

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, June 1, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION
[WJH-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES HELSLEY
FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
5-4-2022 [[96](#)]

RILEY WALTER/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.

Wanger Jones Helsley PC ("Movant"), counsel for KR Citrus, Inc., a California Corporation ("DIP"), requests allowance of interim compensation and reimbursement for expenses for services rendered from March 18, 2022 through April 30, 2022. Doc. #96. Movant provided legal services valued at \$68,922.00, and requests compensation for that amount. Doc. #96. Movant requests reimbursement for expenses in the amount of \$988.46. Doc #96. This is Movant's first interim fee application. No prior fee application has been submitted.

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). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #78. 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) researching and drafting of application for order shortening time; (2) preparing emergency documents for filing; (3) researching and preparing documents regarding motions for turnover and cash collateral; (4) preparing for hearing regarding motions for turnover and cash collateral; (5) attending phone conferences and drafting emails regarding cash collateral motion; (6) preparing supplemental cash collateral

declaration and budget; (7) preparing various chapter 11 required documents and schedules; (8) preparing responses for the United States Trustee; (9) researching and preparing motion to assume executory contract; (10) preparing various documents to continue debtor's reorganization viability; (11) preparing, revising and assembling of Subchapter V plan and exhibits; (12) preparing and drafting various documents regarding a motion to value collateral; (13) conducting legal research to characterize business transactions; (14) corresponding with DIP; and (15) general case administration. Exs. A-C, Doc #98. 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 and expenses in the aggregate amount of \$69,910.46. 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.

2. [22-10629](#)-A-12 **IN RE: LUIS/ANGELA OLIVEIRA**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-12-2022 [[1](#)]

DAVID JOHNSTON/ATTY. FOR DBT.

NO RULING.

At the status conference, counsel for the debtors should be prepared to explain to the court why a status report together with evidence and legal authority to establish that the debtor(s) are a "family farmer" as that term is defined in § 101(18)(A) were not filed with the court and served on the chapter 12 trustee as required by the Order Setting Chapter 12 Status Conference issued by this court on April 29, 2022. Doc. #10.

3. [22-10629](#)-A-12 **IN RE: LUIS/ANGELA OLIVEIRA**
[NOS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-18-2022 [[14](#)]

WILLIAM SYMONDS/MV
DAVID JOHNSTON/ATTY. FOR DBT.
CHRISTOPHER HUGHES/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 14 days' notice prior to the hearing date 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 following holders of fractional interests in a promissory note and deed of trust: Harry Kaye, Trustee of First American Mortgage Company Retirement Trust; Adam Rodriguez, Trustee of the Adam Rodriguez Living Trust dated January 9, 2007; June Francisco Symonds, Trustee of the June Francisco Symonds Living Trust dated March 19, 1997; William Webster Symonds, Trustee of the William Webster Symonds Trust dated October 19, 2009; Allan Locke, Patricia Locke, and William J. Creagh (hereafter collectively referred to as "Movant") seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property commonly known as 25469 and 25471 West Hearst Road, Gustine, California (the "Property"). Doc. #14, 18. Movant also requests a determination that there is no automatic stay currently in place as to the Property. Doc. #14.

As an initial matter, this court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of a filed document but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

Movant is the beneficiary of a promissory note secured by a deed of trust against the Property (the "Loan"). Decl. of Mark Parsons Jr. ¶¶ 4-5, Doc. #16; Exs. 2 & 3, Doc. #17. The promissory note was executed by Luis M. Oliveira and Angela Oliveira (together, "Debtors") in favor of Movant's predecessor in interest, Cal Vista Home Loans Inc., on May 17, 2007. Parsons Decl. ¶ 5, Doc. #16; Ex. 2, Doc. #17. Debtors are in default on the Loan. Parsons Decl. ¶ 6, Doc. #16.

In the past, Movant engaged loan servicing agent FCI Lender Services to process Loan payments, respond to Debtors' inquiries, and keep track of principal and interest paid. Parsons Decl. ¶ 7, Doc. #16. In or around November 2021, Movant changed loan servicing agents from FCI Lender Services to Home Loan Credit Corporation, which took over loan servicing agency duties from FCI Lender Services. Id. On or about November 10, 2021, Movant recorded a Notice of Default on the Loan. Parsons Decl. ¶ 8, Doc. #16; Ex. 5, Doc. #17. The Notice of Default and Election to Sell Under Deed of Trust was recorded in Merced County on November 19, 2021. Ex. 5, Doc. #17.

The declaration testimony submitted with the motion states that Movant's loan servicing agent transmitted a Notice of Trustee Sale to Debtors on February 22, 2021 and cites to Exhibit 6 as a true and correct copy of the Notice of Trustee Sale. Parsons Decl. ¶ 9, Doc. #16. Because the Notice of Default and Election to Sell Under Deed of Trust was not recorded until November 2021, the February 22, 2021 date is likely a typographical error. However, Exhibit 6 submitted with the motion appears to be a duplicate of Exhibit 5, and the court is unable to discern whether or when a Notice of Trustee Sale was transmitted to Debtors. Movant will have an opportunity to correct the record at the hearing.

