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IT IS SO ORDERED.

Dated: March 26, 2025



Mina Nami Khorrami
Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: : Case No. 24-51398
: Chapter 11 - Subchapter V
DRTMG, LLC, : Judge Mina Nami Khorrami
: :
Debtor : :

OPINION AND ORDER GRANTING MOTION OF THE UNITED STATES TRUSTEE TO DISMISS OR CONVERT CASE AND MEMORANDUM IN SUPPORT (DOC. 190)

I. Introduction

Before the Court is the *Motion To Dismiss Or Convert Case* (Doc. 190) (the “Motion”), filed by Andrew R. Vara, United States Trustee for Regions 3 and 9 (the “UST” or “U.S. Trustee”), together with the *Memorandum Of Subchapter V Trustee In Support Of Motion To Dismiss Or Convert Case* (Doc. 199) (the “Joinder”), filed by James Coutinho, the subchapter V trustee (the “Trustee”), and the *Debtor’s Response To Motion To Dismiss Or Convert Case* (Doc. 198) (the “Objection”), filed by the Debtor, DRTMG, LLC (the “Debtor”). The Court held a hearing on the

Motion on March 18, 2025 (the “Hearing”). At the Hearing, Edward Corley appeared on behalf of the Debtor together with the Debtor’s representative, Nathanael Thompson (“Mr. Thompson”), Laura Atack appeared on behalf of the UST, and the Trustee appeared on his own behalf.¹

The Court heard testimony from Mr. Thompson, as well as Jeffrey Pfriem (“Mr. Pfriem”), who is an auditor with the Office of the United States Trustee, and Andre Dowdy (“Mr. Dowdy”), an appraiser retained by the Debtor. The U.S. Trustee’s exhibits UST-5 through UST-18, UST-21, UST-23 through UST-28, UST-30, and UST-33 through UST-44 were admitted pursuant to stipulation. Debtor’s Exhibits 1-7 were admitted without objection. For the reasons that follow, the Motion is granted, and this case will be converted to one under chapter 7, effective immediately.

II. Findings of Fact

Based upon the testimony and exhibits admitted at the Hearing, the Court makes the following findings of fact.

The Debtor filed its subchapter V petition (the “Petition”) on April 12, 2024 (the “Petition Date.”). Mr. Thompson is the sole member and owner of the Debtor. The Debtor currently holds title to seven real properties (the “Real Properties”) in central Ohio, which it operates as residential rental properties. Prior to the Petition Date, the Real Properties had been the subject of one or more state court receivership actions but had been returned to the control of the Debtor shortly after the Petition was filed.

The UST presented testimony from Mr. Pfriem, who oversees and monitors chapter 11 cases to ensure that they are progressing appropriately. Mr. Pfriem also reviews chapter 11 plans

¹ Two attorneys appeared telephonically for the purpose of observing the proceedings but did not take a position regarding the Motion or otherwise participate in the Hearing. Zachary Prendergast appeared telephonically on behalf of U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trusts 2021-3 and 2021-4 and U.S. Bank Trust Company, National Association, as Trustee for Velocity Commercial Capital Loan Trusts 2022-1 and 2022-5. Charles Lester Kennon, III appeared telephonically on behalf of U.S. Bank National Association, not in its individual capacity but solely as trustee for the BINOM Securitization Trust 2021-INV1.

to ensure that they are feasible considering the debtor's performance during the case as reflected in its monthly operating reports (the Debtor's monthly operating reports will individually be referred to as the "MOR" and collectively as the "MORs"). Timely, complete, and accurate monthly operating reports are critical to both functions performed by Mr. Pfriem.

Given the various obligations imposed upon the Debtor as a debtor-in-possession, at the outset of this case, Mr. Pfriem contacted the Debtor's counsel to advise of those obligations, including the requirement to file MORs, and included a copy of the *Chapter 11 Guidelines for Region 9 Operating Instructions and Reporting Requirements For Small Business Chapter 11 Cases* detailing that and other requirements. Ex. UST-5 (the "UST Guidelines"). At the initial debtor interview (the "IDI") held on May 13, 2024, Debtor's counsel, Mr. Thompson, and Mr. Pfriem discussed the requirements of the UST Guidelines in detail. At the IDI, Mr. Thompson signed a receipt acknowledging he had received a copy of the UST Guidelines. Ex. UST-6 at 6.

The UST Guidelines describe a debtor-in-possession's obligation to file timely, complete, and accurate monthly operating reports. Ex. UST-5 at 10. It also describes a debtor-in-possession's obligation to obtain court approval prior to engaging or compensating professionals or incurring debt. *Id.* at 2, 13. The monthly operating reports for any given month must be filed on the 21st day of the following month in order to be considered timely. *Id.* at 10. The monthly operating reports are used by the UST to monitor the progress of a case, and they enable interested parties to assess whether the business is operating at a sufficient level of profitability to demonstrate feasibility of reorganization. *Id.* Mr. Pfriem stated that monthly operating reports that are not timely, accurate, and complete undermine his ability to monitor the progress of the case and assess viability of a proposed plan of reorganization.

