

**ORDERED.**

**Dated: May 17, 2023**

  
Tiffany P. Geyer  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Beau Ryne Hickman,  
  
Debtor.

Case No. 6:22-bk-1283-TPG  
Chapter 7

SCCY Industries, LLC,  
  
Plaintiff,

Adversary No. 6:22-ap-91-TPG

v.

Beau Ryne Hickman,  
  
Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS  
AMENDED COUNTERCLAIM WITHOUT PREJUDICE**

Plaintiff SCCY Industries, LLC ("SCCY") moves to dismiss an Amended Counterclaim (the "Motion") filed by pro se Defendant Beau Ryne Hickman. (Doc. No. 27.) Hickman filed a response opposing dismissal (the "Response") (Doc. No. 31), and the Court held a hearing to consider the parties' arguments on April 19, 2023 (Doc. No. 33). Upon consideration of the

parties' arguments and analysis of the Amended Counterclaim, the Motion, the Response, and the law, the Motion is granted but without prejudice as explained below.

### **I. PROCEDURAL HISTORY**

Prepetition, SCCY sued Hickman and two others in state court on February 17, 2021. (No. 6:22-bk-01283-TPG, Claim 9-1.) As relevant to Hickman, SCCY alleged claims for breach of fiduciary duty, civil conspiracy, fraud in the inducement and performance, fraudulent misrepresentation, breach of contract, conversion, and unjust enrichment. (*Id.* at 6-18.) On June 25, 2021, Hickman, through counsel, responded to the complaint and asserted counterclaims for breach of contract and, in the alternative, promissory estoppel. (Doc. No. 27 at 22-27.)

On April 8, 2022, Hickman commenced a Chapter 13 case but subsequently moved to convert the case to Chapter 7. (No. 6:22-bk-01283-TPG, Doc. No. 38.) He did not include any claims against third parties as assets in his initial schedules and was represented by counsel at the time of filing. (No. 6:22-bk-01283-TPG, Doc. No. 1 at 15, § 34.) On June 15, 2022, SCCY filed Claim 9 in the amount of \$501,400 and attached its state court complaint in which it alleged the claims set forth above. (No. 6:22-bk-01283-TPG, Claim 9-1.)

SCCY filed numerous motions seeking to extend the time to object to Hickman's discharge. (No. 6:22-bk-01283-TPG, Doc. Nos. 21, 26, 41.) On August 15, 2022, the Court converted the case to Chapter 7 and extended the time to object to discharge to November 14, 2022. (No. 6:22-bk-01283-TPG, Doc. No. 43.) On November 14, 2022, SCCY timely filed its complaint in this adversary proceeding. (Doc. No. 1.) SCCY's claims in the adversary complaint closely mirror SCCY's claims in the state court case, but here they are styled as non-dischargeability actions; the underlying facts in both lawsuits are the same. (No. 6:22-bk-01283-TPG, Claim 9-1; No. 6:22-ap-91-TPG, Doc. No. 1.)

On January 17, 2023, Hickman filed an Answer, Affirmative Defenses, and Counterclaim. (Doc. No. 11.) SCCY responded with motions to dismiss the counterclaim and strike the affirmative defenses. (Doc. Nos. 12, 13.) One of the reasons SCCY gave to dismiss the counterclaim was Hickman's failure to include such claims against SCCY when he filed his schedules approximately ten months earlier. (Doc. No. 12 at 5-6; No. 6:22-bk-01283-TPG, Doc. No. 1 at 15, § 34.) In response, on January 25, 2023, Hickman filed amended schedules listing as assets claims against third parties for employment disputes, breach of fiduciary duty, negligence, and aiding and abetting, with a value of \$6,936,000. (No. 6:22-bk-01283-TPG, Doc. No. 71 at 10.)

On February 24, 2023, the Court struck Hickman's affirmative defenses and gave Hickman until March 9, 2023, to file amended affirmative defenses. (Doc. No. 20 at 2.)<sup>1</sup> Four days later, Hickman timely filed amended affirmative defenses, and also took it upon himself to file an amended answer and the amended counterclaim at issue here. (Doc. No. 25.) On March 14, 2023, SCCY filed the Motion (Doc. No. 27) to which Hickman filed the Response on March 28, 2023 (Doc. No. 31). On April 19, 2023, the Court held a hearing on the Motion and Response and took the matter under advisement. (Doc. No. 33.)