Debtors filed the voluntary petition under chapter 12 of the Bankruptcy Code on April 12, 2022. Doc. #1. On April 15, 2022, the clerk entered a Notice of Incomplete Filing and Notice of Intent to Dismiss ("NOID"). Doc. #8. No schedules, no statement of financial affairs, no summary of assets and liabilities, and no attorney's disclosure statement had been filed, and the NOID stated that Debtors' bankruptcy case may be dismissed if Debtors failed to submit the forms by April 26, 2022. Id. Debtors did not file schedules until May 1, 2022. Doc. #13.

Debtors' Schedule A/B lists the Property. Schedule A/B, Doc. #13. Debtors' Schedule D asserts that Movant holds the first deed of trust on the Property and ACM Investor Services Inc. ("ACM") holds a second deed of trust on the Property. Schedule D, Doc. #13. Debtors value the Property at \$1,800,000, and schedule Movant's secured claim at \$938,070. Id. Debtor's schedule ACM's secured claim at \$421,704. Id.

Debtors' Schedule G indicates that that a tenant leases a dairy facility and approximately 16 acres of the Property while Debtors retain about 82 acres of the Property for row crop farming. Schedule G, Doc. #13. Debtors receive approximately \$25,000 per month from rental income for leasing a portion of the Property and other properties owned by Debtors. Schedules G & I, Doc. #13. Debtors expend \$11,200 every month on mortgages on real property other than their residence, including the Property. Schedule J, Doc. #13. Debtors also spend \$12,083 every month on interest accruing on matured debt. Schedule J, Doc. #13.

This is Debtors' fifth bankruptcy case. On September 17, 2012, Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code (the "First Case"). See Bankr. E.D. Cal. Case No. 12-17910. The bankruptcy court dismissed the First Case upon granting the United States Trustee's motion to dismiss under 11 U.S.C. § 1112(b). See First Case Doc. ##149, 158, 159. In the First Case, the court determined that Debtors failed to propose a plan after 8 months in chapter 11 and had a history of failing to file monthly operating reports. First Case Doc. #158. The Order of Dismissal entered in the First Case barred Debtors from filing a subsequent chapter 11 petition for a period of 180 days. Order of Dismissal, First Case Doc. #159.

Debtors' second bankruptcy case was filed under chapter 12 on February 8, 2017 (the "Second Case"). See Bankr. E.D. Cal. Case No. 17-10427. Debtors received an extension of time to file schedules and other documents in the Second Case. Second Case Doc. #22. Debtors' chapter 12 plan was confirmed on July 31, 2017 and provided for Movant in Class 3.1. Second Case Doc. #183. The confirmation order states that "[t]he pending foreclosure commenced by FCI [Movant's agent at the time] is cancelled." Id. at 5:5. Movant contends the Second Case was filed shortly before a scheduled trustee sale initiated by Movant. Memorandum of Points & Authorities at 5:8-9, Doc. #18. On September 2, 2020, Debtors moved for entry of discharge in the Second Case although Debtors were unable to pay the secured claims in full by the maturity date in the chapter 12 plan. Second Case Doc. ##229-231. Movant subsequently sought relief from the automatic stay to foreclose on the Property, which the court granted on November 13, 2020 under § 362(d)(1). Second Case Doc. ##236, 250.

The confirmation order confirming the chapter 12 plan in the Second Case stated that Debtors waived their right to extend the chapter 12 plan beyond 36 months and would not refile a bankruptcy case sooner than 180 days after July 31, 2020. Second Case Doc. #183 at 6:16-19. Nevertheless, Debtors commenced their third bankruptcy case on December 8, 2020 (the "Third Case"), before the Final Decree in the Second Case had even been entered and less than a month after the court granted Movant relief from the automatic stay with respect to the

Property. See Second Case Doc. #250, 252; Third Case, Bankr. E.D. Cal. Case No. 20-90783.

The voluntary chapter 12 petition in the Third Case was not filed with the required schedules or statement of financial affairs. Third Case Doc. ##3, 5. Debtors sought an extension in time to file the required documents, explaining that the Third Case was filed on an emergency basis due to at least two foreclosure sales scheduled for December 9, 2020, the day after the petition date. Third Case Doc. #19. The court granted Debtors' request for an extension, requiring the missing documents to be filed by January 5, 2021. Third Case Doc. #23. Debtors never filed any schedules, but instead moved to voluntarily dismiss the Third Case on January 16, 2021. Third Case Doc. #28. The order dismissing the Third Case was entered on January 19, 2021. Third Case Doc. #30.

