate, which was affirmed by the
28 District Court, is law of the case. This doctrine ordinarily precludes a

1 court "from reexamining an issue previously decided by the same
2 court, or a higher court, in the same case." *Delannoy v. Woodlawn*
3 *Colonial, L.P. (In re Delannoy)*, 615 B.R. 572, 583 (9th Cir. BAP
4 2020) (*quoting Richardson v. United States*, 841 F.2d 993, 996 (9th
5 Cir. 1988) (citations omitted), *amended*, 860 F.2d 357 (9th Cir. 1988)).
6 So we cannot say that the bankruptcy court erred in concluding that
7 Debtor lacked standing to object. At the same time, this is the rare
8 instance where dismissing the appeal for lack of standing does not
9 make sense due to the potential "domino effect" of a future reversal of
10 the Turnover Order.

11 *In re Baroni*, 2021 WL 3011907, at *6 n.8 (B.A.P. 9th Cir. Jul. 13, 2021), *appeal dismissed*, No. 21-
12 60045, 2023 WL 2058699 (9th Cir. Feb. 8, 2023). Because the Debtor dismissed her Ninth Circuit
13 appeal from the BAP's decision affirming the sale of the Carmel Property, the BAP's opinion is final
14 and binding on this Court.

15 The Baronis' arguments fail to persuade the Court that that there is any distinction between
16 the Court's holding under the Turnover Order with respect to the Carmel Property and its holding
17 under the same order with respect to the Calabasas Property. Fatally absent from the Baronis'
18 opposition to the Sale Motion or the Abandonment Motion are any legal authorities or analysis on
19 this issue. The Amended F&C re Turnover found — in a single sentence — that the both the Carmel
20 Property and the Calabasas Property are property of the chapter 7 estate. Where the BAP has
21 determined that the Turnover Order is "law of the case" with respect to the Carmel Property, the
22 Court can think of no cogent reason or legal principle why the Turnover Order is also not "law of the
23 case" with respect to the Calabasas Property.

24 There is an exception to the "law of the case" doctrine, but the Court does not find that
25 exception applicable here. "The law of the case doctrine does not apply 'if the court is convinced
26 that its prior decision is clearly erroneous and would work a manifest injustice.'" *Rocky Mountain*
27
28

1 *Farmers Union*, 913 F.3d at 951 *quoting* *Pepper v. United States*, 562 U.S. 476, 506–07 (2011).¹⁷

2 As detailed below, the Turnover Order is not clearly erroneous, and it is not manifestly unjust for the
3 Baronis to be bound by the Turnover Order.

4 The holding of the Turnover Order is not clearly erroneous with respect to the Calabasas
5 Property for all the reasons discussed above with respect to the Plan. The Plan treated the Calabasas
6 property, implicitly and explicitly, as property of the estate, i.e., community property. The Plan is
7 now res judicata and binding on both the Debtor and James Baroni. Further, the Turnover Order is
8 consistent with the amended Schedules in effect at the time of Plan confirmation, and the Debtor is
9 judicially estopped from contradicting those Schedules.

10 Likewise, it is not manifestly unjust to treat the Turnover Order as law of the case with
11 respect to the Calabasas Property. Prior to conversion of the case, the Debtor treated the Calabasas
12 Property as community property when it was advantageous to do so. She did so explicitly and under
13 penalty of perjury, and also by necessary implication. It was only after conversion of the case in
14 2019 (and the Trustee assuming control of property of the estate) that the Debtor and James Baroni
15 began to assert that they held the Calabasas Property as joint tenants, arguing that James' alleged
16 50% interest was beyond the reach of the Trustee. Because the Baronis reaped the benefits of
17 treating the entirety of the Calabasas Property as estate property (i.e., community property), there is
18 no injustice in continuing to do so after conversion of the case.¹⁸

20 ¹⁷ Decisions prior to the Supreme Court decision in *Pepper v. United States* recognized two
21 additional exceptions where "intervening controlling authority makes reconsideration appropriate, or
22 . . . substantially different evidence was adduced at a subsequent trial" following remand. *Gonzales*
23 *v. U.S. Dept. of Homeland Sec.*, 712 F.3d 1271, 1277 (9th Cir. 2013) *quoting* *Hegler v. Borg*, 50
24 F.3d 1472, 1475 (9th Cir. 1995). Neither applies here. There has been no intervening Ninth Circuit
25 or Supreme Court authority regarding what constitutes property of the chapter 7 estate following a
26 post-confirmation conversion in a chapter 11 case such that this Court must reconsider the Turnover
27 Order. Additionally, because the Ninth Circuit affirmed the Turnover Order in its entirety, there was
28 no remand of the Turnover Order and thus no different evidence produced regarding the Trustee's
Turnover Motion.

