

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, May 26, 2021
Place: Department A - Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

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

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-21](#)

CONTINUED AMENDED/MODIFIED PLAN
2-18-2021 [[520](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [21-10853](#)-A-12 **IN RE: MIKE WEBER**

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-6-2021 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

1. [21-10007](#)-A-7 **IN RE: ANIKA RODRIGUEZ**
[JES-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-3-2021 [\[22\]](#)

JAMES SALVEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection to debtor's claim of exemption 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). Therefore, the defaults of the non-responding parties in interest are entered. At the hearing on April 21, 2021, the court continued the hearing to May 26, 2021 to permit the chapter 7 trustee and debtor to supplement the record. Order, Doc. #30.

James E. Salven ("Trustee"), the chapter 7 trustee in the bankruptcy case of Anika Monique Rodriguez ("Debtor"), objects to Debtor's claim of an \$8,906.00 exemption in Debtor's 2019 federal tax refund. Doc. #22. Debtor claims the exemption under Florida Statute § 222.25(3), which permits the exemption of a "debtor's interest in a refund or credit received or to be received . . . pursuant to § 32 of the Internal Revenue Code of 1986, as amended." Fla. Stat. Ann. § 222.25(3). Section 32 of the Internal Revenue Code relates to the earned income credit permitted to a taxpayer. Trustee contends that Debtor's claimed exemption of \$8,906.00 exceeds the amount allowed by Florida Statute § 222.25(3) and requests that Debtor's exemption be reduced to \$5,081.00 to conform to that statute. Doc. #22; Doc. #34. Debtor appeared at the April 21, 2021 hearing but has not filed any written response to Trustee's objection.

Under Florida law, which is consistent with Federal Rule of Bankruptcy Procedure 4003(c), "the burden is on the objecting party to establish with preponderance of the evidence that the Debtor in fact is not entitled to the exemptions claimed." In re Ehnle, 124 B.R. 361, 363 (Bankr. M.D. Fla. 1991); In re Haning, 252 B.R. 799, 806 (Bankr. M.D. Fla. 2000); see also Fed. R. Bankr. P. 4003(c).

Here, Trustee's objection and supplemental supporting declaration explain that the amount claimed as exempt by Debtor exceeds the amount permitted under Florida Statute § 222.25(3). Debtor seeks to exempt all of her 2019 federal tax refund, but Florida Statute § 222.25(3) only permits Debtor to exempt the Earned Income Credit (EIC). Doc. #34. Debtor's EIC is \$5,081.00, which is totally exempt under Florida Statute § 222.25(3). Doc. #34. Therefore, Debtor's exemption in the 2019 federal tax refund should be reduced to \$5,081.00. Doc. #34. Based on the evidence before the court, the court determines that Trustee has established by a preponderance of the evidence that Debtor is not entitled to the entire exemption amount claimed under Florida Statute

§ 222.25(3), and Debtor's exemption in the 2019 federal tax refund should be reduced to \$5,081.00.

Accordingly, Trustee's objection is SUSTAINED. Debtor's claimed exemption in the 2019 federal tax refund will be reduced to \$5,081.

2. [21-10920](#)-A-7 **IN RE: CANDELARIA DE RUIZ**
[MOT-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO FINANCIAL NATIONAL BANK
4-28-2021 [\[12\]](#)

CANDELARIA DE RUIZ/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, the meeting of creditors was first scheduled for May 17, 2021, and has been continued to June 7, 2021. See Doc. #9; Tr.'s Report dated 05/20/21. Because parties in interest can still object to the debtor's claimed exemptions under Rule 4003, the debtor cannot yet establish that she is entitled to the scheduled exemption the debtor asserts is impaired by the lien. This motion is therefore premature and not ripe for hearing because the debtor cannot satisfy the first element required to avoid a lien under § 522(f)(1) at this time.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-16-2021 [\[16\]](#)

NISSAN-INFINITI LT/MV
LAYNE HAYDEN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Nissan-Infiniti LT ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Nissan Rogue, VIN KNMAT2MT9JP548972 ("Vehicle"). Doc. #16.

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 has failed to insure the Vehicle in the manner required by the lease agreement between the debtor and Movant. Doc. #18.