Less than ten days after the entry of the order dismissing the Third Case, on January 27, 2021, Debtors filed yet another voluntary chapter 12 petition (the "Fourth Case"). See Bankr. E.D. Cal. Case No. 21-10163. Debtors again did not file the required schedules, statement of financial affairs, or attorney's disclosure statement, and an NOID was issued on January 29, 2021. Fourth Case Doc. #7. Debtors again sought an extension to file schedules and other required documentation, which the court granted on February 10, 2021. Fourth Case Doc. #18. Debtors had until February 24, 2021 to file the required missing documents identified in the NOID. Id. Debtors filed the documents on February 24, 2021 and listed the Property on their Schedule A/B. Schedules, Fourth Case Doc. #23.

On March 5, 2021, ACM, the holder of the second deed of trust on the Property, moved for relief from the automatic stay to commence or complete foreclosures with respect to the Property and other real property securing ACM's claim. Fourth Case Doc. #26. ACM's motion was unopposed, and the court granted the motion at the 11:00 a.m. hearing on April 8, 2021, finding cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1) and in rem stay relief pursuant to 11 U.S.C. § 362(d)(4). Civil Minutes, Fourth Case Doc. #35. The court determined that the filing of the Fourth Case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. Id. After the 11:00 a.m. hearing, at 1:04 p.m. on April 8, 2021, Debtors moved to dismiss the Fourth Case. Fourth Case Doc. #36. The court entered the Order Dismissing Chapter 12 Case on April 9, 2021, before the order granting ACM relief from the automatic stay was entered on April 12, 2021. Fourth Case Doc. ##38, 42.

Almost exactly one year later, on April 12, 2022, Debtors filed a voluntary petition under chapter 12 initiating this bankruptcy case. Doc. #1.

Movant asks the court to confirm that the automatic stay is inoperative with respect to the Property pursuant to 11 U.S.C. § 362(b)(20). Section 362(b)(20) states that the filing of the bankruptcy petition does not operate as a stay under § 362(a) "of any act to enforce any lien against or security interest in real property following entry of the order under § 362(d)(4) as to such real property in any prior case under this title for a period of 2 years after the date of the entry of such an order[.]" 11 U.S.C. § 362(b)(20). However, the Fourth Case was dismissed prior to the entry of the order under § 362(d)(4), and this court finds that the automatic stay in Debtors' current case is in place under the plain language of § 362(b)(20).

In any event, the court is inclined to GRANT Movant's motion under § 362(d)(1) and (d)(4).

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause. "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).

To obtain relief under § 362(d)(4), the moving party must show, and the court must affirmatively find, three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme was to delay, hinder, or defraud creditors; and (3) the scheme involved either (i) the transfer of some interest in the real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4); First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

After review of the evidence, the court finds that cause exists to grant Movant relief from the automatic stay. Debtors are in default on the Loan, and Movant has been unable to pursue collection remedies against Debtors because of successive bankruptcy filings.

Additionally, the court finds that Movant has made the requisite showing under § 362(d)(4). The instant bankruptcy case, Debtors' fifth, is part of a scheme. The object of the scheme is to hinder or delay creditors, including Movant, for the purpose of delaying foreclosure proceedings on real property, including the Property. Debtors failed to abide by a 180-day bar to refiling self-imposed in the Second Case. Debtors filed the Third Case prior to the expiration of the 180-day bar to prevent a foreclosure sale affecting the Property. Debtors then voluntarily dismissed the Third Case only to refile just a few days later. Debtors then moved to dismiss the Fourth Case only hours after the court granted a motion requesting in rem stay relief pursuant to 11 U.S.C. § 362(d)(4), but before the court could enter an order granting such relief. Further, each of Debtors' prior bankruptcies affected the Property, and the Property is affected in Debtors' current bankruptcy case.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law. Further, pursuant to 11 U.S.C. § 362(d)(4), the order shall be binding in any other case under Title 11 of the United States Code purporting to affect the Property for two years after the date of the entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived in light of Debtors' attempts to hinder and delay the rights of Movant.

11:00 AM

1. [22-10603](#)-A-7 **IN RE: NOU YANG**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECHNOLOGY FEDERAL
CREDIT UNION
5-10-2022 [[10](#)]

NO RULING.

1. [22-10306](#)-A-7 **IN RE: RIAN HALL**
[UST-1](#)

MOTION TO DISMISS CASE
4-8-2022 [\[12\]](#)

TRACY DAVIS/MV
VINCENT GORSKI/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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 chapter 7 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, Tracy Hope Davis, the United States Trustee for Region 17, asks the court to dismiss this case pursuant to 11 U.S.C. § 707(a) because the debtor failed to comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1). Doc. #12. The debtor did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Rian Leeann Hall ("Debtor") filed for relief under chapter 7 of the Bankruptcy Code on February 28, 2022. Doc. #1. The Certificate of Counseling filed with the bankruptcy petition shows that Debtor receive pre-petition credit counseling on August 3, 2021, which is outside the 180-day period set forth in § 109(h)(1). Doc. #1.

