



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
January 21, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 10-19537-MKN
	)	Chapter 13
DENISE MOORE,	)	
	)	
Debtor.	)	Date: November 3, 2021
	)	Time: 2:30 p.m.
	)	

**ORDER ON MOTION TO SET ASIDE JUDGMENT<sup>1</sup>**

On November 3, 2021, the court heard the Motion to Set Aside Judgment (“Set Aside Motion”), brought by creditor Hampton & Hampton Collections, LLC in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND<sup>2</sup>**

On May 24, 2010, a voluntary Chapter 13 petition (“Petition”) was filed by Denise Moore (“Debtor”), along with her schedules of assets and liabilities (“Schedules”), statement of

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §101, et seq., unless otherwise indicated. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> The procedural background of this Chapter 13 proceeding is unusually lengthy because the proceeding covers more than eleven years, was closed twice, and has been assigned to three different bankruptcy judges.

1 financial affairs, and a Chapter 13 Plan #1 (“Plan #1”). (ECF Nos. 1 and 2).<sup>3</sup> On her property  
2 Schedule “A,” Debtor listed, *inter alia*, a residence located at 3975 N. Haulapai Way, B-3, #211,  
3 Las Vegas, Nevada 89129 (“Residence”) along with various items of personal property. On her  
4 Schedule “C,” Debtor claimed a Nevada homestead exemption in the Residence. On her  
5 Schedule “F,” Debtor listed Hampton & Hampton as an unsecured creditor with an address of  
6 “8965 S Pecos Rd 10A, Henderson, NV 89074.” A Notice of Chapter 13 Bankruptcy Case  
7 (“Bankruptcy Notice”) was issued scheduling a meeting of creditors as required by Section 341  
8 for July 13, 2010. (ECF No. 8). The Bankruptcy Notice also set a deadline of September 13,  
9 2010, for creditors to object to discharge and to dischargeability of debts and gave notice of a  
10 hearing on confirmation of Plan #1 for August 27, 2010. The case was assigned for  
11 administration to panel Chapter 13 trustee Rick A. Yarnall (“Trustee Yarnall”).

12 On May 27, 2010, the BNC Certificates of Mailing show that on this same date, service  
13 of the Bankruptcy Notice and the notice of confirmation hearing regarding Plan #1, were served  
14 to all creditors who were listed as creditors at the time of the filing of the Petition, including:

- 15 • Cambria Maintenance Assoc, c/o Hampton & Hampton at 8965 S Pecos Rd, Suite  
16 9A, Henderson, NV 89074-7159;
- 17 • Cambria Maintenance Assoc., c/o Benchmark Association Svc. at P.O. Box 60998,  
18 Phoenix, AZ 85082-0998; and
- 19 • Hampton & Hampton at 8965 S Pecos Rd 10A, Henderson, NV 89074-7159.

20 On July 2, 2010, a Motion to Value Collateral, “Strip Off” and Modify Rights of EMC  
21 Mortgage, etc. (“Valuation Motion), was filed by the Debtor regarding the Residence and was  
22 noticed to be heard on August 5, 2010. (ECF Nos. 12 and 13).

23 On July 13, 2010, the meeting of creditors was held and concluded. (ECF No. 15).

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26 <sup>3</sup> Pursuant to FRE 201(b), the court takes judicial notice of all documents appearing on  
27 the docket in this bankruptcy proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980);  
28 Lawson v. Klondex Mines Ltd., 2020 WL 1557468, at \*5 (D. Nev. March 31, 2020); Bank of  
Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717  
(Bankr. C.D. Cal. 2015).

1 On July 14, 2010, Trustee Yarnall filed opposition to confirmation of Plan #1 with a  
2 recommendation for dismissal of the Chapter 13 case. (ECF No. 16).

3 On August 11, 2010, Onewest Bank, FSB, filed an objection to Plan #1. (ECF No. 26).

4 On August 16, 2010, an order was entered by Bankruptcy Judge Linda B. Riegler granting  
5 the Valuation Motion of EMC Mortgage regarding the Residence. (ECF No. 27).

6 On August 18, 2010, Debtor filed her Chapter 13 Plan #2 (“Plan #2”). (ECF No. 28).

7 On September 3, 2010, an order confirming Debtor’s Plan #2 was entered. (ECF No. 30).  
8 Section 2.12.3 CLASS 2C of Plan #2, lists “Cambria Maintenance Assoc.” as having a “Pre-  
9 Petition Arrearage” in the amount of \$408.85.

10 On September 23, 2010, a proof of claim was filed by creditor Cambria Maintenance  
11 Association (“CMA”) with a notice address as: c/o Hampton & Hampton, 8965 S. Pecos Road,  
12 Suite 9A, Henderson, NV 89074 (“Cambria POC”). The proof of claim is signed under penalty  
13 of perjury by Jay Hampton, Esq., on behalf of the creditor. Attached in support of the Cambria  
14 POC is a Statement of Account on the letterhead of Hampton & Hampton, Attorneys at Law,  
15 showing the same address and suite number.

16 On December 17, 2010, OneWest Bank, FSB (“FSB”) filed a motion for relief from  
17 automatic stay regarding the Residence (“MRAS”). (ECF No. 35).

18 On January 3, 2011, the Chapter 13 case was reassigned to Bankruptcy Judge Bruce T.  
19 Beesley in light of the pending retirement of Judge Riegler. (ECF No. 39).

20 On January 25, 2011, an order was entered granting the MRAS filed by FSB. (ECF No.  
21 40).

22 On May 3, 2011, a Motion to Dismiss was filed by Trustee Yarnall. (ECF No. 42).

23 On August 4, 2011, a Conditional Order of Dismissal was entered instructing Debtor to  
24 become current with her Chapter 13 plan payments or file and properly notice a “Modified  
25 Chapter 13 Plan.” (ECF No. 50).