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. Doc. ##18, 19. The debtor's possession of the Vehicle stems from a 3-year lease agreement with Movant dated January 6, 2019, according to which the debtor does not own the Vehicle. Ex. A, Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to gain immediate possession of the Vehicle pursuant to

applicable law. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Official Form 108, Doc. #1.

4. [19-14644](#)-A-7 **IN RE: DONALD/JANICE ROSE**
[DMS-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
4-28-2021 [\[31\]](#)

DAVID SOUSA/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. On May 12, 2021, creditor and holder of a first deed of trust NewRez LLC ("Creditor") filed written non-opposition. Doc. #40.

David M. Sousa ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Donald Duane Rose and Janice Marie Rose (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 5438 W. Prospect Drive, Visalia, CA 93291 (the "Property") to Daniel Bailey ("Buyer") for the purchase price of \$470,000.00, subject to higher and better bids at the hearing. Doc. #31. Trustee seeks to sell the Property free and clear of any interests in the Property pursuant to § 363(f). Doc. #31.

Procedural Considerations

Three procedural defects with Trustee's motion must be addressed. First, the Notice of Hearing filed in connection with this motion does not comply with LBR 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 the trustee 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.

Second, Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to sell free and clear of liens or other interests to be served "in the manner provided for service of a summons and complaint by Rule 7004." Trustee seeks to sell the Property free and clear of the interests of the Tulare County Tax Collector, Creditor NewRez LLC, and The Lakes Homeowners Association of Visalia (together, "Lienholders"). Doc. #31. There also is a solar system lease with Sunnova Asset Portfolio LLC ("Sunnova") with an outstanding amount of \$49,609.19. Decl., Doc. #35; Claim 15. Sunnova's claim is not secured by the Property, but the lease concerns equipment attached to the Property, and the motion contemplates Sunnova's removal of the equipment from the Property. Claim 15; Doc. #31. Under the terms of the proposed sale, Buyer will not assume

the obligations on the lease with Sunnova but will allow Sunnova the opportunity to remove the leased equipment from the Property. Decl., Doc. #35.

Service of the motion to Lienholders and Sunnova has not been shown to satisfy 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). Although Creditor's written non-opposition likely waived any objection to service as to Creditor, there is no indication that proper service to an officer or agent under Rule 7004(b)(3) was made on The Lakes Homeowners Association of Visalia or Sunnova.

With respect to a state or municipal corporation or other governmental organization, service under Rule 7004(b)(6) may be made by mailing, first class prepaid, "a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state." Rule 7004(b)(6). There is no indication that proper service under Rule 7004(b)(6) was made on the Tulare County Tax Collector.

Third, the Proof of Service by Mail filed in connection with Trustee's motion does not indicate that any of the Lienholders, Sunnova, or other directly affected parties were served with the motion to sell. See Doc. #37. LBR 9014-1(d)(3)(B)(iv) occasionally permits a notice of hearing to be served without the motion if the notice of hearing succinctly and sufficiently describes the nature of the relief being requested. "However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief." LBR 9014-1(d)(3)(B)(iv). In this case, service of the notice of hearing, without the motion and supporting papers, does not satisfy the requirements of the local rules or Rule 9014 because the parties directly affected by the motion, each of the Lienholders and Sunnova, were not served with the motion and supporting papers.

The failure of parties in interest that are not Lienholders or Sunnova 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 those non-responding parties in interest are entered.

Creditor's Request to Include Language in Order

Creditor's written non-opposition requests that the order granting Trustee's motion include the following language:

The loan secured by a lien on real property located at 5438 W. Prospect Dr., Visalia, CA 93291 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from NewRez LLC, f/k/a New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing.

Creditor's Non-Opp'n, Doc. #40. If Trustee agrees to include the proposed language in the order and Creditor waives any defect in service of the motion, the court is inclined to grant this motion subject to higher and better offers at the hearing.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #31, 35. Trustee has previously received offers to purchase the Property from two separate buyers. Doc. #31. The first buyer offered \$475,000 but reduced the offer to \$430,000 upon seeing the condition of the Property. Id. The second buyer offered \$430,000 but canceled their offer upon seeing the condition of the Property. Id. Buyer has tendered an offer to purchase the Property for a cash price of \$470,000, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Decl., Doc. #35. Buyer has agreed to pay most of the escrow fees, and no real estate commissions are being paid in the sale. Id. Buyer's offer is sufficient to pay all known liens and encumbrances on the Property. Id. Trustee's proposed sale to Buyer is made in consideration of the full and fair market value of the Property and previous purchase offers received by Trustee. Doc. #31. Trustee estimates the total closing costs to the estate will be \$2,000. Decl., Doc. #35.