## **II. SCCY'S ALLEGATIONS IN THE AMENDED COMPLAINT**

The following allegations are taken from SCCY'S Complaint and provide the backdrop for the Amended Counterclaim.

---

<sup>1</sup> On that same day, Hickman filed a motion in the bankruptcy case asking for permission to pursue his claims listed on his amended schedules as a counterclaim in this adversary proceeding or for the Trustee to have standing to do so. (No. 6:22-bk-01283-TPG, Doc. No. 73 at 3.) SCCY filed an objection to Hickman's motion for authorization to pursue the counterclaims on March 29, 2023 (Case No. 6:22-bk-01283-TPG, Doc. No. 80), and on April 21, 2023, the Court denied the motion without prejudice to considering the issues raised in the motion for authorization in connection with consideration of the Motion in this adversary proceeding (Case No. 6:22-bk-01283-TPG, Doc. No. 82).

SCCY is a licensed firearms manufacturer and employed Hickman from August 19, 2019, through September 23, 2020. (Doc. No. 1 ¶¶ 13, 14, 19.) Hickman became Chief Operating Officer (“COO”) and reported directly to SCCY’s Chief Executive Officer, Joseph Roebuck. (*Id.* ¶¶ 14-15.)

SCCY alleges that as its COO, Hickman owed it a fiduciary duty to perform his duties in good faith and in SCCY’s best interest. (*Id.* ¶ 20.) According to SCCY, Hickman breached this duty by, among other things, misrepresenting that a Winter Park, Florida office was necessary for SCCY’s marketing department, and then using the office for Hickman’s personal benefit, stealing SCCY’s Red Dot Laser Sights and other property, and making unauthorized purchases with SCCY’s credit card. (*Id.* ¶¶ 22-23, 26, 29, 40.)

SCCY also alleges that Hickman conspired with his girlfriend, Rosemari Petruccelli, and her company, Bespoke Florida, LLC (“Bespoke”), to defraud SCCY out of \$150,000. (*Id.* ¶ 26.) SCCY claims that Hickman, Petruccelli, and Bespoke fraudulently represented to Roebuck that Bespoke was a legitimate company that would provide marketing services to SCCY, and based on those representations, SCCY and Bespoke entered into a Marketing Services Agreement (the “Agreement”). (*Id.* ¶¶ 32, 33.) SCCY states that Petruccelli and Bespoke never intended to perform such services, but that this was a scheme by Hickman, Petruccelli, and Bespoke to steal \$150,000 in marketing fees from SCCY. (*Id.* ¶ 34, 35.) SCCY also alleges that Bespoke was a sham entity and alter ego of Hickman and Petruccelli and that Bespoke was used as their personal piggy bank and to obtain marketing fees from SCCY for Hickman’s and Petruccelli’s benefit without providing any services. (*Id.* ¶¶ 37-39.) Based on the above allegations, SCCY pleads five claims against Hickman for nondischargeability of debt under 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6). (*Id.* at 8-15.)

### **III. HICKMAN’S ALLEGATIONS IN THE AMENDED COUNTERCLAIM**

Hickman’s Amended Counterclaim asserts eleven counts against the following entities (collectively, the “Counter Defendants”): (1) SCCY; (2) Roebuck in his individual capacity; (3) SCCY’s attorneys, John Ferguson and Holly Woerschling Zitzka; and (4) SCCY’s attorneys’ firm, Cobb Cole, P.A. (Doc. No. 25 at 16-17, 25-42.) Hickman alleges that while he worked for SCCY, he was denied commissions to which he was entitled from August 2019 through July 2020. (*Id.* at 18, 19.) But Hickman alleges later in the Amended Counterclaim that he was paid his owed commissions and salary in August 2020. (*Id.* at 34.) Hickman also claims that Roebuck told him that SCCY would always have an office in central Florida. (*Id.* at 25.)

Regarding Bespoke, Hickman alleges that the Counter Defendants knew of his relationship with Petruccelli but attempted to put him in some sort of position regarding the Agreement between Bespoke and SCCY, despite Hickman’s conflict of interest (it is not clear what role Hickman played in the Agreement between Bespoke and SCCY). (*Id.* at 23-24.) Hickman also alleges that SCCY published Bespoke’s copyrighted and digital assets between November 2019 and the time the Amended Counterclaim was filed. (*Id.* at 24.)