26 On March 1, 2012, a Motion to Dismiss was filed by Trustee Yarnall. (ECF No. 55). On  
27 March 28, 2012, Trustee Yarnall withdrew his Motion to Dismiss. (ECF No. 59).

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1 On August 9, 2012, a Motion to Dismiss for failure to make plan payments was filed by  
2 Trustee Yarnall. (ECF No. 60). No order approving this Motion to Dismiss was ever entered.

3 On April 8, 2014, a Motion to Dismiss for failure to make plan payments was filed by  
4 Trustee Yarnall. (ECF No. 73). No order approving this Motion to Dismiss was ever entered.

5 On July 13, 2015, a Motion to Dismiss for other reason was filed by Trustee Yarnall.  
6 (ECF No. 84). No order approving this Motion to Dismiss was ever entered.

7 On October 6, 2015, Debtor filed a Chapter 13 Plan Number 3 (“Plan #3”). (ECF No.  
8 91).

9 On October 7, 2015, a Conditional Order of Dismissal was entered instructing Debtor  
10 that she must properly file the necessary documents by October 1, 2015, “in order to resolve the  
11 outstanding feasibility issue due to” the Cambria POC. (ECF No. 92).

12 On October 9, 2015, Debtor filed a notice of hearing scheduling Plan #3 to be heard on  
13 November 19, 2015. (ECF No. 93).

14 On October 14, 2015, a Certificate of Service was filed attesting that Plan #3, and the  
15 notice of hearing were served on Cambria in care of Hampton as well as Hampton separately at  
16 the addresses shown in the Schedules. (ECF No. 95).

17 On November 24, 2015, an order confirming Debtor’s Plan #3 was entered. (ECF No.  
18 97). Section 2.12.3 CLASS 2C of Plan No. 3, lists CMA as having been paid \$992.90 - “Paid to  
19 date” and under “Pre-Petition Arrearage,” it shows, “See 6.03.” Section 6.03 of Plan #3  
20 provides that “Debtor and Cambria Maintenance Association have agreed to resolve HOA  
21 arrears outside of bankruptcy plan.”

22 On January 28, 2016, Trustee Yarnall filed a “Chapter 13 Final Account and Report –  
23 Completed (BAPCPA).” (ECF No. 99). Trustee’s Claim No. 00012, lists CMA “Class of Claim  
24 – Z-Added by Matrix” with “0.00” allowed claim amount and with “0.00” principal and interest  
25 paid. Trustee’s Claim No. 00013, lists CMA “Class of Claim – Secured” with “0.00” allowed  
26 claim amount and with “0.00” principal and interest paid. Trustee’s Claim No. 00053, lists  
27 Hampton & Hampton “Class of Claim – Unsecured” with “0.00” allowed claim amount and with  
28 “0.00” principal and interest paid.

1 On January 29, 2016, Trustee Yarnall’s Certificate of Service (ECF No. 100) indicates  
2 that service of the “Chapter 13 Final Account and Report – Completed (BAPCPA)” was mailed  
3 to:

- 4 • Cambria Maintenance Assoc co Hampton & Hampton at 8965 S Pecos Rd, Suite 9A,  
5 Henderson, NV 89074-7159;
- 6 • Cambria Maintenance Assoc. co Benchmark Association Svc. at P.O. Box 60998,  
7 Phoenix, AZ 85082-0998; and
- 8 • Hampton & Hampton at 8965 S. Pecos Rd 10A, Henderson, NV 89074-7159.

9 On March 29, 2016, Debtor filed her “Certificate of Compliance with Conditions Related  
10 to Entry of Chapter 13 Discharge . . .” (ECF No. 106).

11 On April 8, 2016, Trustee Yarnall filed a further “Chapter 13 Final Account and Report –  
12 Completed (BAPCPA).” (ECF No. 108). This report lists CMA as “Secured” with a “Claim  
13 Scheduled” in the amount of \$2,402.00 and “Claim Allowed” in the amount of \$992.91 –  
14 “Principal Paid” in the amount of \$992.91, no interest. Hampton & Hampton is listed as  
15 “Unsecured” with -0- “Claim Scheduled” and no “Claim Asserted” or “Claim Allowed.”

16 On April 13, 2016, Trustee Yarnall’s Certificate of Service (ECF No. 109) indicates that  
17 service of the “Chapter 13 Final Account and Report – Completed (BAPCPA)” was mailed to  
18 Debtor and Debtor’s counsel – Haines & Krieger LLC.

19 On May 2, 2016, an Order of Discharge was entered after the Debtor completed her  
20 Chapter 13 plan (“Discharge Order”). (ECF No. 110).

21 On May 4, 2016, the BNC Certificate of Mailing (ECF No. 111) indicates service of the  
22 Chapter 13 Discharge was made via first class mail to Debtor, the Office of the United States  
23 Trustee, and all creditors who were listed as creditors at the time the Chapter 13 Discharge was  
24 entered.

25 On May 5, 2016, Debtor’s Final Decree was entered, and her Chapter 13 case was closed.  
26 (ECF No. 112).

27 **FIRST REOPENING OF DEBTOR’S CASE**

1 On April 1, 2019, Debtor filed an ex parte motion to reopen her Chapter 13 case (“First  
2 Reopen Motion”) to allow her to file a motion to determine contempt of court against creditor  
3 Hampton & Hampton. (ECF No. 113).

