UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, June 2, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click here.

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. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-13

OBJECTION TO CLAIM OF SANDTON CREDIT MASTER SOLUTIONS FUND IV, LP, CLAIM NUMBER 1
4-19-2022 [514]

STEPHEN SLOAN/MV
PETER FEAR/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.

Stephen William Sloan ("Debtor") objects to Proof of Claim No. 1 filed by Sandton Credit Master Solutions Fund IV, LP ("Sandton") on March 4, 2020 and amended April 30, 2021, and requests that this claim be disallowed to the extent that it seeks post-petition interest and late charges. Doc. #514.

Sandton timely filed written opposition. Doc. #531.

Debtor replied. Doc. #543.

This matter will be called and proceed as scheduled. The court is inclined to OVERRULE the objection.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Sandton 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 objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Sandton are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Neither party filed separate statements identifying each disputed factual issue. Thus, under LBR 9014-1(f)(1)(B) and (C), both parties have consented to resolution of the objection and all disputed

material factual issues under Federal Rule of Civil Procedure ("Civ. Rule") 43(c).

The parties request the court take judicial notice of certain documents filed in this case and the parties' related adversary proceeding. Docs. #517; #533. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, the parties' adversary proceeding, 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 requested documents, but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

BACKGROUND

Debtor filed chapter 11 bankruptcy on March 2, 2020. Doc. #1. On March 4, 2020, Sandton filed Claim 1 representing that, at the time the petition was filed, it was owed $57,264,545.53. Claim 1-1. Claim 1 was listed as secured with a principal balance of $47,469,035.59 with cash interest of $4,479,364.84, default cash interest of $1,906,576.74, late charges of $225,710.71, legal costs and fees of $183,857.65, and extension fees of $3,000,000.00, plus post-petition interest, attorney's fees and costs, and other costs as allowed by the loan documents or the Bankruptcy Code. *Id.*

Eventually, Debtor and Sandton stipulated to stay relief effective April 1, 2021 in the related bankruptcy case for Debtor's company, 4-S Ranch, LLC ("4-S"). *See* Case No. 20-10800 ("4-S Bankruptcy"), Doc. #346. The relevant portion of the stipulation provided the following language:

> 4-S and Sloan hereby ratify that the following sums are *unconditionally and absolutely owed by them*, jointly and severally, to Sandton as of December 8, 2020:
>
> | | |
> |---|---|
> | Principal | $52,036,600.41 |
> | Accrued Interest | 7,143,777.65 |
> | Accrued Default Interest | 3,048,467.95 |
> | Extension Fee | 3,000,000.00 |
> | Legal and Other Costs | 601,268.79 |
> | Accrued Late Charges | 354,645.92 |
> | Unbilled Legal | + 54,774.92 |
> | Total | $66,240,535.64 |
>
> For each additional day past December 8, 2020, an additional $31,537.33 will be due from 4-S and Sloan, jointly and severally, to Sandton. . . .

Id. (emphasis added).

This stipulation permitted Sandton to foreclose on two parcels of real property commonly known as Hamburg Ranch and 4-S Ranch Property ("4-S Property"). Hamburg Ranch was sold on April 27, 2021 for $10,117,970.84 and 4-S Ranch Property was sold on April 29, 2021 for $20,000,000.00. Both of these amounts were applied to the amount owing to Sandton, and Sandton amended Claim 1 to assert the amount of $40,823,797.25 due as of April 30, 2021. *See* Claim 1-2.

Thereafter, Debtor successfully navigated through plan confirmation proceedings and confirmed *Debtor's Fourth Amended Plan of Reorganization* dated December 21, 2021 ("Plan"). Doc. #483.

Article III of the Plan incorporates Sandton's Claim 1-1 as follows:

> The Class 1.1 claimant has filed Claim No. 1 herein indicating that the amount owing on the date of this bankruptcy case was filed (the "Petition Date") was $57,264,545.53. On the date of filing the bankruptcy case, the Class 1.1 claim was secured by Hamburg Ranch (defined above) and the 4-S Property. The Class 1.1 creditor has foreclosed on both Hamburg Ranch and the 4-S Property. From those two trustee's sales, a total of $30,117,970.84 was applied toward the Class 1.1 claim. Because the value of the collateral of the Class 1.1 claim was less than the amount owed on the claim, *the Class 1.1 claim is not entitled to post-petition interest and attorney fees pursuant to 11 U.S.C. Sec. 506(b)*. Consequently, *the amount of the Class 1.1 claim is currently $27,146,574.69 and the claim is completely unsecured*.