The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtor has not requested a waiver of the § 109(h)(1) requirements. Because Debtor did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

Further, under 11 U.S.C. § 707(a), the court may dismiss a case, after notice and a hearing, for cause, including unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 707(a)(1). There is "cause" for dismissal

because Debtor is ineligible to be a bankruptcy debtor pursuant to 11 U.S.C. § 109(h).

Accordingly, this motion is GRANTED. The case will be dismissed.

2. [22-10415](#)-A-7 **IN RE: DESMOND PRYER**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF CREDITORS
4-26-2022 [[22](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

In the notice of hearing and opposition to trustee's motion to dismiss filed on May 16, 2022, the debtor indicates that he is incarcerated at California Substance Abuse Treatment Facility and State Prison and was prevented from attending the meeting of creditors held on April 25, 2022. Doc. #25. Debtor requests that the meeting of creditors be rescheduled to be held telephonically or by Zoom. Id. In light of the ongoing COVID-19 outbreak, meetings of creditors are currently being conducted by Zoom.

The debtor shall attend, by Zoom, the continued meeting of creditors rescheduled for **June 6, 2022 at 3:00 p.m.** Appearance by zoom can be made by following the instructions found on the court's website at <https://www.caeb.uscourts.gov/Calendar/341Calendar.aspx>. The debtor is responsible for making arrangements to appear by Zoom at the continued meeting of creditors. The chapter 7 trustee in this case is Peter L. Fear. The website for specific instructions on how to attend the meeting by Zoom can be found at <https://pages.trustesolutions.com/fear>.

The debtor shall attend the meeting of creditors rescheduled for June 6, 2022 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-18-2022 [\[14\]](#)

COREY RUSSELL/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
PATRICK KAVANAGH/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 14 days' notice prior to the hearing date 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.

Corey Russell ("Movant") moves the court for an order determining that there is no automatic stay in place with respect to eviction proceedings between Movant and Debbie Ann Schaumberg ("Debtor") concerning residential real property located at 10418 Mustang Peak Drive, Bakersfield, CA 93311 (the "Property"). Doc. #14. Alternatively, Movant seeks relief from the automatic stay under § 362(d)(1) and (d)(2). Doc. #14.

Movant is one of the owners of the Property. Decl. of Corey Russell, Doc. #17. On March 23, 2020, Debtor and Movant entered into a rental contract for the Property. Id. On July 22, 2021, Movant gave Debtor a 60-day notice to quit. Id. On November 23, 2021, Movant commenced an unlawful detainer action against Debtor in Kern County Superior Court as case number BCL-21-016278. Id.; Ex. A, Doc. #16. Pre-petition, on January 22, 2022, the Superior Court entered judgment in Movant's favor. Id.; Ex. B, Doc. #16. Movant testifies that he first became aware of Debtor's bankruptcy on the day Debtor was to be locked out of the Property. Id.

Debtor filed the voluntary petition under chapter 7 of the Bankruptcy Code on March 3, 2022. Doc. #1. Debtor indicated on the petition that she rents her residence and that her landlord obtained an eviction judgment against her pre-petition. Petition Question 11, Doc. #1. Filed with the petition is Official Form 101A: Initial Statement About an Eviction (the "Initial Statement"). Doc. #1. Debtor did not list the landlord's name or address on the Initial Statement. Id. The Initial Statement indicates that, if the debtor had checked the relevant boxes, signed the form to certify that both statements next to the checked boxes apply, and served the landlord with Initial Statement, then the automatic stay would apply to the eviction proceeding for the first 30 days after the bankruptcy petition is filed. Id. Debtor did not check either of the required boxes in the certification portion of the Initial Statement. Id. A review of the docket indicates that no funds were deposited with the clerk of court, as required by 11 U.S.C. § 362(l)(1)(B).

If the debtor wishes to stay in the residence after the initial 30-day period, the Initial Statement instructs the debtor to pay the entire delinquent amount to the landlord before the 30-day period expires, fill out a Statement About Payment of an Eviction Judgment Against You (Official Form 101B) (the "Rent Payment Statement"), and file and serve it before the 30-day period ends. Id.

Debtor filed a Rent Payment Statement with the petition. Doc. #1. However, like the Initial Statement, Debtor did not check any of the required boxes in the certification portion of the form. Rent Payment Statement, Doc. #1.

Subject to § 362(1), the filing of the bankruptcy petition does not act as a stay "of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides under a lease or rental agreement and with respect to which the lessor has obtained," before the petition date, "a judgment for possession of such property against the debtor[.]" 11 U.S.C. § 362(b) (22).

"Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained the pre-petition judgment on the petition and on any certification filed under this subsection." 11 U.S.C. § 362(1) (5) (A).