None of the Debtor's MORs in this case are fully compliant with the UST Guidelines. Ex. UST-7 – UST-18. In fact, the Debtor's MORs are so replete with deficiencies that they are ineffective in assisting the UST in evaluating the progress of the case. The deficiencies with the Debtor's MORs start with timeliness. As of the Hearing, the Debtor was required to file ten MORs. The December 2024 MOR was not filed.² The MORs for July, August, September, and October 2024 were all filed on December 3, 2024. Ex. UST-13 through UST-16. This means that the July MOR was filed 104 days late, the August 2024 MOR was 74 days late, the September MOR was 43 days late, and the October MOR was 12 days late. The January 2025 MOR was 6 days late. Ex. UST-18.

It is clear from the testimony of Mr. Pfriem that late filed monthly operating reports present issues for the U.S. Trustee, creditors, and the Court by preventing them from reviewing a timely picture of the debtor-in-possession's activities and financial affairs. Chronic lateness also conveys that the Debtor is not serious about its obligations as a debtor-in-possession. It also presents the possibility that the monthly operating reports are late because the debtor does not intend to comply with its chapter 11 duties and obligations.

The second deficiency is that none of the Debtor's MORs contain complete information as required by the UST Guidelines. Mr. Pfriem noted that, although item 20 of the monthly operating report form³ requires the disclosure of the total cash receipts for each given month and further

² After the close of the evidence at the Hearing, on March 24, 2025, the Debtor amended its MORs for April through December 2024 (Docs. 215-223) and January and February 2025 (Docs. 224 and 225). The December 2024 and February 2025 MORs were marked as amended even though they had not been previously filed. The evidentiary record before the Court is limited to the evidence admitted at the Hearing, and the Court disregards any amendments filed after the evidence closed at the conclusion of the Hearing. *In re Anthony*, 664 B.R. 418, 426 n.4 (Bankr. S.D. Ohio 2024) (disregarding evidentiary materials filed after close of hearing); *In re Ghaffari*, 2025 WL 384458, at *2 n.12 (disregarding amendments to plan of reorganization that were “filed well after the close of the evidence”).

³ The Judicial Conference has approved Official Form 425C for use in small business and subchapter V cases. Use of this form is mandatory. Fed. R. Bankr. P. 2015(a)(6); 9009(a).

expressly requires that each individual cash receipt be itemized on an attached Exhibit C, none of the Debtor's MORs included an Exhibit C. Similarly, item 21 of the monthly operating report form requires the disclosure of the total cash disbursements for each given month and further expressly requires that each individual disbursement be itemized on an attached Exhibit D, but none of the Debtor's MORs had an Exhibit D. As a result, each of the Debtor's MORs provide total cash receipts and disbursements for the month in question, but no detailed information about specific receipts and disbursements. Further, other than April, June, and November, none of the Debtor's MORs contained a bank statement. Finally, Sections 3-7, (which cover topics such as unpaid bills and receivables, the status of payroll, professional fees paid in the month, and projections for the coming month) of the Debtor's MORs are for the most part left blank.⁴ For the few MORs where those sections were filled in at all, portions of those sections were left blank.

Mr. Pfriem also showed that the Debtor's MORs for May and June 2024 incorrectly start with a zero balance, instead of carrying over the ending balance for the prior month. For example, the April 2024 MOR indicates that the Debtor started the case with no cash on hand and had \$1,710 in total cash receipts during the month. Ex. UST-9 at 2. Yet the May 2024 report indicates a starting cash balance of \$9,883.10. Ex. UST-10 at 2. And although the May 2024 report indicates a closing balance of \$9,861.10, the June 2024 report indicates a starting balance of \$0. Ex. UST-12 at 2, UST-13 at 2. This issue was never corrected nor explained.

At various times from June 2024 through February 2025, the UST and the Trustee raised specific deficiencies with each MOR to the Debtor through email communications. Mr. Pfriem sent an email to Debtor's counsel on June 25, 2024, and the Trustee sent an email to the Debtor's counsel to identify deficiencies with the MOR in June and July 2024 and to seek answers to certain

⁴ Mr. Pfriem testified that the monthly operating reports must be filled out completely by inserting zeros in places where no activity is to be reported.

questions. Ex. UST-41 at 3-4. The UST's counsel concurred with the issues raised by the Trustee in an email sent on July 23, 2024 to Debtor's previous counsel of the record. Ex. UST-41 at 1. The Debtor did not respond to the emails or amend any of the MORs to correct these deficiencies.⁵

On October 9, 2024, and November 12, 2024, Mr. Pfriem sent another email to Debtor's counsel to point out that the MORs for July 2024 and subsequent months were overdue. On November 21, 2024, the Debtor finally responded, providing draft MORs for July through October 2024. Ex. UST-42B. On November 27, 2024, the UST's counsel provided detailed comments on the deficiencies in those draft MORs and requested further information on various issues. Ex. UST-43A.⁶ But when those MORs were ultimately filed on December 3, 2024, the MORs were unchanged from the drafts provided on November 21, 2024 – none of the issues raised by the UST's counsel on November 27, 2024, had been addressed. Mr. Pfriem also emailed Debtor's counsel on February 3 and 27, 2025 because the December 2024 MOR had not been filed. The Debtor did not file the December 2024 MOR prior to the Hearing.