Id., Plan, Art. III, § 3.01 (emphasis added). The *Order Confirming Debtor's Fourth Amended Plan of Reorganization Dated December 21, 2021* ("OCP") was approved as to form by Sandton on February 2, 2022 by and through its attorney, Kurt F. Vote. *Id.*, at 3.

However, Art. III, § 3.01 is not determinative of the amount of Sandton's claim. The OCP also incorporates certain stipulations modifying the Plan. *Id.*, at 2. In the weeks leading up to Plan confirmation, Debtor stipulated to two minor modifications to secure votes approving the Plan from the Merced County Tax Collector and Sandton. The first modification was derived from a stipulation with Merced County Tax Collector and concerned treatment of that creditor's claim specifically. Doc. #470, *Ex. C*.

The second modification was the result of a jointly executed stipulation with Sandton on or about December 20, 2021 to add paragraph 4.06 and appoint a Plan Administrator. *Id.*, *Ex. D*. The last provision in that stipulation provides:

> Sandton contests the amount of its claim stated in paragraph 3.01 of the Plan, but understands that the Plan does not fix the amount of its claim and that there will be a separate proceeding to determine the correct amount of Sandton's

> claim. Except for this dispute, Sandton does not otherwise contest its proposed treatment under the Plan, and with the changes made above will vote in favor of confirmation of the Plan.

Id., *Ex. D*, at 23, ¶ 2. Therefore, even though Sandton did approve the Plan, the parties acknowledged that the amount of Sandton's claim as stated in the Plan was not dispositive.

In addition, the Plan also provided the following procedure regarding objections to claims:

> Any objections to Administrative Claims and *all other Claims* made after the Effective Date *shall be filed and served on the holders of such Administrative Claims and Claims not later than 30 days after the Effective Date* or such later date as may be approved by the Bankruptcy Court via ex parte application. . . . At this time, Debtor does not intend to object to any claims.

Doc. #483, Art. VI, § 6.01. The Effective Date of the Plan is March 15, 2022, unless a stay of the confirmation is in effect, then it will be the first business day after that date on which no stay of the confirmation is in effect. *Id.*, Art. IX, § 9.02. However, per the OCP, the Effective Date is in fact March 15, 2022. *Id.*, at 2, ¶¶ 18-19. Therefore, it appears that any objections to proofs of claim had to be filed not later than April 14, 2022.

This objection was filed and served on April 19, 2022 — 35 days after the Effective Date. Docs. #514; #519. The objection is dated April 13, 2022, but it was not filed and served until later. *Id.* Therefore, this objection is untimely and may be overruled on this ground as a result.

CONTENTIONS

Debtor's Objection

First, Debtor argues that Sandton is an undersecured creditor because the combined sale price of 4-S Ranch and Hamburg Ranch was $30,117,970.84, which is far less than the original $57,264,545.53 amount of Claim 1-1. Doc. #514.

Since Sandton is an undersecured creditor, Debtor objects to Amended Claim 1-2 under 11 U.S.C. § 506(b) on the basis that it asserts post-petition interest and late charges. *Id.*, citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 372-73 (1988) ("Since this provision [§ 506(b)] permits postpetition interest to be paid only out of the 'security cushion,' the undersecured creditor, who has no such cushion, falls within the general rule disallowing postpetition interest."); *In re Bloomingdale Partners*, 160 B.R. 93, 97-98 (Bankr. N.D. Ill. 1993) (same); *In re Johnston*, 44 B.R. 667 (Bankr. W.D. Mo. 1984) ("If . . . the security is insufficient to pay both the principal with interest to the date of the petition and interest accruing thereafter, the secured creditor cannot be allowed

the latter interest with, or as an unsecured claim for, a deficiency; nor can he first apply the security or its proceeds to interest accrued since the filing of the petition and to the principal and then prove a claim for the balance without deducting the amount applied to such interest."); *In re Willson Dairy Co.*, 30 B.R. 67 (Bankr. S.D. Oh. 1983) (denying claim for postpetition interest on secured claim because creditor was undersecured); *In re Goforth*, 24 B.R. 100 (Bankr. E.D. Tenn. 1982) (liquidation of collateral resulting in less than secured creditors claim means that lender would not be entitled to postpetition interest in amount of its claim).