"If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)[,] subsection (b) (22) shall apply immediately upon failure to file such certification, and relief from the stay provided under [§ 362] (a) (3) shall not be required to enable the lessor to complete the process to recover full possession of the property[.]" 11 U.S.C. § 362(1) (4); In re Furtado, Case No. 11-19099, 2011 Bankr. LEXIS 5667, *1 (Bankr. E.D. Cal. Dec. 29, 2011).

Here, it appears that Debtor did indicate on the petition that Debtor's landlord obtained judgment for possession of Debtor's residence pre-petition. Movant has demonstrated that he rented out the Property to Debtor and subsequently obtained a judgment for possession of the Property where Debtor resided prior to the Debtor filing her bankruptcy petition. However, Debtor did not comply with either of the certification requirements set forth in § 362(1) (1) or (2). Consequently, pursuant to § 362(1) (4), the automatic stay does not protect Debtor from the eviction proceedings and no stay relief is required to enable Movant to complete the process to recover full possession of the Property. 11 U.S.C. § 362(1) (4) (A).

Even if the stay were in place, the court finds grounds to grant Movant relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1) and (d) (2).

Section 362(d) (1) of the Bankruptcy Code allows the court to grant relief from the stay for cause. "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). Here, there is cause to lift the stay because Movant obtained a pre-petition judgment of unlawful detainer against Debtor and Debtor remains in possession of the Property.

Section 362(d) (2) of the Bankruptcy Code 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. Here, Debtor does not have any equity in the Property because she does not own the Property.

Additionally, the Property is not necessary to an effective reorganization because Debtor is in chapter 7.

In conclusion, the court finds that there is no automatic stay currently in effect with respect to Movant's pre-petition judgment for unlawful detainer against Debtor. To the extent that there is an automatic stay in place, the automatic stay will be terminated pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit Movant to take possession of the Property.

4. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[DMG-3](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH ABLP PROPERTIES, VISALIA LLC AND ABLP REIT LLC AND/OR MOTION TO SELL,
MOTION TO APPROVE CORPORATE DISSOLUTIONS
3-2-2022 [\[81\]](#)

JAMES SALVEN/MV
D. GARDNER/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 originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On March 16, 2022, the parties stipulated to continue the hearing to April 27, 2022 at 1:30 p.m., requiring written opposition to be filed no later than April 13, 2022, and any replies to be filed no later than April 20, 2022. Order, Doc. #92. The debtor, Esperanza Hansen Gonzalez ("Debtor"), timely filed written opposition on April 13, 2022. Doc. #94. Timely replies were filed on April 20, 2022 by the chapter 7 trustee ("Trustee") and one of the parties settling with the chapter 7 estate, ABLP Properties Visalia LLC ("ABLP Properties"). Doc. ##98, 100.

The court posted its pre-hearing disposition prior to the April 27, 2022 hearing, indicating the court would deny the motion. At the hearing, Trustee requested a continuance. After considering the statements made by all parties at the hearing, the court continued the hearing to May 25, 2022 at 1:30 p.m. Order, Doc. #117. Supplemental papers could be submitted by Trustee no later than May 11, 2022; Debtor could respond no later than May 18, 2022; and any party wishing to overbid must qualify no later than May 23, 2022. Order, Doc. #117.

On May 11, 2022, Trustee submitted a supplemental declaration, a revised settlement agreement, and a revised stipulated judgment addressing the concerns raised by Debtor and the court at the April 27, 2022 hearing. Doc. ##123-124. Debtor did not file a timely supplemental response; however, Debtor did file a response on May 23, 2022 ("Response"). Doc. #126.

On May 24, 2022, ABLP Properties filed an objection to the late-filed Response and requested that the Response be stricken in its entirety. Doc. #127. At the hearing on May 25, 2022, the court overruled ABLP Properties' objection and motion to strike the Response. The court determined that Debtor, now acting in pro se, did not understand the deadlines to file her Response and the Response contained information that the court wanted Trustee to consider before granting the motion to compromise. The court continued the hearing to June 1, 2022, and required Trustee to file additional pleadings by noon on May 31, 2022, after his review of the Response, and Debtor and ABLP Properties could respond at the hearing on June 1.

Trustee, as chapter 7 trustee of Debtor's bankruptcy estate, moves to approve the compromise of claims and interests in state court litigation, sell the estate's assets in property, and approve corporate dissolutions. Doc. #81. Debtor opposes Trustee's motion. Doc. #94. The amended compromise and settlement agreement for which Trustee seeks approval is filed as Exhibit G, Docket No. 124 (the "Settlement Agreement"). Ex. G, Doc. #124.

After reviewing the supplemental papers, including the papers filed on May 31, 2022 (Doc. # 134), the court is inclined to GRANT the motion.

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).

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)).

Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 23, 2021. Doc. #1. Debtor scheduled a 100% ownership interest in The Magnolia Group, Inc., a Delaware corporation ("Magnolia Group"), valued at \$0. Schedule A/B, Doc. #21. Debtor scheduled a 100% ownership interest in Magnolia Park, a Nevada corporation, valued at \$0.¹ Id. Debtor also scheduled, as a contingent and unliquidated claim, a lawsuit against ABLP REIT LLC

¹ Debtor scheduled Magnolia Park as a Nevada corporation while Trustee's motion identifies Magnolia Park as an LLC. It does not appear that the specific corporate structure is at issue.

("ABLP REIT") and ABLP Properties (together, the "ABLP Entities") as well as others pending in Tulare County Superior Court as case number VCU284145, valued at \$5 million ("State Court Litigation"). Id. Debtor did not exempt the lawsuit. Schedule C, Doc. #21.

Debtor scheduled ABLP REIT as having a disputed unsecured claim of \$3.2 million in connection with the State Court Litigation and scheduled ABLP Properties as having a disputed unsecured claim also in connection with the State Court Litigation, but valued ABLP Properties' claim at \$0. Schedule E/F, Doc. #21. On October 19, 2021, ABLP Properties filed a proof of claim asserting a claim of \$3,657,906.89 in connection with an adversary proceeding filed by ABLP Properties to determine certain of Debtor's debts to be nondischargeable under 11 U.S.C. § 523(a)(2). Claim 7. The non-dischargeability complaint filed by ABLP Properties against Debtor is pending before this court as Adversary Proceeding No. 21-01031 (the "Adversary Proceeding").

Trustee testifies that Magnolia Group's business consisted of the ownership of real properties located at 2948 and 2950 East Douglas Ave., Visalia, CA, and 1331 Lewis Lane, Tulare, CA. Tr. Decl. ¶ 9, Doc. #83. Trustee testifies that the East Douglas property was foreclosed in November 2019, and the Lewis Lane property was foreclosed on June 30, 2020. Id. Trustee states that Magnolia Group has no assets and no value. Id. ¶¶ 3, 11.

Trustee further testifies that the business operation of Magnolia Park consists of a nursing home and is presently under receivership since the appointment of a receiver on September 30, 2021. Id. ¶ 11. Trustee states that the effect of executing and performing under the Settlement Agreement will result in the receiver of Magnolia Park conducting a UCC sale to dispose of the personal property assets of Magnolia Park. Id. Otherwise, Trustee does not believe Magnolia Park has any value. Id. ¶ 3.

The Settlement Agreement involves the State Court Litigation and the cross-complaint filed by the ABLP Entities against Debtor, Magnolia Group, Magnolia Park, and Debtor's husband Arnulfo Gonzalez. Decl. of Trustee ¶ 8, Doc. #83.

Trustee states that the main points of the settlement agreement are:

- a. Payment of \$30,000 to the estate. Tr. Decl., p. 4, ¶ 12.a, Doc. #83. The court initially raised the question of what entity would pay the amount to the estate, but the revised Settlement Agreement states that the ABLP Entities will pay \$30,000 to Trustee. See Ex. G, Doc. #124.
- b. A stipulated judgment on the cross-complaint in favor of the ABLP Entities. Tr. Decl., p. 4, ¶ 12.b, Doc. #83. The court initially raised concern because the original proposed settlement agreement stated that the stipulated judgment on the ABLP Entities' cross-complaint in the State Court Litigation would be against Debtor, Magnolia Park, and Magnolia Group, jointly and severally. Ex. E, page 2, ¶ 3.b, Doc. #84; see also Ex. F, Doc. #87. However, the revised Settlement Agreement and stipulated judgment have excluded Debtor from the relevant provisions. Ex. G, Doc. #124; Ex. H, Doc. #124.
- c. A UCC foreclosure on the personal property owned by Magnolia Park. Tr. Decl., p. 4, ¶ 12.c, Doc. #83. Trustee supplemented his original testimony to explain that the UCC sale is necessary to allow the ABLP Entities to transfer the operating nursing home business to an

operational entity that will operate and maintain the business. Tr.'s Suppl. Decl. ¶ 5, Doc. #123.

- d. ABLP Properties and ABLP REIT shall have judgments against Debtor, Magnolia Group, and Magnolia Park, but will waive any claim against the chapter 7 estate. Tr. Decl., p. 4, ¶ 12.d, Doc. #83. The court raised issue with this statement because the original settlement agreement stated that the pre-petition general unsecured claim of ABLP [undefined] against the bankruptcy estate would be retained as a claim in the bankruptcy case. Ex. E, p. 3, ¶ 7, Doc. 84. However, the revised Settlement Agreement now states that the ABLP Entities waive all claims against Trustee and the estate, including the proof of claim filed by ABLP Properties. Ex. G, Doc. #124. Additionally, Debtor has been removed from the provisions identifying the parties against whom judgment will be entered. Id.
- e. Trustee will step into the shoes of Debtor as the sole shareholder, or sole member, of Magnolia Park and Magnolia Group and will wind up and dissolve those entities and file certificates of dissolution in Nevada and Delaware. Tr. Decl., p. 5, ¶ 12, Doc. #83. The Settlement Agreement does not specifically require this, but the recitals to the Settlement Agreement state that Trustee became or will become president of Magnolia Group and Magnolia Park and that Trustee is authorized to enter into the Settlement Agreement as president of those entities. Ex. G, Doc. #124.