The Property will be sold at a price greater than the aggregate value of all liens on the Property and it appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing and the Trustee's agreement to include Creditor's proposed language, the court is inclined to GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). However, for the reasons stated below, the court cannot authorize the sale of the Property free and clear of liens as requested under 11 U.S.C. § 363(f).

Selling Property of the Estate Free and Clear of Interests under 11 U.S.C. § 363(f) Not Permitted Without Express Consent of Lienholders and Sunnova

The trustee may sell property under § 363(b) free and clear of any interest of an entity other than the estate only if: (1) applicable nonbankruptcy law permits the sale; (2) such entity consents; (3) the interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the entity could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f).

Here, Trustee states that the Lienholders hold liens against the Property. Decl., Doc. #35. There are outstanding real property taxes owed to Tulare County, outstanding HOA fees owed to The Lakes Homeowners Association of Visalia, and a deed of trust in favor of Creditor. Decl., Doc. #35. There also is personal property owned by Sunnova that is attached to the Property under a lease agreement with Sunnova. Id. The aggregate value of these liens plus Debtors' exemption of \$125,000 is estimated to be less than \$460,000. Decl., Doc. #35; Creditor's Non-Opp'n, Doc. #40. The Property is to be sold for \$470,000, which is greater than the aggregate value of all liens on the Property. Decl., Doc. #35. Therefore, Trustee satisfies the initial requirements of § 363(f). However, because proper notice was not provided to Lienholders and Sunnova, a motion to sell free and clear can only be granted upon the express acceptance of the terms of the proposed sale by each of the Lienholders and Sunnova. Alternatively, the request to sell the Property free and clear of liens and other interests could be denied without prejudice to permit Trustee to serve the Lienholders and Sunnova properly.

Request to Limit Notice

Trustee also moves the court pursuant to Rules 2002 and 9007 and 11 U.S.C. § 105(a) for an order limiting notice of the sale and the related pleadings to: (1) Debtors; (2) the Office of the United States Trustee; (3) creditors in Debtors' schedules with actual dollar amounts owed according to those schedules; (4) those parties that have filed proofs of claim; and (5) any party that has requested special notice in this matter (collectively, the "Service Parties"). Doc. #36.

Rule 9007 provides that the court "shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given." Section 105 of the Bankruptcy Code permits the court to issue any order "that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

Debtors have scheduled hundreds of parties having claims of \$0. See Doc. #14. Given the size of the sale of the Property and the cost of noticing the sale to hundreds of parties listed in Debtors' schedules that appear to have no interest in this case, Trustee believes that limited notice is appropriate. Doc. #36.

The court finds that good cause exists pursuant to Rules 2002 and 9007 and 11 U.S.C. § 105(a) to limit notice as requested by Trustee. Trustee's request to limit notice of the motion is GRANTED.

Conclusion

Pursuant to 11 U.S.C. § 363(b)(1), Trustee is authorized to sell the Property. However, without the express consent of Lienholders and Sunnova, the sale of the Property will not be free and clear of liens and other interests. Trustee's request to limit notice of the motion is granted.

The 14-day stay of Rule 6004(h) will be ordered waived because Buyer has indicated that time is of the essence in purchasing the Property and permitting the sale of the Property will benefit creditors and the estate.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH CASH A. LONG AND JEFFREY E. PATTERSON
4-28-2021 [\[181\]](#)

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Mogul Energy Partners I, LLC ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the settlement of contract claims against Cash A. Long ("Long") and Jeffrey E. Patterson ("Patterson"). Doc. #181. Long and Patterson are both members of Debtor. Doc. #184.

Among the assets of the estate are claims against Long and Patterson for unpaid promissory notes Long and Patterson each owed to Debtor as of the petition date. Doc. #183. Based on the unpaid promissory notes, Trustee could recover \$154,178.19 from Patterson and \$152,676.92 from Long. Doc. #181. Long and Patterson each filed claims against the estate for \$441,635.60. Claims 10 and 11. Trustee has agreed to release Long and Patterson from their obligations to the estate and, in exchange, Long and Patterson each agree to subordinate their claims against the bankruptcy estate to all other timely-filed general unsecured and higher priority claims. Doc. #181.