Finally, the Debtor's MORs for July through October 2024 are materially inaccurate because they do not disclose various unauthorized transactions undertaken by the Debtor. In July and August 2024, the Debtor borrowed \$10,960 in "supplemental funds" from "friends and family" of Mr. Thompson, \$6,000 of which came from Mr. Thompson's wife Jennifer Thompson. Ex. UST-33 at 2, 8. These funds were repaid during August and September in the total amount of \$12,960. Ex. UST-33 at 2-3. The borrowing of funds and repayment of debts are not disclosed on the relevant MORs, which instead answer "no" to questions whether the Debtor had borrowed

⁵ The April 2024 MOR was amended twice, and the June 2024 was amended once. Ex. UST-7, UST-8, UST-9, UST-11, and UST-12. However, none of the amendments corrected the issues raised by the Trustee and UST. Ex. UST-41 at 3-4 (noting issues with the amended MORs for April and June).

⁶ One of the issues raised by the UST's counsel on November 27, 2024, related to the cancellation of an insurance policy on November 23, 2024. Mr. Pfriem had also been communicating in writing with the Debtor's counsel about this issue. Ex. UST-39. The Debtor finally responded on December 6, 2024.

money or transferred assets during those months. Ex. UST-13 through UST-15. Neither the borrowing nor repayment of funds was authorized by the Court. Moreover, the Debtor's September MOR did not disclose a transfer of \$871 from the Debtor to Dr. Thompson Merchant Group LLC.⁷ Ex. UST-15; UST-34. The Debtor did not obtain Court authorization allowing the Debtor to pay any expenses of the Dr. Thompson Merchant Group from the estate of the Debtor.

Section 6 of the October MOR, where the Debtor was required to disclose payments to professionals, was left blank. Ex. UST-16 at 3. In fact, on October 2, 2024, the Debtor had paid \$1,505 to appraiser Mr. Dowdy and another payment of \$1,505 to Mr. Dowdy's company, The Orange Company, for appraisals of the Real Properties. Ex. UST-36. The Debtor never sought or obtained this Court's authorization for either the retention or compensation of Mr. Dowdy and/or Mr. Dowdy's company, The Orange Company, as appraisers for the Debtor.

When asked to explain the issues regarding the Debtor's MORs and unauthorized borrowing and payments, Mr. Thompson testified that he relied upon the Debtor's counsel to ensure that everything was being done appropriately. Mr. Thompson suggested that he had signed some of the MORs without reviewing them carefully. Although he acknowledged receiving a copy of the UST Guidelines at the IDI in May 2024, he stated that he had not reviewed it carefully. Despite the many emails to the Debtor's counsel concerning issues with the MORs, and the fact that the Motion addressing issues with the Debtor's MORs in detail had been served directly upon the Debtor as required by this Court's rules, Mr. Thompson claimed that he was learning of the defects with the MORs for the first time at the Hearing. Mr. Thompson stated that if he was given more time, he would ensure that corrected MORs would be promptly filed.

⁷ Dr. Thompson Merchant Group LLC ("Dr. Thompson Merchant Group") is another entity that is wholly owned by Mr. Thompson. It filed a subchapter V case in this Court on April 17, 2024 (case no. 24-51476). That case was converted to chapter 7 on October 2, 2024.

In many instances here, the UST and/or the Trustee made inquiries of the Debtor regarding the MORs or other issues but those inquiries either received no response or received a response only after multiple follow-ups. When a response was provided, it did not address all of the underlying concerns. *See* Ex. UST-39; UST-41 through UST-44. In particular, after the Debtor provided draft monthly operating reports for July through October, the UST’s counsel provided a detailed list of issues that needed to be addressed and additional information that needed to be provided. and requested a response by December 6, 2024. Ex. UST-43A. With no response forthcoming by that deadline (and the draft MORs filed without change on December 3, 2024), the UST then filed a motion under Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to obtain an order compelling the Debtor to provide the requested information.

III. Legal Analysis

A. Jurisdiction

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. A motion to dismiss or convert under 11 U.S.C. § 1112 is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Positions of the Parties

The UST asserts that cause exists under 11 U.S.C. § 1112(b) to dismiss or convert this case based upon three grounds: (1) that the Debtor has filed late, inaccurate, and incomplete MORs, (2) that the Debtor has failed to respond to reasonable requests for information from the UST and Trustee, and (3) that the Debtor has committed gross mismanagement of this estate. The Trustee

supports the UST's position and has added two additional grounds for cause: (1) that the Debtor has engaged in the unauthorized use of cash collateral substantially harmful to one or more creditors and (2) the Debtor has filed a plan that is not viable, and the Debtor cannot successfully reorganize.