4 On April 5, 2019, an order was entered granting the First Reopen Motion. (ECF No.  
5 115).

6 On April 22, 2019, Debtor filed a Motion for Sanctions for Violation of the Discharge  
7 Injunction (“Sanctions Motion”) against Hampton & Hampton Collections, LLC (“Hampton”),  
8 along with a request for punitive damages, attorney’s fees, and sanctions. (ECF No. 116).  
9 Debtor alleged that Hampton had violated the discharge injunction imposed under Section  
10 524(a)(2) by engaging in collection efforts of a debt discharged in her Chapter 13 case. Included  
11 in the Sanctions Motion is a Certificate of Service Re: Motion for Sanctions, indicating service  
12 of the same was made on April 22, 2019, via electronic service (email) to the Chapter 13 Trustee  
13 (through ECF System) and via “Certified Mail” to Hampton at 8965 S. Pecos Road, Suite 9A,  
14 Henderson, Nevada 89074. The Sanctions Motion was accompanied by a notice of hearing for  
15 the matter to be heard on June 4, 2019. (ECF No. 117).

16 On June 5, 2019, the Sanctions Motion was re-noticed to be heard on July 2, 2019. (ECF  
17 No. 119). On the same date, Debtor filed a Certificate of Service Re: Motion for Sanctions,  
18 indicating service of the same was made on June 5, 2019, via electronic service (email) to the  
19 Chapter 13 Trustee (through ECF System) and via “Certified Mail” to Hampton as well as to the  
20 “Attention: Officer, Managing Agent, or General Agent” at 8965 S. Pecos Road, Ste. 9A,  
21 Henderson, NV 89074. (ECF No. 120).

22 On July 2, 2019, Judge Beesley granted interim relief and scheduled an evidentiary  
23 hearing to take place on September 27, 2019 (“Evidentiary Hearing”) to determine damages and  
24 attorney’s fees.

25 On July 10, 2019, an interim order granting the Sanctions Motion (“Interim Order”) was  
26 entered. (ECF Nos. 123 and 124). The Interim Order states “Hampton & Hampton Collections,  
27 LLC is hereby enjoined from taking any actions to collect or foreclose on the above property.”  
28

1 On August 8, 2019, Debtor filed a Certificate of Service Re: Motion for Sanctions,  
2 indicating service of the same was made on August 8, 2019, via electronic service (email) to the  
3 Chapter 13 Trustee (through ECF System) and via “Certified Mail” to Hampton as well as to the  
4 “Attention: Officer, Managing Agent, or General Agent” at 6625 S. Valley View Blvd., Suite  
5 300, Las Vegas, NV 89118. (ECF No. 125).

6 On September 24, 2019, Debtor filed an ex parte motion (“Ex Parte Motion”) to vacate  
7 the scheduled Evidentiary Hearing and re-set it for November 19, 2019. (ECF No. 128). On the  
8 same date, Debtor filed and served a notice of hearing on the Sanctions Motion to have it heard  
9 on November 19, 2019. Debtor filed a Certificate of Service Re: Motion for Sanctions,  
10 indicating service of the same was made on September 24, 2019, via electronic service (email) to  
11 the Chapter 13 Trustee (through ECF System) and via “Certified Mail” to Hampton as well as to  
12 the “Attention: Officer, Managing Agent, or General Agent” at 8965 S. Pecos Road Ste. 9A,  
13 Henderson, NV 89074 and to 6625 S. Valley View Blvd., Suite 300, Las Vegas, NV 89118.  
14 (ECF No. 127).

15 On September 25, 2019, an order was entered granting the Ex Parte Motion to vacate the  
16 September 27, 2019, Evidentiary Hearing and re-set it for November 19, 2019. (ECF No. 130).  
17 There is no certificate of service or mailing on the docket evidencing service of the order.

18 On November 13, 2019, an Affidavit of Raynette Fuchigami in Support of Motion for  
19 Sanctions was filed by Debtor (ECF No. 131) and a declaration of David Krieger was filed in  
20 support of the Sanctions Motion (ECF No. 132). The Fuchigami affidavit attests that the  
21 Sanctions Motion and supporting documents were served by certified mail on September 25,  
22 2019, to Hampton to the attention of the officer, managing agent, or general agent at 8965 S.  
23 Pecos Road Ste. 9A, Henderson, NV 89074 and to 6625 S. Valley View Blvd., Suite 300, Las  
24 Vegas, NV 89118. There is no certificate of service or mailing on the docket, however,  
25 evidencing service of either the Fuchigami affidavit or Krieger declaration.

26 On November 16, 2019, an amended declaration of David Krieger in support of the  
27 Sanctions Motion was filed. (ECF No. 133). There is no certificate of service or mailing on the  
28 docket evidencing service of the amended declaration.



1 On November 18, 2019, a declaration of Denise Moore was filed in support of the  
2 Sanctions Motion. (ECF No. 134). There is no certificate of service or mailing on the docket  
3 evidencing service of the declaration.

4 On November 19, 2019, a further amended declaration of David Krieger and an amended  
5 affidavit of Raynette Fuchigami were filed in support of the Sanctions Motion. (ECF Nos. 135  
6 and 136). There is no certificate of service or mailing on the docket evidencing service of the  
7 declaration or the affidavit.

8 On November 19, 2019, a minute entry was entered on this court's docket, continuing the  
9 November 19, 2019, Evidentiary Hearing to January 9, 2020. (ECF No. 137).

10 On December 23, 2019, an Ex Parte Application to Continue Evidentiary Hearing was  
11 filed by Debtor, requesting the Evidentiary Hearing scheduled for January 9, 2020, to be  
12 continued approximately sixty (60) days out. (ECF No. 138). There is no certificate of mailing  
13 on the docket evidencing service of the ex parte application.

14 On December 30, 2019, an order granting the Ex Parte Application to Continue  
15 Evidentiary Hearing was entered, which continued the Evidentiary Hearing to March 20, 2020.  
16 (ECF No. 139). There is no certificate of mailing on the docket evidencing service of the order.

17 On March 16, 2020, Administrative Order 2020-04 was entered vacating all scheduled  
18 hearings in response to the COVID-19 national emergency declaration as well as the declaration  
19 of the Nevada governor.