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 Properties), 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. ##181, 183. The proposed settlement allows for payment to general unsecured creditors before Long and Patterson and will avoid expenses associated with prosecuting an adversary proceeding against Long and Patterson. Tr.'s Decl., Doc. #183. Although Trustee believes the estate would ultimately be able to recover the debt owed to the estate by Long and Patterson, the proceeds of any recovery would ultimately be redistributed to Long and Patterson as holders of general unsecured claims. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. 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). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee, Long, and Patterson is approved.

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

6. [20-11877](#)-A-7 **IN RE: ANA VENTURA DE PAREDES**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-26-2021 [[18](#)]

JAMES SALVEN/MV
LE'ROY ROBERSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed timely opposition (Doc. #25), and this matter will proceed as scheduled.

James E. Salven ("Trustee"), the chapter 7 trustee in the bankruptcy case of Ana Isabel Ventura De Paredes ("Debtor"), objects to Debtor's claims of exemption under California Code of Civil Procedure ("C.C.P.") § 703.140(b) because Debtor, a married individual filing without her spouse, is required by C.C.P. § 703.140(a)(2) to file a spousal waiver. Obj., Doc. #18.

On May 3, 2021, Debtor filed a Spousal Waiver of Right to Claim Exemptions Pursuant to C.C.P. § 703.140(a)(2). Doc.#23. On May 12, 2021, Debtor filed a written response opposing Trustee's objection asserting that Trustee no longer opposes Debtor's claimed exemptions. Doc. #25.

Accordingly, unless further opposition is presented at the hearing, Trustee's objection will be OVERRULED.

7. [20-13785](#)-A-7 **IN RE: BRANDON/JENIFER THACKER**
[MMS-1](#)

MOTION TO COMPEL ABANDONMENT
4-22-2021 [\[32\]](#)

JERRY REYNOLDS/MV
GRISELDA TORRES/ATTY. FOR DBT.
MATTHEW SPIELBERG/ATTY. FOR MV.
NON-OPPOSITION

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE. The motion and related papers as filed do not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B) which sets forth requirements for the notice of hearing, including the requirement that the names and addresses of persons who must be served with any opposition be included in the notice of hearing and the consequences to potential respondents that fail to file timely written opposition. Additionally, this motion fails to cite to any legal grounds on which the relief sought can be granted and therefore does not comply with LBR 9014-1(d)(3)(A), which requires every motion or other request for relief to "state with particularity the factual and legal grounds" supporting the request. Finally, the moving party has not responded to a Memo to File RE: Calendar Correction filed by the Bankruptcy Court Clerk at Doc. #37. Per the Memo, the motion and related papers listed the incorrect department.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

MOTION TO DISMISS CASE
5-19-2021 [\[24\]](#)

HARINDER AUJLA/MV
PETER BUNTING/ATTY. FOR DBT.
OST 5/19/21

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.

On May 19, 2021, the court granted the debtors' ex parte Motion for Order Shortening Time to hear the debtors' Motion to Dismiss Case. Doc. #30. This Motion to Dismiss was set for hearing on May 26, 2021 at 1:30 p.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). 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.

Gobinder Singh Aujla and Harinder Aujla (together, "Debtors") move to dismiss this chapter 7 case on the grounds that Debtors are ineligible to be debtors under § 109(h)(1) of the Bankruptcy Code because Debtors failed to obtain credit counseling before filing their chapter 7 bankruptcy case. Doc. #24.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtors' voluntary chapter 7 case will cause no legal prejudice to interested parties because Debtors are not eligible to be debtors under the Bankruptcy Code. Section 109(h)(1) of the Bankruptcy Code states that "an individual may not be a debtor under this title" unless the requirements of that section are satisfied. 11 U.S.C. § 109(h)(1). Debtors failed to satisfy the credit counseling requirements of § 109(h)(1). The court finds that cause exists to dismiss this case and dismissal will cause no legal prejudice to interested parties.

Accordingly, this motion will be GRANTED.