UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 1, 2023
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The court is granting the debtors' Motion for Entry of Discharge and Motion for Final Decree [LKW-49] below, therefore this status conference will be DROPPED FROM CALENDAR.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
DWE-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2023 [1343]

NEWREZ LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was voluntarily dismissed by the movant on February 22, 2023. Doc. #1371.

3. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-49

CONTINUED MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE
12-15-2022 [1306]

AMALIA GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors") move the court for an order entering a chapter 11 discharge and for a final decree. Doc. #1306.

With respect to the entry of a discharge, 11 U.S.C. § 1141(d)(5) provides that the confirmation of a plan for an individual in chapter 11 does not automatically discharge them of their debts. Rather, the court must hold a properly noticed hearing and find "that there is no reasonable cause to believe that (i) section 522(q)(1) may be applicable to the debtor; and (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); and if the requirements of subparagraph (A) and (B) are met." 11 U.S.C. § 1141(d)(5)(A) requires all plan payments to be met, which is applicable in this case.

The chapter 11 plan ("Plan") was confirmed by order dated December 6, 2022. Doc. #1302. Article XI, section 12.02 of the Plan provides that, upon a noticed hearing "Debtors shall receive their discharge upon proof of completion of [payments of Class Fourteen Claims] provided notice in compliance with the Bankruptcy Rules is given." Doc. #1235. According to the declaration of Leonard Welsh, counsel for Debtors, Debtors have completed plan payments to Class Fourteen Claimants as required by the Plan. Decl. of Leonard K. Welsh at ¶¶ 4-5, Doc. #1308. Accordingly, the requirements of section 1141(d)(5)(A) have been met.

Based on the supplemental declaration of Eduardo Garcia filed on February 1, 2023, the court finds that there is no reasonable cause to believe that:

(i) section 522(q)(1) may be applicable to Debtors; and (ii) there is pending any proceeding in which Debtors may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B). Supp. Decl. of Eduardo Garcia, Doc. #1355.

Accordingly, Debtors' discharge shall be entered.

With respect to Debtors' request for a final decree, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022.

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define "full administration" of a chapter 11 case, but the Advisory Committee Notes to the 1991 amendments to Federal Rule of Bankruptcy Procedure 3022 outline several factors the court should consider when making that determination. Those factors include: (i) whether the confirmation order is final; (ii) whether property proposed to be transferred under the plan has been transferred; (iii) whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan; whether the payments under the plan have commenced; and (iv) whether all motions, contested matters, and adversary proceedings have been resolved.

The court finds that the order confirming the Plan has become final, Debtors have assumed the business and management of the property dealt with under the Plan, payments under the Plan have been made, and all property required to be transferred under the Plan has been transferred. Welsh Decl., Doc. #1308. All motions, contested matters, and adversary proceedings have been resolved. Therefore, a final decree shall be entered closing this case pursuant to Federal Rule of Bankruptcy Procedure 3022.

4. 21-11814-A-11 **IN RE: MARK FORREST**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

5. 21-11814-A-11 **IN RE: MARK FORREST**
DJP-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [246]

MEGAN KILGORE/MV
LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

6. 21-11814-A-11 **IN RE: MARK FORREST**
LKW-16

CONTINUED EVIDENTIARY HEARING RE: MOTION TO CONFIRM CHAPTER 11 PLAN
7-22-2022 [238]

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
PLAN WITHDRAWN; CONT'D TO 3/15/23 PER ECF ORDER #358

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the chapter 11 plan (Doc. #242) on February 3, 2023. Doc. #368.