20 On March 17, 2020, the court issued a Notice of Rescheduled Evidentiary Hearing  
21 ("Notice"), indicating the Evidentiary Hearing regarding the Sanctions Motion will be heard on  
22 June 5, 2020, "PER COURT INSTRUCTION." (ECF No. 141). On March 19, 2020, a BNC  
23 Certificate of Mailing of the Notice was entered, indicating service of the Notice was made  
24 through the Bankruptcy Noticing Center on March 19, 2020, via first class mail to Debtor, the  
25 Office of the U.S. Trustee, and Federal National Mortgage Association and via electronic  
26 transmission to those parties listed in the Notice. (ECF No. 142). The certificate does not reflect  
27 that the Notice was sent to Hampton.

28



1 On May 27, 2020, the court issued a further Notice of Rescheduled Evidentiary Hearing  
2 (“Second Notice”), indicating the Evidentiary Hearing regarding the Sanctions Motion will be  
3 heard on July 23, 2020. (ECF No. 143). On May 29, 2020, a BNC Certificate of Mailing of the  
4 Second Notice was entered, indicating service of the Notice was made through the Bankruptcy  
5 Noticing Center on May 29, 2020, via first class mail to Debtor, the Office of the U.S. Trustee,  
6 and Federal National Mortgage Association and via electronic transmission to those parties listed  
7 in the Notice. (ECF No. 144). The certificate does not reflect that the Second Notice was sent to  
8 Hampton.

9 On June 8, 2020, declarations of Arlene Krieger, Bonita Lloyd, Hans Van de  
10 Bovenkamp, Lynda Keane, and Alonzo Robert Doswell, were filed in support of the Sanctions  
11 Motion. (ECF Nos. 145-149). There is no certificate of service or mailing on the docket  
12 evidencing service of any of the declarations.

13 On August 6, 2020, a Final Order Granting Motion to Determine Hampton & Hampton  
14 Collections, LLC’s Contempt of Court Pursuant to 11 U.S.C. § 524 and § 105 and Request for  
15 Punitive Damages, Attorney’s Fees and Sanctions (“Final Order”) was entered. (ECF No. 150).  
16 The Final Order was entered after the Evidentiary Hearing that was held on July 23, 2020. The  
17 Final Order indicates that the interim orders entered at ECF Nos. 123 and 124, are incorporated  
18 into the Final Order and made final. Damages pursuant to 11 U.S.C. § 524 and § 105, were  
19 awarded in favor of Debtor and against Hampton in the amount of \$79,145.33, as sanctions  
20 against Hampton for its violation of the Order of Discharge. That amount consisted of \$70,000  
21 in emotional distress damages, and \$1,460.33 in pecuniary damages, plus attorney’s fees of  
22 \$7,438.00 and costs of \$247.20. No punitive damages were awarded. The Final Order further  
23 provided that “Hampton is enjoined from taking any actions to collect or foreclose on Debtor’s  
24 real property located at 3975 N. Hualapai Way, #211, Las Vegas, Nevada 89129 for assessments,  
25 fines, charges, assessments, fees, and costs that arose on or before April 1, 2019.” There is no  
26 certificate of service or mailing on the docket evidencing service of the Final Order.

27 On August 13, 2020, an ex parte Motion to Convert Order Granting Sanctions Into a  
28 Judgment was filed by Debtor and was noticed to be heard on September 22, 2020. (ECF Nos.

1 151 and 152). Debtor filed a “Certificate of Service Re: Motion to Convert Order Granting  
2 Sanctions Into Judgment,” indicating service of the same and a “Notice of Hearing” was made on  
3 August 13, 2020, via ECF to the Chapter 13 Trustee (through ECF System) and via “U.S. First  
4 Class Mail” to Hampton as well as to the “Attention: Officer, Managing Agent, or General  
5 Agent” at 8965 S. Pecos Road Ste. 9A, Henderson, NV 89074, and to 6625 S. Valley View  
6 Blvd., Suite 300, Las Vegas, NV 89118 (“Valley View Address”), and to “Nevada Business  
7 Services, Registered Agent for Hampton & Hampton” at 1805 N Carson Street Suite X, Carson  
8 City, NV 89701 (“Nevada Business Address”). (ECF No. 153).

9 On September 30, 2020, an Order Granting Motion to Convert Order for Sanctions to  
10 Judgment was entered as well as a Judgment (“Sanctions Judgment”). (ECF Nos. 157 and 158).  
11 There is no certificate of service or mailing on the docket evidencing service of either the order  
12 or the Sanctions Judgment.

13 On October 19, 2020, the above-referenced bankruptcy case was closed. (ECF No. 159).

14 On October 20, 2020, a Notice of Deficiency (Affidavit of Writ – BNC) (“Deficiency  
15 Notice”) was filed regarding the Judgment. (ECF No. 160). On October 22, 2020, the BNC  
16 Certificate of Notice (“Certificate”) regarding the Deficiency Notice was filed indicating service  
17 of same was made via first class mail by the Bankruptcy Noticing Center on October 22, 2020, to  
18 Debtor and Federal National Mortgage Association as well as by electronic transmission to  
19 parties listed in the Certificate. (ECF No. 161).

20 On December 10, 2020, an Affidavit and Request for Issuance of a Writ was filed by  
21 Debtor. (ECF No. 162). There is no certificate of service or mailing on the docket evidencing  
22 service of the Affidavit and Request for Issuance of Writ.

23 On December 29, 2020, a Writ of Execution was issued permitting satisfaction of the  
24 Sanctions Judgment from the assets of Hampton. (ECF No. 163).