The Debtor asserts first that it did not provide the MORs with any intent to mislead or cause harm, and that it subsequently provided information to address questions asked of it by the UST. Second, it asserts that there was no mismanagement of the estate, and that all actions were taken to preserve and enhance the value of the estate and did not adversely affect creditors or the estate, and that its actions were disclosed, demonstrating that it was acting in good faith. Finally, it asserts that its proposed plan is designed to make all creditors whole and permit the Debtor to continue as a going concern and is therefore in the best interests of all parties.

Both the U.S. Trustee and the Trustee argue that, in view of potential avoidance actions to be investigated by a chapter 7 trustee, conversion, as opposed to dismissal, is in the best interest of creditors and the estate. The Debtor did not address the question of dismissal versus conversion.

C. Cause to Dismiss or Convert under 11 U.S.C. § 1112(b)

11 U.S.C. § 1112(b) governs the involuntary conversion and dismissal of subchapter V cases. *Cal. Palms Addiction Recovery Campus, Inc. v. Vara (In re Cal. Palms Addiction Recovery Campus, Inc.)*, 87 F.4th 734, 741 (6th Cir. 2023); *In re Lashley*, 664 B.R. 408, 415 (Bankr. W.D. Ky. 2024). The Court must first determine whether there is "cause." *In re Pure Repair & Trucking, LLC*, 658 B.R. 895, 903 (Bankr. S.D. Ohio 2024). If the Court finds that cause exists, it must then consider whether the debtor has established specific facts showing unusual circumstances such that neither conversion or dismissal is in the best interests of the creditors or the estate. *Id.* And if cause is proved, and the exception is not established, the Court must either dismiss the case or

convert it to chapter 7. *In re Creekside Senior Apts., L.P.*, 489 B.R. 51, 63 (B.A.P. 6th Cir. 2013). Even a single basis for cause is sufficient. *Cal. Palms*, 87 F.4th at 740; *Creekside*, 489 B.R. at 60.

The party seeking dismissal or conversion carries the burden of proof to demonstrate cause by a preponderance of the evidence. *Creekside*, 489 B.R. at 60. The Court must engage in a case-specific factual inquiry which focuses on the circumstances of the Debtor. *Id.* Once cause is established, § 1112(b)(2) explicitly shifts the burden of showing the unusual circumstances exception to the Debtor. *Pure Repair*, 658 B.R. at 904.

1. § 1112(b)(4)(F) - Unexcused Failure To Satisfy Timely Any Filing Or Reporting Requirement

“A paramount requirement of bankruptcy, and particularly as to a Chapter 11 debtor in possession, is disclosure and transparency.” *In re Visicon S’holders Tr.*, 478 B.R. 292, 311 (Bankr. S.D. Ohio 2012). This requirement of disclosure and transparency is a fiduciary obligation of the debtor-in-possession.

“A debtor-in-possession is vested with significant power under the Bankruptcy Code and that power comes with certain responsibilities.” *In re Turkey Leg Hut & Co. LLC*, 665 B.R. 129, 140 (Bankr. S.D. Tex. 2024) (quoting *Nester v. Gateway Access Solutions, Inc. (In re Gateway Access Solutions, Inc.)*, 374 B.R. 556, 566 (Bankr. M.D. Pa. 2007)). The debtor-in-possession’s duties are fiduciary in nature. *Turkey Leg Hut*, 665 B.R. at 140. Describing an obligation or duty as “fiduciary” in nature is a shorthand means of expressing that the obligation is particularly serious and important, typically because the fiduciary is empowered to act in a manner that will impact the rights of others. For that reason, fiduciary duties are among the “highest known to law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2nd Cir. 1982) (citing Restatement (Second) of Trusts 2d § 2, comment b (1959)).

The Supreme Court emphasized this point in *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985), when it recognized that debtors-in-possession are functionally equivalent to trustees: “the willingness of courts to leave debtors in possession ‘is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee.’”(quoting *Wolf v. Weinstein*, 372 U.S. 633, 651, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963)). Living up to these fiduciary duties is thus a part of the burden upon a debtor-in-possession in exchange for the significant benefits that chapter 11 offers. *In re Fleetstar LLC*, 614 B.R. 767, 787 (Bankr. E.D. La. 2020) (“As part of that fiduciary obligation, ‘the debtor is obligated to protect and conserve property in its possession, as well as to provide voluntary and honest disclosure of financial information—a reasonable *quid pro quo* for its temporary relief from substantial financial obligations.’”) (quoting *In re Sal Caruso Cheese, Inc.*, 107 B.R. 808, 817 (Bankr. N.D.N.Y. 1989)). Where it becomes clear that the debtor and its management will not adhere to those fiduciary obligations, cause for conversion or dismissal exists. *Fleetstar*, 614 B.R. at 787.