7. 21-11814-A-11 **IN RE: MARK FORREST**
LKW-19

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
1-31-2023 [362]

LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Mark Alan Forrest ("DIP"), requests allowance of interim compensation in the amount of $25,917.50 and reimbursement for expenses in the amount of $532.93 for services rendered from July 1, 2022 through December 31, 2022. Doc. #362. DIP has no objection to the court approving the requested fees and expenses. Doc. #366. This is Movant's sixth fee application in this case. The court has previously approved a total of $49,178.44 in interim fees and expenses, of which $49,045.94 has been paid to Movant. Doc. #362.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing various documents for chapter 11 status conference statements; (3) preparing and filing monthly operating reports; (4) participating in chapter 11 status conferences; (5) preparing and revising third modified plan and supporting documents; (6) preparing DIP's response to secured creditors' objection to confirmation of third modified plan; and (7) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #362; Ex. B, Doc. #364. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of $25,917.50 and reimbursement of expenses in the amount of $532.93. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

8. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
DMG-4

CONTINUED RE: MOTION TO APPROVE STIPULATION RE: DEBTOR'S USE OF CASH COLLATERAL
2-1-2023 [82]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice 9014-1(f)(2) and was continued at the prior hearting to permit the debtor and secured creditor to amend the cash collateral stipulation to address concerns raised by the court and the Office of the United States Trustee for Region 17. The hearing will proceed as scheduled.

Future Value Construction Inc. ("Debtor" or "DIP") moves the court for use of $124,861.00 through June 30, 2023 ("Budgeted Period") of cash collateral of Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Secured Creditor") pursuant

to an amended stipulation ("Stipulation"). Motion, Doc. #82; Amended Stipulation, Ex. C, Doc. #115.

Debtor is the owner of the residential development known as Lakeview at Rio Bravo (collectively, "Development Lots"). Decl. of Chuck R. Thompson ¶ 3, Doc. #84. Debtor also owns three lots in Santa Barbara County for the purpose of constructing custom homes (collectively, the "Residential Lots"). Amended Stipulation, Ex. C, Doc. #115.

Debtor is a party to a secured promissory note dated September 7, 2021 ("Note") in favor of Secured Creditor in an original amount of $2.6 million. Thompson Decl. ¶ 4, Doc. #84; Amended Stipulation, Ex. C, Doc. #115. The amount owed on the Note is $2,608,027.78 as of January 18, 2023. Amended Stipulation, Ex. C, Doc. #115. The Note is secured by a junior deed of trust in the Residential Lots and a senior deed of trust in all but two of the Development Lots. Id.

There is $124,861.00 in an escrow holdback from the loan with Secured Creditor that DIP and Secured Creditor stipulate constitutes cash collateral of Secured Creditor pursuant to 11 U.S.C. § 363(a). By the Stipulation, DIP and Secured Creditor agree that DIP may use $45,000.00 of cash collateral to pay San Joaquin Engineering to satisfy DIP's pre-petition obligation to San Joaquin Engineering in order for DIP to obtain the claim release necessary for final approval from City of Bakersfield for the release of Debtor's "Phase 2" Development Lots located at the Lakeview at Rio Bravo subdivision. Amended Stipulation, Ex. C, Doc. #115. DIP also may use the remaining amount of the escrow holdback, or $79,861.00, to pay expenses pursuant to an agreed upon budget to obtain the "final map" from the City of Bakersfield. Id. The budget is through June 30, 2023. Id.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

Bankruptcy Code § 361 requires DIP to provide adequate protection to Secured Creditor for DIP's use of cash collateral for any decrease in the value of Secured Creditor's interest in the escrow holdings due to DIP's use of cash collateral. As adequate protection for DIP's use of cash collateral, DIP will grant Secured Creditor a junior lien in real property commonly known as: 12211 Wildhorse Ave., 93306, APN# 386-600-03-00, Kern County, California (the "Replacement Collateral"). Based on DIP's schedules, the Replacement Collateral is the model home at Lakeview at Rio Bravo, has a value of $809,900.00, and has a senior lien of $452,324.94, leaving $357,575.06 in equity to serve as adequate protection to Secured Creditor. Schedule D, Doc. #15.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through June 30, 2023, consistent with the Stipulation and the budget attached as Exhibit C to Doc. #115.

9. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
MBR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [62]

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

10. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
MBR-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [69]

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

11:00 AM

1. 22-12068-A-7 **IN RE: ARMANDO GUTIERREZ**

PRO SE REAFFIRMATION AGREEMENT WITH VOLVO CAR FINANCIAL SERVICES LLC
2-2-2023 [49]

RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

The hearing on this reaffirmation agreement was set by the court. Doc. #50. Secured creditor Volvo Car Financial Services LLC ("Creditor") filed written opposition on February 13, 2023. Doc. #52. The matter will proceed as scheduled.