25 **SECOND REOPENING OF DEBTOR’S CASE**

1 On June 16, 2021, an ex parte Motion to Reopen Chapter 13 Case (“Second Reopen  
2 Motion”) was filed by Hampton. (ECF No. 164).<sup>4</sup>

3 On June 17, 2021, Debtor filed an opposition to the Second Reopen Motion (“Second  
4 Reopen Opposition”). (ECF No. 165). Attached to that opposition are ten exhibits consisting of  
5 copies of various documents.<sup>5</sup>

6 On June 21, 2021, Hampton noticed its Second Reopen Motion to be heard on July 28,  
7 2021. (ECF No. 167).

8 On June 23, 2021, Debtor filed a Joint Motion for Order Shortening Time to Hear  
9 Hampton & Hampton Collection, LLC’s Ex Parte Motion to Reopen Chapter 13 Case (“Joint  
10 Motion to Shorten Time”) along with a Declaration of Shawn W. Miller, Esq., Attorney  
11 Information Sheet; and Proposed Order Shortening Time. (ECF No. 169).

12 On June 24, 2021, an order granting the Joint Motion to Shorten Time on the Second  
13 Reopen Motion was entered indicating the Second Reopen Motion would be heard on July 13,  
14 2021, which also indicated that “the reply brief shall be filed and served no less than seven (7)  
15 days prior to the OST.” (ECF No. 170).

16 On July 6, 2021, Hampton filed a response to Debtor’s opposition to the Second Reopen  
17 Motion. (ECF No. 171).

18 On July 22, 2021, an order denying the Second Reopen Motion was entered. (ECF No.  
19 172).

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21 <sup>4</sup> There is no dispute that the Writ of Execution resulted in the judgment amount being  
22 garnished from Hampton’s bank account.

23 <sup>5</sup> Attached as Exhibit H to the Second Reopen Opposition appears to be a copy of this  
24 same Certificate of Service filed at ECF No. 153. Also attached as Exhibit I to the Second  
25 Reopen Opposition are signed receipts evidencing that on August 18, 2020, Hampton received  
26 those documents by certified mail at the Valley View Address as well as to the Nevada Business  
27 Address. Attached as Exhibit J to the Second Reopen Opposition is a declaration of Shawn W.  
28 Miller (“Miller Declaration”) attesting that the motion and notice were served on Hampton “via  
certified mail, return receipt requested on August 6, 2021 to Hampton’s old address, new address  
and registered agent . . .” to the addresses listed in Exhibit J. The Miller Declaration also attests  
that “On August 16, 2020, KLG received the completed and signed return receipts from  
Hampton and the completed and signed return receipt from Nevada Business Services.”

1 On August 5, 2021, Hampton filed a Motion to Reconsider Order Denying Hampton &  
2 Hampton Collections, LLC's Ex Parte Motion to Reopen Bankruptcy [Dkt. 172] ("Reconsider  
3 Motion"). The Reconsider Motion was noticed to be heard on September 7, 2021. (ECF Nos.  
4 173 and 174).

5 On August 24, 2021, Debtor filed an opposition to the Reconsider Motion. (ECF No.  
6 176). That opposition incorporated by reference the Debtor's opposition to the Second Reopen  
7 Motion and accompanying exhibits.

8 On August 25, 2021, an order was entered reassigning the Chapter 13 case to the current  
9 bankruptcy judge in light of the impending retirement of Judge Beesley. (ECF No. 177). The  
10 Reconsider Motion hearing was moved from September 7, 2021, to September 8, 2021, to be  
11 heard on the newly-assigned judge's regular law and motion calendar.

12 On September 1, 2021, Hampton filed a reply to Debtor's opposition to the Reconsider  
13 Motion. (ECF No. 179).

14 On September 21, 2021, an order ("Reconsider Order") granting Hampton's Reconsider  
15 Motion was entered (ECF No. 181), "without prejudice as to whether the Bankruptcy should be  
16 reopened, and the Order Denying Hampton & Hampton Collections LLC's Ex Parte Motion to  
17 Reopen Bankruptcy Case (ECF No. 172) is VACATED." The Reconsider Order indicated that  
18 Hampton "may file a motion to reopen this bankruptcy case for the Court's consideration.  
19 Debtor may oppose any renewed motion to reopen this bankruptcy."

20 On September 27, 2021, Hampton filed another Motion to Reopen Chapter 13 Case  
21 ("Renewed Reopen Motion"). The Renewed Reopen Motion was noticed to be heard on  
22 November 3, 2021. (ECF Nos. 182 and 185). The motion seeks to reopen the Chapter 13 case  
23 so that Hampton can seek relief from the Sanctions Judgment.<sup>6</sup>

24 On September 27, 2021, Hampton filed the instant Set Aside Motion and noticed it to be  
25 heard on November 3, 2021. (ECF Nos. 184 and 186). The Set Aside Motion is supported by  
26 attached the Declaration of Katryna Harper ("Harper Declaration").

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27 <sup>6</sup> The Renewed Reopen Motion is granted by a separate order entered contemporaneously  
28 herewith.

1 On October 20, 2021, Debtor filed opposition to both the Renewed Reopen Motion  
2 (“Reopen Opposition”) and the Set Aside Motion (“Set Aside Opposition”).<sup>7</sup> (ECF Nos. 189 and  
3 190). The Reopen Opposition incorporates by reference the Debtor’s opposition to the Second  
4 Reopen Motion and accompanying exhibits.

5 On October 27, 2021, Hampton filed separate replies to both the Reopen Opposition and  
6 the Set Aside Opposition. (ECF Nos. 191 and 192).