“Failure to file [monthly operating reports] – and file them timely – is a serious breach of the debtor’s fiduciary obligations and ‘undermines the chapter 11 process.’” *In re Lashley*, 664 B.R. 408, 415 (Bankr. W.D. Ky. 2024) (quoting *In re All Denominational New Church*, 268 B.R. 536, 538 (B.A.P. 8th Cir. 2001)). As a result, “a debtor’s inability or belated effort to comply with his fiduciary duty to provide timely and complete financial disclosures does not excuse his obligation to do so; either one ‘undermines the Chapter 11 process and constitutes cause for dismissal [or conversion].’” *In re Alston*, 756 F. App’x 160, 164 (3rd Cir. 2019) (quoting *In re Costa Bonita Beach Resort, Inc.*, 513 B.R. 184, 199 (Bankr. D.P.R. 2014)). Many other courts have recognized the fiduciary nature of the reporting requirement. *See, e.g., In re Berryhill*, 127

B.R. 427, 433 (Bankr. N.D. Ind. 1991); *In re Cont'l Holdings, Inc.*, 170 B.R. 919, 929 (Bankr. N.D. Ohio 1994); *In re Whetten*, 473 B.R. 380, 383 (Bankr. D. Colo. 2012).

Monthly operating reports are one of the most fundamental filing and reporting requirements imposed on a debtor-in-possession. *Alston*, 756 F. App'x at 164. They “‘are the life-blood of the Chapter 11 process’ serving as the ‘primary means for monitoring the debtor’s compliance with the Code’s requirements’ and a ‘litmus test for a debtor’s ability to reorganize.’” *Id.* (quoting *In re Andover Covered Bridge, LLC*, 553 B.R. 162, 173 (B.A.P. 1st Cir. 2016)); *In re Four Wells, Ltd.*, 2016 Bankr. LEXIS 1673, at *29 (B.A.P. 6th Cir. Apr. 12, 2016) (“The reports serve an important purpose: they allow the UST and parties in interest to monitor a debtor’s financial performance, activities and operations”); *Visicon S’holders Tr.*, 478 B.R. at 315 (same). Given their critical role, filing timely, complete, and accurate monthly operating reports “‘is not a ‘mere technicality.’” *Whetten*, 473 B.R. at 384 (quoting *In re Ronald Kern & Sons*, 2002 WL 1628908, at *1 (W.D.N.Y. June 11, 2002)).

To drive the point home, 11 U.S.C. § 1112(b)(4)(F) provides that cause for dismissal or conversion includes the “unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter.” As a result, monthly operating reports that are not timely, complete, or accurate demonstrate cause. *Alston*, 756 F.App'x. at 164.

Timeliness is so important that a pattern of untimely monthly operating reports can constitute cause under § 1112(b)(4)(F), even where they have been brought current by the time of the hearing. *Four Wells*, 2016 Bankr. LEXIS 1673, at *29 (“although the monthly operating reports were current as of the Dismissal Hearing, the bankruptcy [court] could properly conclude that Debtors’ continuous failure to adhere to the UST’s reporting deadlines constituted cause for

dismissal of Debtors' bankruptcy cases . . .”). Courts condemn the practice of filing “catch-up” reports where reports for several months are all filed at once. *Whetten*, 473 B.R. at 383 (“Filing catch-up reports is akin to locking the barn doors after the horses have already gotten out.”); *see also Alston*, 756 F. App’x. at 164 (holding that a debtor’s “belated effort” to catch up on overdue monthly operating reports “undermines the chapter 11 process and constitutes cause…”).⁸

Monthly operating reports must also be complete and accurate. “[I]nadequate monthly operating statements may be so useless as to be the practical equivalent of a failure to file any operating statement at all.” *Ronald Kern & Sons*, 2002 WL 1628908, at *2 n.3. “Filing a piece of paper is meaningless if the content is inaccurate, misleading, or wrong.” *In re Tucker*, 411 B.R. 530, 532 (Bankr. S.D. Ga. 2009); *see also Visicon S’holders Tr.*, 478 B.R. at 315 (finding cause where monthly operating reports “were proven both inaccurate and incomplete”).

As set forth in the Findings of Fact, all of the Debtor’s MORs fail at least one of these criteria. The December 2024 MOR was not filed and was two months late as of the Hearing. The July MOR was 104 days late, the August MOR was 73 days late, the September was MOR 43 days late, the October 2024 MOR was 12 days late, and the January 2025 MOR was 6 days late. Thus, out of the ten MORs due as of the Hearing, half were filed late. The MORs’ are not only incomplete, but they are incomplete in ways that materially undermine their usefulness. None of the MORs had the required Exhibits C and D showing individual cash receipts and disbursements. Only the April, June, and November 2024 MORs included the required bank statement. More troubling in this case is that the MORs for July, August, September, and October 2024 contain

⁸ To be sure, not every late or inaccurate monthly operating report will warrant a finding of cause, which will always depend upon the specific facts and circumstances of the case. *See, e.g. In re Tucker*, 411 B.R. 530, 535 (Bankr. S.D. Ga. 2009) (agreeing with debtor that certain late monthly operating reports did not constitute cause where they were late because debtor was suffering from a life-threatening illness, but holding that subsequent late monthly operating reports after he had recovered did establish cause).

materially false statements by asserting that no post-petition borrowing had occurred in July and August, no post-petition transfers had occurred in August and September, and no payments to professionals had occurred in October.