### **IV. LEGAL STANDARD APPLICABLE TO SCCY’S MOTION TO DISMISS**

The Motion is brought pursuant to Federal Rule of Bankruptcy Procedure 7012, which makes Federal Rule of Civil Procedure 12(b) through (i) applicable to adversary proceedings in bankruptcy. Fed. R. Bankr. P. 7012(b). Rule 12(b)(6) allows dismissal of a complaint before an answer is filed if the complaint fails to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b)(6); *In re MacQuarrie*, No. 6:14-BK-13112-KSJ, 2017 WL 3172807, at \*1 (Bankr. M.D. Fla. July 26, 2017). This same standard likewise applies to counterclaims. *Univalor Trust, SA v. Columbia Petroleum, LLC*, 315 F.R.D. 374, 378-380 (S.D. Ala. 2016) (quoting *Garrett*

*Inv., LLC v. SE Prop. Holdings, LLC*, No. CIV.A. 12-0500-KD-N, 2013 WL 1191237, at \*2 (S.D. Ala. Mar. 22, 2013) (counterclaim must be dismissed if it fails to state a claim upon which relief could be granted). In reviewing a motion to dismiss under Rule 12(b)(6), the court reviews only the allegations in the counterclaim, which the court must accept as true and construe in the light most favorable to the pleader. *Brophy v. Jiangbo Pharm., Inc.*, 781 F.3d 1296, 1301 (11th Cir. 2015).

A counterclaim must contain more than “a formulaic recitation of the elements of a cause of action . . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007). Sufficient factual matter must be pleaded to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). This requires the pleading party to allege “factual content that allows the court to draw the reasonable inference that the [opposing party] is liable for the misconduct alleged.” *Id.*

Hickman is proceeding pro se. “Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys’ and are liberally construed.” *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (quoting *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)). Although pro se pleadings are liberally construed, the Court “cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action.” *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020).

**V. SCCY’S MOTION TO DISMISS HICKMAN’S AMENDED COUNTERCLAIM**

Hickman’s claims are based on the following:

1. Hickman’s employment with SCCY;
2. The Agreement between SCCY and Bespoke;

3. Roebuck's statements to Hickman that SCCY would always have a central Florida office;
4. The individual Counter Defendants' fiduciary duty to SCCY;
5. SCCY's use of "copyright and digital assets" belonging to a third party; and
6. SCCY's statements that Hickman committed larceny, that Hickman and Bespoke did not provide any marketing services, and that Hickman used a Winter Park office for his own benefit.

(Doc. No. 25 at 17-26.) Based on these allegations, Hickman asserts claims for breach of fiduciary duty (Counts I and II), negligence per se (Count III), "aiding and abetting" (Count IV), civil conspiracy (Count V), fraud (Counts VI and VII), unjust enrichment (Count VIII), conversion (Count IX), negligent misrepresentation (Count X), and defamation (Count XI). (*Id.* at 25-42.)

Hickman fails to state a claim upon which relief can be granted because he lacks standing to assert the first ten of the eleven counts, which belong to the Chapter 7 Trustee for the benefit of the estate. The eleventh count, for defamation, fails because SCCY is protected by the litigation privilege. Although the Amended Counterclaim is due to be dismissed, the dismissal is without prejudice as explained below.

#### **A. Hickman lacks standing**

Hickman lacks standing to bring the first ten counts asserted in the Amended Counterclaim because the claims belong to his bankruptcy estate. Further, Hickman fails to allege he is owed fiduciary duties, or that he owns the property over which the Counter Defendants allegedly asserted dominion.

“Generally speaking, a pre-petition cause of action is the property of the Chapter 7 bankruptcy estate, and only the trustee in bankruptcy has standing to pursue it.” *Parker v. Wendy’s Int’l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004). All the debtor’s assets, including intangible assets such as causes of action, vest in the bankruptcy estate when the bankruptcy petition is filed. *Id.* “This includes legal causes of action the debtor had against others at the commencement of the bankruptcy case.” *In re Icarus Holding, LLC*, 391 F.3d 1315, 1319 (11th Cir. 2004), *certified question answered sub nom. Baillie Lumber Co. v. Thompson*, 612 S.E.2d 296 (Ga. 2005).