Trustee originally proposed to sell the estate's interest in the State Court Litigation to ABLP Entities for \$30,000 subject to higher and better offers made at the initial hearing. Doc. #81. Based on the failure of any party to submit an overbid prior to the May 25 hearing, the court determined that the proposed sale is no longer subject to overbid. The ABLP Entities will purchase the estate's interest in the State Court Litigation as part of the Settlement Agreement. Doc. #81; Tr.'s Suppl. Decl., Doc. #123; Ex. G, Doc. #124.

A & C Properties Analysis

As stated above, approval of a compromise must be based upon considerations of fairness and equity. A & C Properties, 784 F.2d at 1381. 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, 839 F.2d at 620.

Probability of success. Trustee testifies that the facts giving rise to the State Court Litigation are complicated and span several years in time. Tr. Decl. ¶ 14(a), Doc. #83. By the supplemental declaration, Trustee testifies in more detail that he consulted with two experienced attorneys and a fellow chapter 7 trustee about finding representation but was unable to find any attorneys willing to take the case. Tr.'s Suppl. Decl. ¶ 4, Doc. #123. Further, ABLP Properties had successfully completed two non-judicial foreclosures which would need to be set aside in order for Trustee to succeed on the merits in the State Court Litigation, and Trustee's experience, as well as the experience of those he spoke with, indicates that would create a heavy evidentiary burden. Id. ¶ 4.b. Additionally, Debtor would be Trustee's primary witness in any litigation undertaken on behalf of the estate, and Trustee has substantial concerns about Debtor's credibility as a witness given a state-led investigation into Debtor's accounting of funds received by Debtor from

potential assisted living or elderly nursing care residents. Id. ¶ 4.c. Finally, the state court has recently issued a tentative ruling granting summary judgment to the ABLP Entities in the State Court Litigation. Supp. Report, ¶ 3, Doc. #134.

Difficulties of collection. Trustee testifies that collection would not be difficult were he to prevail. Tr. Decl. ¶ 14(b), Doc. #83.

Complexity of the litigation. Trustee "view[s] the litigation to be difficult involving multiple witnesses, transactions and documentation to present at the time of trial." Tr. Decl. ¶ 14(c), Doc. #83. As stated above, the ABLP Entities have successfully completed two non-judicial foreclosures that would need to be set aside, which would be fact intensive and burdensome to prove. Tr.'s Suppl. Decl. ¶ 4.b, Doc. #123.

Interest of the creditors. Trustee believes "that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees that would be paid out as administrative expenses." Tr. Decl. ¶ 14(d), Doc. #83. Trustee is unaware of any contingency fee attorneys who would not require the payment of costs in the event of losing the State Court Litigation, which Trustee believes is likely. Tr.'s Suppl. Decl. ¶ 4(a), Doc. #123. Trustee does not believe the estate should risk the approximately \$20,000 in funds available to the estate to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. ABLP Properties will waive its proof of claim filed against the estate. Ex. G, Doc. #124.

The court is satisfied with Trustee's supplemental declaration and supporting evidence and is inclined to find that Trustee has demonstrated that the compromise is fair and equitable under A & C Properties. Trustee adequately explains his attempts to find competent counsel to represent the estate, the difficulties in succeeding on the merits of the State Court Litigation and the high probability of failure. Trustee also explains why the settlement is in the best interests of creditors and the estate.

Debtor's Opposition

Debtor's opposition, filed on April 13, 2022, set forth several discreet objections to Trustee's motion. Debtor's Opp'n, Doc. #94. First, Debtor contends that the ABLP Entities are not entitled to have a judgment entered against Debtor with respect to the cross-complaint. Id. Debtor's opposition states: "Contrary to the Trustee's Motion and proposed settlement agreement between the Trustee and the ABLP Defendants, there can be no judgment entered against Debtor in connection with the ABLP Defendants' Cross-Complaint in the State Court [Litigation because they] dismissed Debtor as a Cross-Defendant in the State Court [Litigation] on or about August 19, 2021." Debtor's Opp'n 2:19-27, Doc. #94. This first objection has been resolved by the removal of Debtor from the offending provisions of the revised Settlement Agreement and proposed stipulated judgment. Exs. G & H, Doc. #124.