In this case, not only were the Debtor's MORs untimely, incomplete, and inaccurate, the Debtor did not take steps to correct the deficiencies and make accurate disclosures despite receiving several written notifications from the U.S. Trustee and the Trustee. Not even the Motion was sufficient to cause the Debtor to correct its MORs prior to the Hearing. Exhibits UST-41 through UST-44 show the substantial efforts of the UST and Trustee to point out deficiencies to the Debtor. The December 2024 MOR is particularly illustrative, as it was not filed as of the Hearing even though its absence was specifically identified in two emails from Mr. Pfriem (Ex. UST-44) and in the Motion. A debtor who comes to a hearing on a motion to dismiss or convert without ensuring that all of the monthly operating reports then due have been filed sends a very loud message to the court that it is either unwilling or unable to perform the most basic obligations of a debtor-in-possession. *In re Brauer*, 80 B.R. 903, 905 (N.D. Ill. 1987) (affirming bankruptcy court ruling that failure to have all reports on file prior to hearing was a "a gross failure to comply with national and local rules, and it shows me a lack of seriousness about the Chapter 11 Case").

The only response offered by Mr. Thompson was that the Debtor's MORs were filed in good faith with no intent to mislead anyone. Mr. Thompson also asserted that he did not fully understand the monthly operating report obligation until the Hearing and assured the Court that the issues would be promptly corrected if only the Court would give him a little more time. But the Bankruptcy Code requires more than that. Good intentions will not prevent a finding of cause. *In re Carrington*, 710 F. Supp. 3d 248, 256-57 (S.D.N.Y. 2024). The UST Guidelines – which Mr. Thompson acknowledged receiving and discussing at the IDI – state in bold print on the front page:

“Timely compliance with each of the following requirements is mandatory. Failure to comply with any requirement may result in the filing of a motion for dismissal or conversion of the case” Ex. UST-5 at 1. In exchange for receiving the benefits of bankruptcy, the Debtor had the obligation to review the UST Guidelines closely and to comply with them. This case has been pending for nearly a year and the Debtor has been granted numerous opportunities to comply with its basic obligations and responsibilities as a subchapter V chapter 11 debtor-in-possession, but it has failed to carry out its basic fiduciary duties. At this time, the Debtor cannot blame its failure on anyone else but itself.

Accordingly, the Court finds that the UST established cause under 11 U.S.C. § 1112(b)(4)(F).

2. 11 U.S.C. § 1112(b)(4)(H) - Failure to Timely Provide Information or Attend Meetings Reasonably Requested by the United States Trustee

The next ground for cause asserted by the UST is his assertion that the Debtor repeatedly failed to respond to his requests for information under § 1112(b)(4)(H). Section 1112(b)(4)(H) requires a showing that the UST has reasonably requested information and that the Debtor has not provided it. This provision recognizes the UST’s vital role in subchapter V cases and mandates that the Debtor be cooperative and responsive to the UST’s reasonable requests. The UST is often aptly described as the “watchdog” in bankruptcy cases. *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990). For that reason, providing information reasonably requested is part of a debtor-in-possession’s fiduciary obligation of openness and transparency.

As detailed in the evidence presented, the UST introduced a substantial record of requests for information starting in June 2024 and continuing through February 2025, covering matters such

as the Debtor's MORs, the Debtor's various plans of reorganization, notices of cancellation of insurance policies, and related issues. *See* Ex. UST-41, UST-42A, UST-42B, UST-43A, UST-43B, and UST-44. Most of these requests were ignored by the Debtor, even on time-sensitive matters such as cancellation of insurance. The UST was forced to file a motion for discovery under Bankruptcy Rule 2004 in December 2024 when the Debtor had failed to respond to a detailed list of inquiries made by the UST's counsel on November 27, 2024. The UST's requests were reasonable. They were focused on issues directly relevant to the case and the UST's oversight duties. Forcing the UST to use discovery tools to obtain financial records indicates an unacceptable misunderstanding of the Debtor's fiduciary obligations of openness and transparency.

Moreover, the Debtor's failure to respond to the UST's requests does not stand alone. The issues with the MORs also demonstrate cause under § 1112(b)(4)(H) as well as § 1112(b)(4)(F). *Four Wells*, 2016 Bankr. LEXIS 1673, at *28-30; *Andover Covered Bridge*, 553 B.R. at 173-74. Indeed, the deficient MORs and the information requests go hand-in-hand: many of the UST's requests were seeking correction and/or clarification precisely because of the deficiencies of the Debtor's MORs. The Debtor's deficient MORs warrant a conclusion of cause under § 1112(b)(4)(H) by themselves. That conclusion becomes even more clear when combined with the Debtor's repeated and continuous failure to provide information reasonably requested by the UST.

3. 11 U.S.C. § 1112(b)(4)(B) – Gross Mismanagement of the Estate

11 U.S.C. § 1112(b)(4)(B) provides that cause for dismissal or conversion includes gross mismanagement of the estate. This ground is established when the debtor-in-possession violates its fiduciary obligations. *In re Exigent Landscaping, LLC*, 656 B.R. 757, 769 (Bankr. E.D. Mich. 2024).