On February 2, 2023, Armando Gutierrez ("Debtor"), the chapter 7 debtor in this bankruptcy case, filed a motion to approve a reaffirmation agreement ("Agreement") to reaffirm the obligation Debtor owes to Creditor that is secured by a 2021 Volvo XC60 T5 Momentum ("Vehicle"). Doc. #49. The Agreement is not accepted by Creditor. Doc. #49. In the opposition, Creditor specifically states that Creditor has not offered to reaffirm Debtor's obligation that is secured by the Vehicle. Doc. #52.

A debtor's unilateral reaffirmation of a pre-petition debt does not constitute a valid reaffirmation agreement for purposes of 11 U.S.C. § 524(c). In re Turner, 156 F.3d 713 (7th Cir. 1998). Moreover, "§ 524(c) facially contemplates that the creditor, for whatever reason, may reject any and all tendered reaffirmation offers[.]" In re Bell, 700 F.2d 1053, 1056 (6th Cir. 1983).

Because only Debtor has agreed to the Agreement, the Agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not approved.

1:30 PM

1. 22-12133-A-7 **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**
FW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR ABSTENTION
1-20-2023 [15]

RHONDA HARDY-JOEL/MV
RILEY WALTER/ATTY. FOR DBT.
LENDEN WEBB/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The moving party did not serve the chapter 7 trustee with the motion. The chapter 7 trustee is the representative of the chapter 7 bankruptcy estate and must be served by mail with a motion for relief from the automatic stay. 11 U.S.C. § 323(a); Fed. R Bankr. P. 4001(a)(1), 7004(b)(1), 9014(b).

The moving party also did not serve the debtor properly. Federal Rules of Bankruptcy Procedure ("Rule") 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. With respect to a domestic or foreign corporation or other unincorporated association, service under Rule 7004(b)(3) may be made by mailing, first class prepaid, "a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(3). In addition, if the debtor is represented by counsel in the bankruptcy case, which the debtor is in this case, Rule 7004(g) requires that the debtor's bankruptcy attorney be served. Here, the moving party did not serve either the debtor by mail or the debtor's bankruptcy counsel.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with Local Rule of Practice ("LBR") 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022. In addition, the certificate of service was not filed as a separate document as required by LBR 9004-2(e). The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

2. 22-12137-A-7 **IN RE: AEF FARMS, LLC**
LKW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2023 [14]

CREAM OF THE CROP AG SERVICE, INC./MV
RILEY WALTER/ATTY. FOR DBT.
LEONARD WELSH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #20. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

3. 08-16938-A-7 **IN RE: PAUL KLIMEK AND CHARLENE MARCUM**
FW-5

MOTION TO APPROVE STIPULATION REGARDING EXEMPTION IN PRODUCT LIABILITY CLAIM
2-8-2023 [119]

PETER FEAR/MV
GARY FRALEY/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the

respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Paul Gerald Klimek and Charlene Joan Marcum (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a compromise with respect to Debtors' exemption in proceeds of certain litigation. Doc. #119.

Among the assets of the estate is an undisclosed, pre-petition claim asserted by debtor Paul Klimek with respect to Mr. Klimek's exposure to an allegedly toxic chemical (the "Claim") that is subject to a cash payment to settle the Claim ("Settlement Funds"). Motion, Doc. #119. After Debtors' bankruptcy case was re-opened to administer the Claim, Debtors sought to switch from the 703 series of exemptions set forth in their original schedules to the 704 series of exemptions in an effort to exempt the entirety of the Settlement Funds. Id. To resolve the dispute over Debtors' claimed exemption in the Settlement Funds, Debtors and Trustee have stipulated to permit Debtors to have an exemption in the amount of $20,725.00 in the Settlement Funds, which amount shall be paid to Debtors not later than 15 days after receipt of the Settlement Funds or entry of an order approving this compromise if Trustee has already received the Settlement Funds. Stipulation, Ex. A, Doc. #123.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #119. Although Trustee believes he will ultimately succeed if any exemption in excess of the exemption to be permitted by the proposed stipulation were attempted, the terms of the settlement with Debtors obviates the need to continue litigation over Debtors' claimed exemption in the Settlement Funds. Tr.'s Decl. at ¶ 2, Doc. #121. The settlement provides Debtors with the maximum exemption to which Trustee believes Debtors are entitled without the estate incurring additional costs of litigation. Id. at ¶ 3. Trustee believes in his business judgment that the settlement maximizes the benefits to unsecured creditors of the estate and fairly addresses the concerns of interested parties. Id. at ¶ 5. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be GRANTED, and the settlement between Trustee and Debtors is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