Debtor next argues that the judgment against Magnolia Park and Magnolia Group should not be entered as originally proposed because the original settlement agreement was silent as to (a) a specific dollar amount of the judgment to be stipulated to and (b) specific amounts provided for reasonable attorneys' fees. Debtor's Opp'n, 3:3-17, Doc. #94.

This objection also is resolved by the revised Settlement Agreement and proposed stipulated judgment. The revised stipulated judgment states that ABLP REIT will obtain a judgment against Magnolia Group and Magnolia Park,

jointly and severally, in the sum of \$5,364,351, inclusive of attorneys' fees, costs, and receiver fees and costs. Ex. H, Doc. #124.

Debtor further objected that the Trustee's motion and the original settlement agreement were contradictory as to what claims were being released or waived by the respective parties to the original settlement agreement. Debtor's Opp'n, Doc. #94. Debtor's opposition highlighted the contradiction in Trustee's motion stating that the ABLP Entities will waive any claim against the chapter 7 estate and the original settlement agreement language stating that the ABLP Entities did not waive their pre-petition unsecured claim. Compare Ex. E page 3 ¶ 7, Doc. #84 with Tr. Decl. ¶¶ 12, 14(d), Doc. #83. Again, the revised Settlement Agreement resolves this issue by stating that the ABLP Entities waive all claims against Trustee and the bankruptcy estate, including the proof of claim filed by ABLP Properties. Ex. G, Doc. #124.

Debtor's next objection states that, as presently pleaded, Trustee's motion effectively leaves Debtor with nothing, apart from an exemption related to her home. Debtor's Opp'n, Doc. #94. Debtor objects because the Settlement Agreement leaves Debtor no chance of continuing to operate Magnolia Park Assisted Living as she once did. Debtor's Opp'n 4:5-13, Doc. #94. Debtor wants the Adversary Proceeding against her dismissed as part of the compromise. Id. By the reply, Trustee states that Trustee "cannot control or leverage ABLP to release the Debtor from a non-dischargeability action. This should not be grounds for keeping the settlement from going forward." Tr. Reply 2:13-16, Doc. #98. Similarly, ABLP Properties, in its reply, states that the Settlement Agreement between the estate and the chapter 7 trustee is not related to the Adversary Proceeding. ABLP Reply, Doc. #100. The court agrees with Trustee and ABLP Properties that there is no basis upon which this court should deny approval of this compromise simply because Debtor is not released from the non-dischargeability complaint as part of the compromise. Trustee has no authority to require such a condition in the estate's settlement with the ABLP Entities.

Finally, Debtor objects to the motion on the grounds that dissolution of Magnolia Park and Magnolia Group is unnecessary and adds nothing to the proposed settlement with the ABLP Entities. Debtor's Opp'n, Doc. #94. Debtor correctly states that Trustee initially made no mention of the reason or justification for the proposed dissolution of Magnolia Park and Magnolia Group, which Trustee states have no value. Debtor states that Magnolia Park and Magnolia Group may have tax attributes for Debtor and asks that the compromise between Trustee and the ABLP Entities exclude the dissolution of Magnolia Park and Magnolia Group as unnecessary. Debtor's Opp'n 4:14-24, Doc. #94.

In its reply, ABLP Properties stated that the dissolution of Magnolia Park and Magnolia Group are material terms to the proposed Settlement Agreement. ABLP Reply 3:23-4:7, Doc. #100. By the supplemental declaration, Trustee testifies that the judgment entered in the State Court Litigation must confirm that neither Debtor, Magnolia Park, nor Magnolia Group have any possessory right to the real or personal property so that the ABLP Entities may move to terminate the receivership and maintain the business operations under a distinct operational entity. Tr.'s Suppl. Decl. ¶ 5, Doc. #123. Here, Trustee has provided sufficient justification for dissolving Magnolia Park and Magnolia Group as a material term of the compromise given Debtor's opposition.

By the written opposition submitted April 13, 2022, Debtor signaled that she would submit an overbid at the May 25 hearing. Debtor's Opp'n, Doc. #94. ABLP Properties requested Debtor be prohibited from overbidding at the April 27 hearing because Debtor had failed to qualify to overbid. At the April 27 hearing held on the motion, Debtor was provided with instructions on submitting an overbid, and the court instructed any party interested in submitting an

overbid to do so prior to close of business on May 23, 2022. Order, Doc. #117. No party submitted an overbid by May 23, 2022, and the court closed overbids at the May 25 hearing.

Conclusion

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.

It appears that the sale of the estate's interest in the State Court Litigation is in the best interests of the estate and the sale is supported by a valid business judgment and proposed in good faith. The sale was subject to auction, and no party complied with the overbid requirements.

Accordingly, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the State Court Litigation to the ABLP Entities on the terms set forth in the motion and revised Settlement Agreement. See Ex. G & H, Doc. #124.