Retaining and compensating professionals without authorization shows gross mismanagement. *In re Sillerman*, 605 B.R. 631, 642-43 (Bankr. S.D.N.Y. 2009); *Carrington*, 710 F. Supp. 3d at 257. The same is true when a debtor-in-possession engages in unauthorized and undisclosed borrowing and repayment. *Nester v. Gateway Access Sols., Inc. (In re Gateway Access Solutions, Inc.)*, 374 B.R. 556, 566 (Bankr. M.D. Pa. 2007); *In re ARS Analytical, LLC*, 433 B.R. 848, 864 (Bankr. D.N.M. 2010). Finally, because of their importance, the failure to file timely, complete, and accurate monthly operating reports also demonstrates gross mismanagement where that failure results in a materially inaccurate financial picture or where other acts in violation of the Code are hidden. *Turkey Leg Hut*, 665 B.R. at 140; *In re JJ Arch LLC*, 663 B.R. 258, 279-80 (Bankr. S.D.N.Y. 2024).

Each of these factors is present here. The Court has found unauthorized retention and compensation of an appraiser. The Court has found that the Debtor engaged in unauthorized borrowing and repayment. And it has found that the Debtor's MORs are so deficient that they do not serve their intended purpose. Individually, each of these breaches is unacceptable. Collectively, they destroy any confidence the Court has that the Debtor is either willing or able to operate within the confines of the Bankruptcy Code and Rules. Without that confidence, the premise for allowing a debtor to remain in possession no longer exists. *See Weintraub*, 471 U.S. at 355. The Court therefore concludes that the UST has established gross mismanagement of the estate.

Although even a single basis for cause is sufficient under the Sixth Circuit's opinion in *Cal. Palms*, 87 F.4th at 740, the UST has demonstrated multiple grounds here. Considered together,

they overwhelmingly establish cause.⁹ Therefore, the Court must either dismiss or convert the case unless the Debtor can establish that the unusual circumstances exception of § 1112(b)(2) applies. *In re Creekside Senior Apartments, L.P.*, 489 B.R. 51, 63 (B.A.P. 6th Cir. 2013); *In re Martinez*, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

D. The Debtor Failed to Establish the Unusual Circumstances Exception

As set forth in § 1112(b)(2), the unusual circumstances exception requires the following: (1) the Court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate; and the Debtor must establish (2) that there is a reasonable likelihood of confirmation of a plan within a reasonable period of time, (3) there is a reasonable justification for the acts or omissions that gave rise to a finding of cause, and (4) the acts or omissions underlying the finding of cause will be cured within a reasonable time. 11 U.S.C. § 1112(b)(2); *In re Fall*, 405 B.R. 863, 870 (Bankr. N.D. Ohio 2009). The Debtor failed to establish any of these elements.

“Unusual circumstances” is not defined in § 1112(b), but it contemplates conditions that are not common in chapter 11 cases, such that all parties are better off without conversion or dismissal. *Fall*, 405 B.R. at 870; *In re Aurora Memory Care, LLC*, 589 B.R. 631, 642 (Bankr. N.D. Ill. 2018). The Debtor argues that its proposed plan will provide full payment for all creditors such that the estate or creditors are better off in subchapter V, but it failed to prove that at the Hearing. Although the Debtor provided appraisal values for the Real Properties, it did not provide any evidence showing that sales of the Real Properties at those appraised values would provide the promised 100% payment. Moreover, the Court’s conclusions regarding the Debtor’s repeated

⁹ Because the UST’s showing of cause is so clear, the Court declines to address the additional grounds for cause asserted by the Trustee. *See In re Nwosu*, ___ B.R. ___, 2025 WL 737042, at *13 (Bankr. S.D. Ohio Mar. 7, 2025) (holding that under the principle of judicial restraint, the Court need not decide more issues than are necessary to fully resolve what is pending before it).

and continuing violations of its fiduciary obligations strongly suggests that the creditors and the estate will not be better off with the case remaining in subchapter V. The Debtor did not carry its burden of showing unusual circumstances.

The Debtor also failed to prove that there is a reasonable likelihood of confirming a plan in a reasonable time. Although the UST and Trustee have asserted that there are many issues with the Debtor's current Plan (Exhibit UST-27), the Court simply notes that the failure to file compliant monthly operating reports creates a significant impediment to confirmation under 11 U.S.C. §§ 1129(a)(2) and 1191(a). *In re Valley Park Grp., Inc.*, 96 B.R. 16, 21-22 (Bankr. N.D.N.Y. 1989) (holding that the court could not confirm a plan under § 1129(a)(2) when no operating reports were on file). The Debtor presented no evidence or argument to show either that the current plan would otherwise be confirmable or that confirmation could be obtained in a reasonable time. Therefore, the Debtor has not carried its burden to establish that confirmation can be obtained within a reasonable time.