Because the causes of action belong to the estate, the trustee, “as the representative of the bankruptcy estate, is the proper party in interest, and is the only party with standing to prosecute causes of action belonging to the estate.” *Parker v. Wendy’s Int’l, Inc.*, 365 F.3d at 1272 (citing 11 U.S.C. § 323). The debtor’s rights in the causes of action are extinguished unless the causes of action are abandoned back to the debtor under § 554 of the Bankruptcy Code.<sup>2</sup> *Id.* When the bankruptcy case closes, the estate’s property that is neither abandoned nor administered “in the bankruptcy proceedings remains the property of the estate.” *Id.* (citing 11 U.S.C. § 554(d)). “Failure to list an interest on a bankruptcy schedule leaves that interest in the bankruptcy estate.” *Id.*

Ten of the eleven causes of action in the Amended Counterclaim are based upon events that occurred during Hickman’s prepetition employment with SCCY. (Doc. No. 25 at 25-41.) Hickman complains of being wrongly denied commissions and of a conspiracy to position Hickman as having some sort of role between SCCY and Bespoke, despite a known conflict of interest. (*Id.* at 18-20.) Hickman also states that in 2019 Roebuck made the statement that SCCY

---

<sup>2</sup> All references to the Bankruptcy Code refer to Title 11 of the United States Code.

would always have a central Florida office. (*Id.* at 25.) Hickman asserts in the Response that SCCY converted his commissions between August 2019 and July 2020. (Doc. No. 31 at 4.) Although Hickman’s exact employment dates are not alleged in the Amended Counterclaim, he does state that he was promoted to COO on December 18, 2019. (Doc. No. 25 at 19.) In the Amended Answer preceding the Amended Counterclaim, Hickman admits SCCY’s allegation that he was hired on August 19, 2019. (*Id.* at 2.) He denies the allegations in paragraph 19 of the Complaint that he was terminated from SCCY on September 23, 2020, but the denial is qualified only with the statement, “Hickman resigned from SCCY.” (*Id.* at 3.) On April 8, 2022, Hickman filed his bankruptcy petition, over eighteen months after his last day as a SCCY employee. (No. 6:22-bk-01283-TPG, Doc. No. 1.) Thus, the alleged causes of action accrued before Hickman filed his bankruptcy petition.

Because the alleged causes of action accrued before Hickman’s bankruptcy petition was filed, they belong to the estate. The Trustee has not abandoned the claims. And because the claims belong to the estate, Hickman lacks standing to bring them. *See Calderon v. U.S. Bank Nat’l Ass’n as Tr. for SG Mortg. Sec. Tr. 2006-fre2 Asset Backed Certificates Series 2006-fre2*, 860 F. App’x 686, 687–88 (11th Cir. 2021) (plaintiffs lacked standing to bring rescission claim that accrued before they filed for bankruptcy); *Oswalt v. Sedgwick Claims Mgmt. Servs., Inc.*, 624 F. App’x 740, 741 (11th Cir. 2015) (plaintiff lacked standing to bring employment discrimination claims accruing pre-petition, and his “petition to re-open his bankruptcy case and amend his list of assets to properly include the lawsuit, in and of itself, does not remedy [the plaintiff’s] lack of standing.”); *Chen v. Siemens Energy Inc.*, 467 F. App’x 852, 854 (11th Cir. 2012) (plaintiff’s “Title VII claim became part of her bankruptcy estate upon the filing of her Chapter 7 petition. At that point, [the plaintiff] lost standing, and the bankruptcy trustee became

the only party with standing to bring the Title VII claim, unless the trustee later abandoned the claim from the estate, which has not occurred.).<sup>3</sup> Indeed, Hickman appears to acknowledge that the claims belong to the estate, stating in his Response that SCCY's assertion of dominion over digital assets "has caused harm to Hickman's estate" and that "the equity, or even debt, owed to Hickman by [SCCY] is an asset of the estate." (Doc. No. 31 at 2, 7.)

Hickman attempts to save at least some of his claims based on the allegation that SCCY's publication and retention of copyright and digital marketing assets occurred post-petition, as late as May 2022, and that he discovered SCCY's actions on November 14, 2022. (Doc. No. 25 at 12; Doc. No. 31 at 9.) Taking these allegations as true, Hickman still lacks standing to assert claims based on these facts because he alleges that the digital assets belong to a third party, not to him. (Doc. No. 31 at 7.) The only damage to Hickman that he asserts is the unpaid commissions, but in paragraph 138 of the Amended Counterclaim he states that he was paid his duly owed commissions and salary in August 2020. (Doc. No. 25 at 34.) Therefore, Hickman lacks standing to state a cause of action based upon SCCY publishing copyright and digital marketing assets of a third party with no resulting damage to him occurring after his bankruptcy petition was filed.