25 ¹⁸ The Baronis also dramatically changed their assertions regarding the Carmel, Camarillo and
26 Henderson rental properties being community property following conversion of the case. The
27 Debtor confirmed her plan which stripped the liens of four lenders down to the value of the rental
28 properties (and, regarding the Henderson rental property, stripped the junior lien off entirely) freeing
up a total of \$1,078,276 in equity for the benefit of both the Debtor and James Baroni. Plan, Case
Dkt. 376 at 17:15-19:6; *Motion for Order (1) Confirming [Plan]; (2) Determining Value of Real*
Property for Purposes of Plan Confirmation, etc., Case Dkt. 301 at 17:3-11. By the express terms of
section 506(a) and (d), however, the bankruptcy court can only disallow a secured claim (and strip

1 Following confirmation of the Plan, but prior to conversion, the Debtor pursued an adversary
2 proceeding against CIT's predecessor, OneWest, N.A. ("OneWest"), seeking a determination that the
3 note and the deed of trust encumbering the Calabasas Property were not enforceable by OneWest.
4 *See* Adversary Proceeding 1:13-ap-01249-MB (the "OneWest Adversary"). The Debtor litigated this
5 adversary proceeding for six years. During that litigation, the Debtor never alleged that the
6 Calabasas Property was a joint tenancy property and never sought to join James Baroni as a co-
7 plaintiff. If the Baronis had owned the property as joint tenants as they now contend, the Debtor's
8 litigation against OneWest would have been a futile pursuit. The Court would not have had
9 jurisdiction over James Baroni's 50% interest in the Calabasas Property and could not have
10 adjudicated OneWest's rights vis-à-vis James Baroni, a non-party. Even if the Debtor had prevailed,
11 James Baroni would have remained obligated to OneWest and his interest in the Calabasas Property
12 would have remained fully encumbered in favor of OneWest.

13 Following years of scorched earth litigation in the OneWest Adversary, and appeals to the
14 District Court and Ninth Circuit, this Court awarded OneWest \$538,323 in attorneys' fees and costs
15

16 down the corresponding lien) to the extent it encumbers "the estate's interest in such property." 11
17 U.S.C. § 506(a); *United States Internal Revenue Service v. Snyder*, 343 F.3d 1171, 1176-79 (9th Cir.
18 2003). If the Debtor had asserted that the Carmel, Camarillo and Henderson rental properties were
19 held in joint tenancies, the proposed lien strip would have been impossible; it was only because the
20 Plan implied they were community properties that the \$1,078,276 in liens could be stripped down.
21 *Compare In re Rodriguez*, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993) (denying confirmation of
22 debtor's plan which sought to strip a creditor's lien down to the value of the collateral pursuant to
23 section 506 because the debtor held only a 50% interest in the collateral) *with In re Maynard*, 264
24 B.R. 209, 214-15 (B.A.P. 9th Cir. 2009) (finding that, because the community property interests of
25 the non-debtor spouse became property of the estate pursuant to section 541(a)(2), the entirety of a
26 creditor's lien secured by community property could be stripped down to the value of the real
27 property under section 506(a) and (d)). James Baroni did not object to the plan's implicit
28 characterization of the rental properties as community properties of the estate. Following
confirmation of the lien stripping plan, the Baronis received \$303,248 in net sales proceeds when
they sold the Henderson rental property — equity that existed only because the Debtor previously
represented to the Court that the Henderson property was wholly property of her bankruptcy estate
so that the Court could strip the junior deed of trust off entirely and strip the senior deed of trust
down to \$196,000 from \$801,712. Case Dkt. 376 at 26:16, 34:2-7. *See also*, July 3, 2019
Declaration of Allana Baroni, Case Dkt. 1004 at 14, ¶ 7 ("The proceeds from the Henderson, NV
property were \$303,248.43 deposited . . . on or about March 27, 2019"). It was only after the
\$1,078,276 in liens were stripped off the rental properties to the benefit of both the Debtor and
James Baroni, and after the case was converted on April 29, 2019, that the Debtor and James Baroni
began asserting that the rental properties were held in a joint tenancy and that James' 50% interest
was not property of the chapter 7 estate. Case Dkt. 985 at 5; 988 at 2-4; 1142 at 9; 1478 at 12, ¶ 4;
1484 at 24, ¶ 4. The Baronis' shifting position regarding the community nature of the Calabasas
Property therefore is nothing new.

1 based on attorneys' fee provisions in the prepetition loan documents signed by both the Debtor and
2 James Baroni (the "Attorneys' Fee Award"). Adv. Dkt. 13-01249-MB, Dkt. 395, *aff'd* 2018 WL
3 6112612 (C.D. Cal., Mar. 30, 2018) *aff'd In re Baroni*, 781 F. App'x 670, 671 (9th Cir. 2019). In
4 2018, OneWest moved for an order confirming that the automatic stay did not prevent it from
5 collecting the Attorneys' Fee Award from James Baroni and lifting the stay as to the Calabasas
6 Property securing that award in the event he failed to pay (the "RFS Motion").¹⁹ Case Dkt. 838. The
7 Debtor opposed the RFS Motion arguing that the Calabasas Property was protected by the automatic
8 stay because it was her community property:

9 CIT wants to foreclose on the family home. Allana Baroni and James
10 Baroni jointly own that home, as tenants in common and under
11 California's community property laws. Declaration of Allana Baroni
12 (or "Baroni Dec."), at ¶ 2. . . .