The Debtor also failed to prove a reasonable justification for the actions giving rise to the Court's finding of cause. Mr. Thompson's suggestion that some of the communications regarding the MORs had not been passed on to him by the Debtor's counsel, and that he only fully appreciated the Debtor's legal obligations at the Hearing is not a reasonable justification. Even if it were true, there are two reasons why this would not establish reasonable justification.

First, if Mr. Thompson truly did not understand the monthly operating report requirements before the Hearing, it means that he ignored the information that he was directly provided early in the case at the IDI and in the UST Guidelines by Mr. Pfriem. His apparent choice to disregard that information does not establish reasonable justification. Second, when a party is represented by counsel, knowledge of counsel is deemed to be the knowledge of the party as a matter of law. *Link*

v. Wabash R. Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); *Ford Motor Credit Co. v. Weaver*, 680 F.2d 451, 457 (6th Cir. 1982). As a result, even if the Court found that Debtor’s counsel did not advise Debtor of the deficiencies in the MORs, or pass on the many emails from the UST and the Trustee, lack of communication from counsel does not establish reasonable justification. As a matter of law, counsel’s knowledge of those emails must be imputed to the Debtor.

Second, even if counsel provides incorrect advice to a debtor-in-possession or the debtor-in-possession otherwise violates its duties due to ignorance of them, that does not provide reasonable justification. *In re Gow Ming Chao*, 2011 Bankr. LEXIS 4543, at *24-28 (Bankr. S.D. Tex. Nov. 21, 2011). In *Gow Ming Chao*, the debtors were represented by an attorney who was not experienced in chapter 11. In the first month of the case the debtors violated “no less than twelve provisions in the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules, and U.S. Trustee Guidelines.” *Id.* The court found that it did not matter whether the debtors’ lack of understanding of the rules resulted from language difficulties, poor legal advice, or some other cause – “a debtor’s ignorance of the law does not excuse him from the consequences of his actions.” *Id.* Therefore, even though the debtor’s failures “might well have been an honest mistake,” that provided no grounds for relief from the conversion order. *Id.*¹⁰ The Court thus finds that the Debtor has not established reasonable justification.

Finally, the Debtor did not show that the issues giving rise to the finding of cause could be cured within a reasonable time. The Debtor has had nearly a year to file compliant MORs. It had a month after the Motion was filed to correct them prior to the Hearing. If filing the Motion was

¹⁰ The Sixth Circuit recently applied this principle in an analogous context when it held that a debtor’s claimed ignorance of the obligation to include an FMLA cause of action on his bankruptcy schedules would not prevent the application of judicial estoppel to defeat the FMLA claim, even if that lack of knowledge resulted from poor legal advice. *Stanley v. FCA United States LLC*, 51 F.4th 215, 221 (6th Cir. 2022).

not enough to spur the Debtor into action, the Court has no reason to believe that offering the Debtor yet another chance after the Hearing would lead to a different outcome. In a very real sense, the Debtor already has had a reasonable time to cure, but the evidence at the Hearing showed that it has done nothing.¹¹ Thus, the Debtor failed to sustain its burden of showing unusual circumstances.

E. The Court Will Convert this Case to Chapter 7 Rather Than Dismiss It

Section 1112(b)(1) directs the Court to exercise its discretion to choose between dismissal and conversion to chapter 7 based upon its evaluation of the best interests of creditors and the estate. *Pure Repair*, 658 B.R. at 906-07. The key question is whether there would be assets available for a chapter 7 trustee to liquidate and administer for the benefit of unsecured creditors. *In re Capra*, 614 B.R. 291, 294 (Bankr. N.D. Ill. 2020). The Debtor owns the Real Properties, though it is unclear whether any equity is available in them. The Court need not determine that question. A chapter 7 trustee can review all the facts and can abandon properties and/or stipulate to relief from stay upon a determination that there is no equity. The Trustee has also identified potential avoidance actions which he believes ought to be investigated. As a subchapter V trustee, he has been unable to fully investigate or pursue them, but a chapter 7 trustee can do so if there is value to be realized. *See Fleetstar*, 614 B.R. at 788-89.

The interests of the estate also favor conversion. Protecting the best interests of the estate includes protecting the best interest of the bankruptcy process under which the estate is administered. *Capra*, 614 B.R. at 299. As detailed above, the Debtor's conduct has fallen short of its fiduciary obligations. A chapter 7 trustee can review the events that have occurred in this

¹¹ Further, the other issues – the unauthorized payments to Mr. Dowdy and the borrowings and repayments with Mr. Thompson's "friends and family" – are beyond the Debtor's control to cure, and the Court has no evidence regarding the willingness of the recipients of the unauthorized payments to return them to the estate.

case and determine whether any actions should be pursued, and the Court and the creditors will have comfort that matters will be reviewed by an independent fiduciary.

As a result, the Court finds that the interests of the creditors and the estate favor conversion.

IV. Conclusion

For the foregoing reasons, the Court concludes that, for cause, this case shall immediately be converted to one under chapter 7 pursuant to 11 U.S.C. § 1112(b)(1). The U.S. Trustee is directed to submit an order incorporating this Opinion by reference and granting the Motion.

IT IS SO ORDERED.

Copies to:
All creditors and parties in interest