Hickman also lacks standing to assert his claims based on fiduciary duty, because he alleges the fiduciary duty was owed to SCCY, not to him. Claims for breach of fiduciary duty "must arise from a claimed breach of duty owed to the plaintiffs themselves." *Avila S. Condo. Ass'n, Inc. v. Kappa Corp.*, 347 So. 2d 599, 609 (Fla. 1977) (stating that party owed the fiduciary duty "is the only party that may properly bring suit" for breach of fiduciary duty); *Hall v. Cooks*,

---

<sup>3</sup> In this circuit, "[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority." 11th Cir. R. 36-2.

346 So. 3d 183, 191 (Fla. 1st DCA 2022), *reh'g denied* (Sept. 2, 2022) (affirming dismissal of breach of fiduciary duty claim where plaintiffs failed to allege a fiduciary duty owed to them). Hickman also attempts to use the alleged breach of duties owed to SCCY to demonstrate that he was injured, claiming in the Response that “Counts I-II clearly claim that both Roebuck and Ferguson breached their fiduciary duty to SCCY which injured Hickman . . . .” (Doc. No. 31 at 2.) But again, Hickman lacks standing to claim he was injured by the breach of a fiduciary duty allegedly owing to another. His claims for negligence fail for the same reasons, in addition to the fact that the claims pertain to property he states he does not own. (Doc. No. 25 at 29; Doc. No. 31 at 2.)

Hickman further tries to avoid dismissal due to lack of standing by arguing in the Response that he is a shareholder of SCCY due to an Employee Incentive Agreement. (Doc. No. 31 at 5.) Although Hickman did not attach any such agreement to the Counterclaim, he did attach one to the Response, but it is not signed by SCCY. (Doc. No. 25; Doc. No. 31 at 14.) Assuming for Hickman’s sake that the Court can consider the unsigned agreement, it specifically states, “The issuance of the Incentive Compensation is not ownership in the Company, and the Employee is not entitled to any voting rights, distributions of income or other indices of ownership in the Company.” (Doc. No. 31 at 22.) Thus, this argument too is unavailing.<sup>4</sup>

Counts I through X fail to state a claim upon which relief may be granted because they are based on causes of action that accrued before Hickman’s bankruptcy petition was filed, and

---

<sup>4</sup> Within this argument in the Response, Hickman appears to raise the specter of his claims proceeding as a derivative action. (Doc. No. 31 at 6-7.) However, a derivative action was not pleaded in the Amended Counterclaim. Regardless, because any claim brought as a derivative action would be rooted in the pre-bankruptcy past, Hickman would lack standing to pursue such an action.

thus they belong to the bankruptcy estate and Hickman lacks standing to bring them.

Furthermore, the claims are also due to be dismissed on other bases.

In sum, and in addition to Hickman's lack of standing, Counts I and II, for breach of fiduciary duty, fail to state a claim upon which relief can be granted because they rely on a fiduciary duty owed to SCCY, not Hickman. Similarly, Count III for negligence per se is based on the Counter Defendants breaching their duty to SCCY, so Hickman has no claim here either. Counts IV (aiding and abetting), V (civil conspiracy), VIII (unjust enrichment), and IX (conversion), each depend on the allegation that SCCY wrongfully publishes and asserts ownership over assets owned by an entity other than Hickman without alleging how this damaged him. Likewise, Hickman fails to state a claim under Count VI for fraud because he fails to assert how the allegedly false statement that Bespoke did not perform marketing services for SCCY damaged him.<sup>5</sup> Finally, Hickman fails to state a claim for relief under Count VII for fraud and Count X for negligent misrepresentation, based on the statement that Roebuck told Hickman SCCY would always maintain a central Florida office, not just because the claims belong to the bankruptcy estate, but also because Hickman does not allege how the statement is false or how the statement damaged him.<sup>6</sup> Counts I through X are therefore dismissed.