4. 18-14445-A-7 **IN RE: KONARK RANCHES, LLC**
LNH-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LISA NOXON HOLDER, PC FOR LISA A. HOLDER, TRUSTEES ATTORNEY(S)
2-8-2023 [82]

LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Lisa Noxon Holder, PC ("Movant"), attorney for chapter 7 trustee Randell Parker ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from November 2, 2019 through December 31, 2022. Doc. #82. Movant provided legal services valued at $24,898.00, and requests compensation in the amount of $18,500.00 (25% discount from fees earned). Doc. #82. Movant requests reimbursement for expenses in the amount of $450.00. Doc. #82. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in filing motions to abandon an almond orchard, compromise controversy with Star Nut and other parties in an adversary proceeding; and (3) preparing and filing employment and fee applications. Decl. of Lisa Noxon Holder, Doc. #85; Ex. A, Doc. #84. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $18,500.00 and reimbursement for expenses in the amount of $450.00. Trustee is authorized to make a combined payment of $18,950.00, representing compensation and reimbursement, to Movant. Trustee is authorized

to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

5. 21-11448-A-7 **IN RE: ATLAS WORLD FOOD & AG, INC.**
ADJ-4

MOTION TO APPROVE STIPULATION REGARDING STATE COURT LITIGATION WITH CITY OF VISALIA
2-1-2023 [84]

IRMA EDMONDS/MV
RILEY WALTER/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Interested parties Brody Blain, Brian Blain and Barrett Blain (collectively, the "Blains") timely filed written opposition on February 15, 2023. Doc. #89. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the movant checked the box on the certificate of service form indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004 and included an Attachment 6A1, which is required if service is effectuated under Rule 7004. Doc. #88. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the movant should have attached the correct item.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Atlas World Food & Ag, Inc. ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a stipulation with the City of Visalia ("Visalia") regarding pre-petition state court litigation pending in the Tulare Superior Court as Case No. 277320 ("State Court Action") in which Visalia sued Debtor, Blain Farming Co., Inc. (also a chapter 7 debtor in this court, Bankr. Case No. 21-12473) ("BFC"), and the Blains. Doc. #84.

Visalia's claims arise from the sale of crops by BFC and Debtor that were grown on city properties over a number of years. Tr's Decl., Doc. #86 at ¶ 6. Visalia claims it is owed substantial funds from BFC or Debtor (and the Blains) for rents or its share of sale proceeds of crops. Id. On September 10, 2021, Visalia filed a timely proof of claim in Debtor's bankruptcy case asserting an

unsecured claim in the amount of $1,330,989.11 based on the claims asserted in the State Court Action ("Claim"). Id. at ¶ 7. Debtor did not file a cross-complaint in the State Court Action and confirmed in section 3.3 of its schedules that Visalia's claims are not subject to offset. Id. There is no pending objection to the Claim. Id.

Trial in the State Court Action is set to commence on March 13, 2023. Tr's Decl. at ¶ 8, Doc. #86. Trustee anticipates that the cost of defending the State Court Action would be significant, and the bankruptcy estate has less than $25,000. Id. at ¶ 9. Pursuant to the stipulation, the bankruptcy trustees for Debtor and BFC have agreed not to contest the State Court Action but stipulate to the entry of default with respect to Debtor and BFC and agree that the amount of any judgment obtained by Visalia in the State Court Action will be an allowed general unsecured claim in each bankruptcy case. Id. at ¶ 11. Visalia will not have a secured claim based on its notice of attachment. Id.