### 7 **DISCUSSION**<sup>8</sup>

8 Hampton seeks relief from the Sanctions Judgment pursuant to Civil Rule 60(b) that  
9 applies in this case pursuant to Bankruptcy Rule 9024. It maintains that the Sanctions Judgment  
10 should be vacated under Civil Rules 60(b)(1), 60(b)(3) or 60(b)(4).<sup>9</sup> A motion seeking relief  
11 under Civil Rules 60(b)(1) and 60(b)(3) must be brought within one year after entry of the  
12 judgment or order. See FED.R.CIV.P. 60(c)(1). A motion under Civil Rule 60(b)(4) must be  
13 brought within a reasonable time. Id. As the moving party, Hampton has the burden of proving  
14 that relief is appropriate. See Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988); Johnson  
15 v. Baughman, 2021 WL 4033041, at \*2. See generally B. Russell, BANKRUPTCY EVIDENCE  
16 MANUAL § 301:94 (2015 Edition).<sup>10</sup>

17  
18 <sup>7</sup> Attached as Exhibit “D” to the Set Aside Opposition is an additional Declaration of  
19 Shawn W. Miller, counsel for the Debtor (“Second Miller Declaration”).

20 <sup>8</sup> Copies of various documents are attached as exhibits to the Set Aside Motion and Set  
21 Aside Opposition. Neither the Debtor nor Hampton object to the authenticity of the exhibits nor  
22 their admissibility. The court therefore considers each exhibit for their full probative value.

23 <sup>9</sup> Hampton does not seek relief under Civil Rule 60(b)(6) for “any other reason that  
24 justifies relief” but relies exclusively on subsections (b)(1, 3 and 4). Because it seeks relief  
25 under those subsections, relief under the “catch-all” language of subsection (b)(6) is unavailable.  
26 See Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 863 n.11 (1988); Lyon v. Augusta  
27 S.P.A., 252 F.3d 1078, 1088 (9th Cir. 2001).

28 <sup>10</sup> There is no apparent dispute that on August 6, 2020, the Final Order was entered by the  
court. That order determined Hampton to be in civil contempt and imposed sanctions in the  
amount of \$79,145.33, on the court’s finding that Hampton had violated the Chapter 13  
discharge that was entered on May 2, 2016. In addition to imposing civil contempt sanctions  
pursuant to Sections 524(a)(2) and 105(a), in the form of actual damages for pain and suffering,  
the Final Order also enjoined Hampton from various collection activity. By the instant Set Aside

1 Civil Rule 60(b)(1) requires relief from a judgment or an order upon proof of “mistake,  
2 inadvertence, surprise, or excusable neglect.” A four-part balancing test typically is applied in  
3 determining the existence of excusable neglect. See In re Walker, 332 B.R. 820, 829 (Bkrcty. D.  
4 Nev. 2005). In that test, “all relevant circumstances” are considered, including (1) the danger of  
5 prejudice to the opposing party, (2) the impact on the judicial proceedings, (3) the reason for the  
6 delay, including whether it was within the reasonable control of the movant, and (4) the good  
7 faith of the movant. Id. at 830, citing Pioneer Investment Services v. Brunswick Associates, 507  
8 U.S. 380, 395, 113 S.Ct. 1489, 1497, 123 L.Ed.2d 74 (1993) and Pincay v. Andrews, 389 F.3d  
9 853, 855 (9th Cir. 2004). Relief under Civil Rule 60(b)(1) lies at the discretion of the trial court.  
10 See generally 11Wright, Miller & Kane, FEDERAL PRACTICE & PROCEDURE: CIVIL, §2857 (3d ed.  
11 2021).

12 Civil Rule 60(b)(3) requires relief from a judgment or an order upon proof of “fraud  
13 (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by the  
14 opposing party.” The moving party must present clear and convincing evidence establishing that  
15 the adverse party’s misconduct prevented the movant from fully and fairly presenting a defense.  
16 See Casey v. Albertson’s Inc., 362 F.3d 1254, 1260 (9th Cir. 2004); In re Wylie, 349 B.R. 204,  
17 213 (B.A.P. 9th Cir. 2006). The culpable conduct must be attributable to the adverse party rather  
18 than the moving party itself. See Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1102 (9th  
19 Cir. 2006). Relief under Civil Rule 60(b)(3) lies at the discretion of the trial court. See Dixon v.  
20 Commissioner of Internal Revenue, 316 F.3d 1041, 1046 (9th Cir. 2003), citing England v.  
21 Doyle, 281 F.2d 304, 310 (9th Cir. 1960).

22 Civil Rule 60(b)(4) requires relief from a judgment or an order upon proof that “the  
23 judgment is void.” An order or judgment is not void even if it was entered in error. See Tomlin  
24 v. McDaniel, 865 F.2d 209, 210 (9th Cir. 1989). Rather, an order or judgment is void only if the  
25 court that rendered it lacked personal jurisdiction or subject matter jurisdiction, see, e.g., Wages  
26 v. Internal Revenue Service, 915 F.2d 1230, 1234-35 (9th Cir. 1990), or if it was rendered in a

27 \_\_\_\_\_  
28 Motion, Hampton seeks relief from the Sanctions Judgment but no specific relief is requested  
from the Final Order.

1 manner inconsistent with due process. See generally, 11 Wright, Miller & Kane, Federal  
2 Practice & Procedure: Civil 2d, § 2862 (2008). If an order or judgment is void, relief under Civil  
3 Rule 60(b)(4) is mandatory. See Thomas P. Gonzalez Corp. v. Consejo Nacional, 614 F.2d  
4 1247, 1256 (9th Cir. 1980).

5 **I. The Set Aside Motion is Timely under Civil Rule 60(c)(1).**

6 The Sanctions Judgment was entered on September 30, 2020. The instant Set Aside  
7 Motion was filed on September 27, 2021, i.e., within one year of entry of the subject judgment.  
8 The requests for relief from the Sanction Judgment based on Civil Rules 60(b)(1) and 60(b)(3)  
9 therefore are timely.

10 Because the relief sought under Civil Rules 60(b)(1) and 60(b)(3) is timely, there appears  
11 to be no prejudice to consideration of relief under Civil Rule 60(b)(4) as well. That basis for  
12 relief is sought within a reasonable time and also will be treated as timely under Civil Rule  
13 60(c)(1).