13 The bankruptcy laws deal with this situation. 11 U.S.C. § 541(a)
14 provides that the "commencement of a case under section 301, 302 or
15 303 of this title creates an estate." That estate, under § 541 (a) (2),
16 includes "All interests of the debtor and the debtor's spouse in
17 community property as of the commencement of the case that is—[¶]
18 (A) under the sole, equal, or joint management and control of the
19 debtor; or [B] liable for an allowable claim against the debtor, or for
20 both an allowable claim against the debtor and an allowable claim
21 against the debtor's spouse..."

22 The Baroni home is under the "joint management and control of the
23 debtor." Baroni Dec., at ¶ 3. And, CIT argues that it can make a claim
24

25 ¹⁹ Generally, the automatic stay terminates upon confirmation of a chapter 11 plan when the
26 property of the estate reverts in the reorganized debtor and ceases to be property of the estate. 11
27 U.S.C. § 362(c)(1). The Debtor's confirmed plan, however, continued the stay "to prohibit
28 collection or enforcement of pre-petition claims against the Debtor or the Debtor's property until the
date the Debtor receives a discharge, if any." Plan, Case Dkt. 376 at 42:2-4. By treating the
Calabasas Property as community property, the Debtor protected it from prepetition creditors even
after confirmation. This benefitted both the Debtor and James Baroni.

1 against James Baroni, the debtor's spouse. MPA, at pages 4-5. Thus,
2 its claim is "allowable...against the debtor's spouse." The home is an
3 asset of the bankruptcy estate. It is protected by the automatic stay. 11
4 U.S.C. § 362 (a). CIT may or may not be able to make a demand
5 against James Baroni, but it can take no action to foreclose on the
6 Baroni home without violating the automatic stay.

7 * * *

8 They [CIT] also did not discuss the impact of 11 U.S.C. § 541(a)(2). If
9 the clear language of section 541(a)(2) is to be honored, the Court
10 must find that the automatic stay protects the Baroni home.

11 *Reorganized Debtor's Opposition to Motion for Relief from the Automatic Stay* ("RFS Opposition"),
12 Dkt. 863 at 3:10-27; 4:4-7. The Debtor's declaration in support of the RFS Opposition was explicit:

13 2. My husband, James Baroni, and I jointly own the home located at
14 3339 Via Verde Court, Calabasas, California as tenants in common
15 and under California's community property laws (the "Baroni Home").
16 3. The Baroni Home is under the "joint management and control of the
17 debtor." My husband and I both manage the home and control it.

18 *Id.* at 11. The Debtor's legal arguments regarding section 541(a)(2) (which only applies to
19 community property) and her declaration testimony are unambiguous: the Calabasas Property is
20 community property. The Debtor made these arguments and offered this testimony—on behalf of
21 herself and her husband— in an effort to shield the Calabasas Property from OneWest's collection
22 efforts on the Attorneys' Fee Award.

23 Now that the Baronis find it convenient to take a different tack, they have abandoned this
24 position, arguing instead that the Calabasas Property is a joint tenancy property, 50% of which is not
25 property of the estate. Notably, none of the Debtor's declarations in opposition to the Sale Motion or
26 in support of the Abandonment Motion expressly state that the Baronis own the Calabasas Property
27 as joint tenants, despite her pleadings advancing that exact argument. *See* Case Dkt. 1835-5, 1884 at
28

1 34-35. Presumably, this is because she previously testified to the contrary, under penalty of perjury,
2 in support of her RFS Opposition.

3 Under the totality of the circumstances, it is not manifestly unjust to apply the "law of the
4 case" doctrine here. In order to obtain confirmation of the Plan, which benefitted both the Debtor
5 and James Baroni, the Debtor took the position that all the Properties she owned with her husband
6 were held as community property. The Plan, which is res judicata and binding on them both,
7 implicitly and explicitly states that the Calabasas Property is property of the estate, i.e., community
8 property. James Baroni not only did not object to the Plan, but he advocated for its confirmation by
9 submitting three declarations in support of it. Following confirmation, in an effort to insulate the
10 entirety of the Calabasas Property from the Attorneys' Fee Award, the Debtor gave declaration
11 testimony under penalty of perjury expressly stating that the Calabasas Property was community
12 property and therefore protected by the automatic stay. Notwithstanding their latest effort to argue
13 to the contrary, it is entirely fair to apply the "law of the case" doctrine here.

V. CONCLUSION

Based on the foregoing, the Court will enter orders:

1. Granting in part and denying in part the Sale Motion as provided above;
2. Denying the Abandonment Motion in its entirety;
3. The fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) will apply upon entry of the order on the Sale Motion;
4. Within 30 days following the closing of the sale, the Trustee shall file the final closing statement, and admissible evidence regarding the amount of CIT's lien at the time of closing;
5. The Trustee shall promptly lodge orders on the Sale Motion and on the Abandonment Motion consistent with this Memorandum of Decision, and file notices of lodgment; and
6. Any objection to the form of the orders lodged by the Trustee shall be filed no later than 2 court days following the filing of the notices of lodgment.

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Date: July 21, 2023



Martin R Barash
United States Bankruptcy Judge