---

<sup>5</sup> In some instances, Hickman alleges that these actions interfered with his commissions and salary, but as noted above, he also alleges that he was paid his duly owed commissions and salary in August 2020. (Doc. No. 25 at 34.)

<sup>6</sup> Hickman alleges that only Roebuck and one other SCCY employee remained in Orlando, and that Roebuck moved, and the other employee resigned, but Hickman states that this occurred after Hickman resigned from SCCY. (Doc. No. 25 at 25.) Thus, even if these allegations are construed as SCCY no longer maintaining an office in central Florida, the events nonetheless occurred after Hickman left SCCY and therefore negate damages to Hickman caused by a statement that SCCY would maintain an office in central Florida.

### **B. The Defamation Claim**

Finally, Hickman asserts a claim for defamation in Count XI of the Amended Counterclaim. (Doc. No. 25 at 41-42.) Specifically, he alleges that SCCY “falsely stated, and published that Hickman committed larceny of red dot optics, firearms, and/or a laptop with docking station and monitor to multiple SCCY employees and third parties . . . [and that] Hickman sought to rent a Winter Park office for personal benefit to multiple SCCY employees and third parties.” (*Id.* at 41.) Hickman includes in the allegedly defamatory statements that SCCY said that Bespoke, through Hickman, did not produce any marketing assets. (*Id.* at 41.) The alleged false statements mirror the allegations against Hickman in the Complaint. (Doc. No. 1.) Thus, SCCY moves to dismiss Count XI under the litigation privilege, which “affords absolute immunity for acts occurring during the course of judicial proceedings.” *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1274 (11th Cir. 2004).

Hickman does not address SCCY’s arguments regarding the litigation privilege barring his defamation claim in the Response. (Doc. No. 31.) As the Amended Counterclaim fails to contain any details regarding the alleged defamation that would demonstrate that the litigation privilege does not apply, Count XI is dismissed.

### **C. Dismissal Without Prejudice**

In the Response, Hickman requests leave to amend the Amended Counterclaim if it is deficient. (Doc. No. 31 at 11.) Pro se plaintiffs must ordinarily be given one chance to amend their complaint should their initial complaint be dismissed, if it appears that the plaintiffs might be able to state claims upon which relief may be granted. *Silva v. Bieluch*, 351 F.3d 1045, 1048-49 (11th Cir. 2003). With respect to Counts I – X of the Amended Counterclaim, and in addition to the other problems the Court describes above, Hickman lacks standing to bring these claims

and no amount of re-pleading by Hickman will cure this problem. However, Hickman has requested that this Court allow him to pursue the Amended Counterclaim (No. 6:22-bk-01283-TPG, Doc. No. 73 at 3), which SCCY opposed (Case No. 6:22-bk-01283-TPG, Doc. No. 80), noting the rarity of cases and circumstances in which a debtor in a Chapter 7 case would be permitted to substitute in as the party in interest in place of a Chapter 7 trustee. As such, the Court declines to permit Hickman to pursue the Amended Counterclaims but will permit the Trustee to do so should he so chose, and alternatively, will permit the Trustee to seek leave of Court to file a second amended counterclaim should he wish to do so. In the event the Trustee does not choose to pursue Counts I – X of the Amended Counterclaim or seek leave of Court to file a second amended counterclaim, Hickman will not be permitted to do so in the Trustee's stead, nor will this Court compel the Trustee to pursue any such claims.

With respect to the defamation claim in Count XI which facially does not appear rooted in the pre-bankruptcy past, however, the Court will provide Hickman one more opportunity to state a claim upon which relief may be granted, provided Hickman can allege details regarding the alleged defamation that would demonstrate the litigation privilege does not apply.

On June 15, 2023, at 10:00 a.m., the Court will hold a status conference in this proceeding.

Accordingly, it is **ORDERED**:

1. The Motion (Doc. No. 27) is **GRANTED**;
2. Counts I though X of the Amended Counterclaim (Doc. No. 25) are **DISMISSED**

**WITHOUT PREJUDICE** for the Trustee to assert them if he chooses to do so within fourteen days of the service of this order, or to seek leave of Court within that same period to file a second amended counterclaim; and

3. Count XI of the Amended Counterclaim (Doc. No. 25) is **DISMISSED WITHOUT PREJUDICE**. Within fourteen days of the date of service of this Order, Hickman may file a second amended counterclaim for defamation.

###

The Clerk is directed to serve a copy of this order on all interested parties.