14 **II. Hampton Has Not Met its Burden of Proof.**

15 **A. Civil Rule 60(b)(4).**

16 Because a judgment that is void cannot be enforced regardless of the conduct of the  
17 parties leading to the judgment, the court first addresses relief under Civil Rule 60(b)(4). The  
18 court has personal jurisdiction over Hampton if only because it voluntarily appeared in this  
19 proceeding by filing a proof of claim. The court has subject matter jurisdiction over the  
20 bankruptcy proceeding and the instant dispute arises in the case and under the Bankruptcy Code.  
21 Thus, there is no basis to conclude that the Sanction Judgment is void for lack of jurisdiction.  
22 Hampton argues, however, that the Sanctions Judgment is void because it was not obtained in a  
23 manner consistent with due process.

24 Hampton maintains that when the Debtor filed her Chapter 13 petition on May 24, 2010,  
25 Hampton was located at 8965 S. Pecos Road, Suite 9A, in Henderson, Nevada, 89074. See  
26 Harper Declaration at ¶15. It also asserts that in January 2019, it relocated to 6625 S. Valley  
27 View Blvd., Suite 300, in Las Vegas, NV, 89118. Id. at ¶16. Hampton does not represent that it  
28 currently has a different address. In other words, after January 2019, Hampton concedes that



1 6625 S. Valley View Blvd., Suite 300, Las Vegas, NV, 89118 was the correct address for  
2 service. Moreover, Hampton does not dispute that its registered agent for service of process is  
3 Nevada Business Services, at 1805 N Carson Street, Suite X, Carson City, NV 89701.

4 As discussed above, many documents were filed in this proceeding after the first  
5 reopening of the Debtor's case. The record indicates that the Sanctions Motion was filed on  
6 April 22, 2019 but was served by certified mail at the prior address for Hampton. The record  
7 also indicates, however, that on August 8, 2019, the Sanctions Motion was re-served on  
8 Hampton by certified mail at its current Valley View Address prior to the Evidentiary Hearing.

9 There is no dispute that the Interim Order was entered setting the Evidentiary Hearing for  
10 September 27, 2019, but that the Debtor requested the Evidentiary Hearing to be continued to  
11 November 19, 2019. The record indicates that Debtor's request to continue the Evidentiary  
12 Hearing was served on Hampton on September 24, 2019, by certified mail to its current Valley  
13 View Address as well as its prior address.

14 There is no dispute that the Final Order was entered on August 6, 2020, after the  
15 Evidentiary Hearing was completed. The record indicates that the Debtor's request to convert  
16 the Final Order into the Sanctions Judgment was served on Hampton by certified mail at its old  
17 address, and to its current Valley View Address. The same request also was sent by certified  
18 mail to Hampton's registered agent for service of process. In particular, the record includes  
19 evidence that on August 18, 2020, an employee of Hampton signed a certified mail receipt for  
20 the motion to convert the Final Order to a judgment.

21 Hampton does not dispute that the aforementioned materials were served by mail nor  
22 does it offer evidence sufficient to overcome the presumption of delivery under the "mailbox  
23 rule." See Moody v. Bucknum (In re Bucknum), 951 F.2d 204, 206-07 (9th Cir. 1991). See also  
24 Nev.Rev.Stat. § 47.250(13)(rebuttable presumption of receipt by mail). The presumption is not  
25 rebutted simply by submitting an affidavit denying receipt of the document; rather, the  
26 presumption must be overcome by clear and convincing evidence. See In re State Line Hotel,  
27 Inc., 323 B.R. 703, 709 n.5 (B.A.P. 9th Cir. 2005). Because Hampton had notice of the Debtor's  
28 request for sanctions prior to the Evidentiary Hearing and prior to entry of the Final Order, as

1 well as her effort to obtain the Sanctions Judgment, it has not met its burden of proving that the  
2 Sanctions Judgment was obtained in a manner inconsistent with due process. Thus, the court  
3 concludes that the Sanctions Judgment is not void within the meaning of Civil Rule 60(b)(4).

4 **B. Civil Rule 60(b)(1).**

5 Although Civil Rule 60(b)(1) includes several grounds for relief, Hampton seeks to  
6 vacate the Sanctions Judgment based on “excusable neglect.” Hampton seeks such relief so that  
7 it can challenge the substantive basis for the Final Order by which damages were awarded to the  
8 Debtor for violation of the discharge injunction. While Hampton now alleges that it did not  
9 violate the discharge injunction, see Harper Declaration at ¶¶ 6, 7, 8, 9, 10, 11, 12, 13 and 14, it  
10 had every opportunity to raise those allegations in response to the Sanctions Motion, at the  
11 Evidentiary Hearing resulting in the Final Order, and in opposition to conversion of the Final  
12 Order into the Sanctions Judgment. Hampton’s delay in responding to the Sanctions Motion, its  
13 delay in participating in the Evidentiary Hearing, and its delay in responding to Debtor’s request  
14 to convert the Final Order into the Sanctions Judgment, is significant in both the passage of time  
15 and its prejudice to the Debtor. More than 22 months passed between service of the Sanctions  
16 Motion at the current Valley View Address and Hampton’s effort to reopen the Debtor’s case.  
17 More than 18 months passed between the requested continuance of the Evidentiary Hearing and  
18 Hampton’s efforts to reopen the case. More than 9 months passed between Debtor’s request to  
19 convert the Final Order to the subject judgment and Hampton’s efforts to reopen the case. All of  
20 these events may have been avoided, including Debtor’s expenditure of time, energy and  
21 resources, if Hampton initially had responded to the Sanctions Motion.