Trustee is the representative of Debtor's chapter 7 bankruptcy estate and is the person with authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #84. Debtor has no claim for affirmative relief or offset against Visalia, and the terms of the stipulation with Visalia obviates the need to continue defending against Visalia's claims. Tr.'s Decl. at ¶ 14, Doc. #86. Moreover, there is an email that apparently admits the sum owing from Debtor to Visalia, so Trustee believes there is significant doubt that Debtor would prevail at trial. Id. Moreover, the Claim arises from a complex 10 plus year relationship between Debtor, BFC and Visalia involving oral, written, and implied contracts. Id. at ¶ 16. Trustee believes in her business judgment that the stipulation is fair, reasonable, and obtains an economically advantageous result for the estate. Id. at ¶ 17. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

By the opposition, the Blains want to assure that any order approving the stipulation does not impair or impede the ability of the Blains to protect their individual interests by contesting the actual amount of Visalia's claim for damages, including by way of offsets, or contesting the claims by Visalia in Visalia's attempt to impose individual liability on the Blains for any debt Debtor owes to Visalia as may ultimately be determined in the State Court Action. Doc. #89.

In response to the opposition, Visalia asserts that the stipulation preserves whatever rights the Blains may have to defend themselves in the State Court Action. Doc. #92. However, the stipulation was not intended, and should not be interpreted, to enhance the Blains' right to defend themselves by allowing the Blains to raise claims, cross-claims or counter-claims that belong to Debtor or BFC. Id.

The stipulation is between Trustee, the chapter 7 trustee of the BFC bankruptcy estate, and Visalia. Ex. 2, Doc. #87. This court will leave to the state court any determination as to the impact of the entry of Debtor's default in the State Court Action on the rights of the Blains in that litigation. To the extent the Blains oppose the motion to approve the proposed stipulation because Debtor's default may impact the rights of the Blains in the State Court Action, that consideration is not part of the standards that this court must consider in approving the stipulation under A & C Properties and Woodson, and the opposition is overruled.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the opposition of the Blains is overruled and the motion is GRANTED. The stipulation between Trustee, the chapter 7 trustee of the BFC bankruptcy estate, and Visalia is approved.

This ruling is not authorizing the payment of any fees or costs associated with the stipulation.

6. 22-12061-A-7 **IN RE: LEO BRADSHAW**
DJP-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-15-2023 [22]

EDUCATIONAL EMPLOYEES CREDIT UNION/MV
GABRIEL WADDELL/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Educational Employees Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2003 Holiday Rambler Ambassador ("Vehicle"). Doc. #22.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is one payment past due in the amount of $635.13 plus late fees of $19.05. Decl. of Amber Luna, Doc. #25.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at $25,000.00 and the amount owed to Movant is $34,978.12. Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least one post-petition payment and the Vehicle is a depreciating asset.

7. 22-11379-A-7 **IN RE: THURMAN ROGERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-6-2023 [47]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. An amended schedule D (Doc. #41) was filed by the debtor on January 23, 2023, which added creditors who were not listed on the previously filed schedule D. A fee of $32.00 was required at the time of filing because the amended schedule D added creditors. The fee was not paid. A notice of payment due was served on the debtor on January 29, 2023. Doc. #45.

If the filing fee of $32.00 is not paid prior to the hearing, the amended schedule D (Doc. #41) may be stricken, and sanctions will be imposed on the debtor on the grounds stated in the order to show cause.

8. 22-11095-A-7 **IN RE: SEAN/KRISTINA MOSS**
DWE-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2022 [15]

FREEDOM MORTGAGE CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 10/25/2022

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 10, 2023 at 1:30 p.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

Pursuant to the movant's status report filed on February 22, 2023 (Doc. #87), the hearing on the motion for relief from the automatic stay will be continued to May 10, 2023, at 1:30 p.m.

If the moving party does not elect to withdraw the motion by May 3, 2023, the moving party shall file and serve a status report not later than May 3, 2023.