22 Similarly, the judicial proceedings have been impacted by Hampton’s lack of diligence.  
23 Multiple proceedings before two different judges could have been avoided or minimized if  
24 Hampton had responded. Hampton represents that it did not know that the Sanctions Motion  
25 would be heard on July 2, 2019, because the motion was sent to the wrong address. See Harper  
26 Declaration at ¶ 17. The effect of that deficiency is militated by evidence in the record that on  
27 August 8, 2019, prior to the Evidentiary Hearing that resulted in the Final Order, Hampton was  
28 re-served with the Sanctions Motion by certified mail to the current Valley View Address.

1 Hampton offers no evidence that it lacked notice or knowledge of efforts in September 2019 to  
2 continue the Evidentiary Hearing. While Hampton explains that its staff was reduced from seven  
3 to two people after the COVID pandemic, see Harper Declaration at ¶ 18, that reduction would  
4 have occurred after March 2020. Moreover, the record includes evidence that even after the staff  
5 reductions took place, Hampton's reduced staff actually received certified mail in connection  
6 with the Sanctions Judgment.<sup>11</sup> In other words, the impact of the COVID pandemic offers no  
7 reasonable explanation for Hampton's delays in responding to the Sanctions Motion, in  
8 participating in the Evidentiary Hearing, or opposing entry of the Sanctions Judgment.<sup>12</sup>

9 Under these circumstances, the court concludes that Hampton has not met its burden of  
10 demonstrating excusable neglect within the meaning of Civil Rule 60(b)(1).<sup>13</sup>

### 11 C. Civil Rule 60(b)(3).

12 Civil Rule 60(b)(3) requires proof by clear and convincing evidence of culpable conduct  
13 by the opposing party. In this instance, it requires Hampton to prove misconduct by the Debtor  
14 that prevented Hampton from fully and fairly presenting a defense to the Sanctions Motion or to  
15 entry of the Sanctions Judgment.

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17 <sup>11</sup> Hampton appears to be a law firm that specializes in debt collection. Unlike situations  
18 in which a client alleges excusable neglect based on a failure of its legal counsel, in this case  
19 there is no outside legal counsel taking responsibility for neglecting the notice given prior to  
20 entry of the Sanctions Judgment. Whether Hampton could have successfully challenged the  
21 factual basis for the discharge violation, the amount of the damages and attorney's fees awarded  
in the Final Order, or the conversion of the Final Order to the Sanctions Judgment, is simply  
unknown.

22 <sup>12</sup> Hampton maintains that it was not aware of the Sanctions Judgment until garnishment  
23 of its bank account occurred in early March 2021 as a result of the Writ of Execution. See  
24 Harper Declaration at ¶ 19. There is also no explanation, however, why it took Hampton more  
than three months to seek to reopen the Debtor's bankruptcy case.

25 <sup>13</sup> There is no apparent dispute that upon agreement with Hampton, the garnished funds  
26 initially were held by Debtor's counsel for more than 75 days but subsequently were disbursed to  
27 the Debtor. See Second Miller Declaration at ¶¶ 11 and 12. Even if the Sanctions Judgment is  
28 vacated and relief also was obtained from the Final Order, it is not clear whether equitable relief  
based on unjust enrichment or a similar equitable claim would be appropriate to recover the  
disbursed funds from the Debtor.

1 As previously discussed, Hampton maintains that the substantive basis for the Sanctions  
2 Motion was flawed in that there was no violation of the discharge injunction. It even offers  
3 evidence from its collection manager suggesting: (1) that Hampton was appropriately attempting  
4 to collect a post-petition, rather than a pre-petition debt that was discharged in Chapter 13, and  
5 (2) that the Debtor had satisfied all of the post-petition debt by February 27, 2019. See Harper  
6 Declaration at ¶¶ 11, 12, 13, and 14. The latter suggestion is remarkable because it infers that  
7 even before the Sanctions Motion was filed on April 22, 2019, and before the motion was re-  
8 served on Hampton on August 8, 2019, Hampton already had the information necessary to  
9 present a defense.

10 Also as previously discussed, Hampton received notice of the Debtor's efforts sufficient  
11 to respond to the Sanctions Motion, to appear and participate in any Evidentiary Hearing, and to  
12 oppose conversion of the Final Order into the Sanctions Judgment. It could even have responded  
13 under Civil Rule 11(b) if it believed, as its collection manager attests, that the Sanctions Motion  
14 had no basis in law or fact. But Hampton did not do so. While Hampton disagrees with the  
15 substantive merits of the Sanctions Motion, it offers no evidence of any intrinsic or extrinsic  
16 fraud, misrepresentation, or misconduct by the Debtor or her counsel that prevented Hampton  
17 from presenting its defense. Under these circumstances, Hampton has failed to meet its burden  
18 of proof by a preponderance of the evidence, much less under a clear and convincing standard.  
19 Accordingly, relief from the Sanctions Judgment is not warranted under Civil Rule 60(b)(3).

#### 20 CONCLUSION

21 For the reasons discussed, the court concludes that Hampton has not met its burden of  
22 proving that the Sanctions Judgment should be vacated under Civil Rule 60(b).

23 **IT IS THEREFORE ORDERED** that the Motion to Set Aside Judgment, brought by  
24 creditor Hampton & Hampton Collections, LLC, Docket No. 184, be, and the same hereby is,  
25 **DENIED.**

26  
27 Copies sent via BNC to all parties  
28 Copy sent via BNC to:

1 DENISE MOORE  
2 3975 NORTH HAULAPI WAY UNIT 211 BLDG 3  
3 LAS VEGAS, NV 89129

4 HAMPTON & HAMPTON  
5 ATTN: OFFICER OR MANAGING AGENT  
6 6625 S. VALLEY VIEW BLVD., SUITE 300  
7 LAS VEGAS, NV 89118

8 NEVADA BUSINESS SERVICES  
9 REGISTERED AGENT FOR HAMPTON & HAMPTON  
10 1805 N CARSON STREET SUITE X  
11 CARSON CITY, NV 89701

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