Instead, Debtor argues that Sandton should have used the following formula to calculate the proper amount of its claim:

a. Start with the amount of the claim at the time of filing: $57,264,545.53;
b. Add post-petition legal fees: $529,572.52;[1]
c. Subtract payments on the claim from the two foreclosure sales: $30,117,970.84;
d. This provides that the correct amount of Sandton's claim should be $27,676,147.21.

Id. Debtor prays that the court determine that Sandton is not entitled to post-petition interest and late charges on its claim, and to only allow Claim 1 in the amount of $27,676,147.21. *Id.* Debtor also requests an award of attorney fees and costs in bringing this objection under Cal. Civ. Code § 1717. *Id.*, citing *In re Penrod*, 802 F.3d 1084, 1089 (9th Cir. 2015).

Sandton's Response

In response, Sandton first cites to the joint stipulation between it and Debtor regarding relief from the automatic stay. Doc. #531, citing 4-S Bankruptcy, Doc. #346.

Since the order approving the stipulation is a final and binding agreement between Debtor and Sandton, including the amount and components of Sandton's claim and its treatment under a future chapter 11 plan, Sandton argues that the stipulation should be strictly construed because Debtor has not sought to set aside the order or filed a motion for reconsideration pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9024 and Civ. Rule 60. *Id.*, citing *Noli v. Comm'r*, 860 F.2d 1521, 1525 (9th Cir. 1988); *In re Springpark Assocs.*, 623 F.2d 1377, 1380 (9th Cir. 1980) ("[A] litigant can no more repudiate a compromise agreement than he could disown any other binding contractual agreement . . . it is equally well settled in the usual litigation context that courts have inherent power summarily to enforce a settlement agreement with respect to the action pending before it. . .").

Second, Sandton says that Debtor has argued throughout this case that Sandton was protected by sufficient equity such that its claim was oversecured. Doc. #531. As result, Debtor should be judicially

estopped from now arguing that Sandton is undersecured. *Id.*, citing *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1133 (9th Cir. 2012). Debtor has already ratified the sum of Claim 1 "unconditionally and absolutely," and has repeatedly claimed that Sandton is an oversecured creditor. *See*, *e.g.*, Doc. #51, at 3:17 (Sandton is "protected by ample equity"). Sandton claims these are judicial admissions, and therefore Debtor should be estopped from arguing to the contrary now. Doc. #531.

Lastly, even if the stipulation was neither a binding agreement nor a judicial admission, which Sandton insists it is, the claim cannot be deemed to be undersecured based on the final sale price of Hamburg Ranch and 4-S Property. Since § 506 requires using a property's "replacement value" rather than "liquidation value," Debtor cannot now use a liquidation value for determining whether Sandton is over or undersecured. *Id.*, citing *In re Sunnyslope Hous. L.P.*, 859 F.3d 637, 644 (9th Cir. 2017).

Additionally, Sandton notes that Debtor, through his company, 4-S Ranch, has filed a claim in Merced County Superior Court seeking to set aside the 2021 foreclosure sale based upon the inadequacy of the $20,000,000 sale price. Doc. #532, *Ex. A*. In that action, 4-S Ranch has argued that the stored groundwater owned by it is worth no less than $280,000,000.00, which was not transferred to Sandton by virtue of the foreclosure sale. Based on these allegations, Sandton asserts that the 4-S Property should be worth at least $300,000,000, thereby rendering Sandton over-secured.

Debtor's Reply

In reply, Debtor distinguishes the amount stated in the stipulation for stay relief as the *contractual amount owed* by both 4-S Ranch and Debtor, not the amount of Sandton's claim in this case, nor Sandton's claim in the 4-S Bankruptcy. Doc. #543. The amount owed for both 4-S Ranch and Debtor were the same at the time the stipulation was executed and approved. However, Debtor says the allowed claim amount in this case would be limited by § 506(b) to the extent that the claim was undersecured in this bankruptcy case. The same § 506(b) limitation would apply to Sandton's claim in the 4-S Bankruptcy before it was dismissed, claims Debtor. Though Debtor believed the property was worth more than the amount of the debt, the stipulation only recited the contractual amount due at the time of the stipulation. *Id.*

Second, as to estoppel, Debtor contends that Sandton also argued that there was no equity in Hamburg Ranch. If Debtor's assertions were judicial admissions, the same should apply to Sandton's previous assertions that Claim 1 was completely unsecured. *Id.*

Third, Debtor contends that the value of Sandton's collateral should be determined as of the date of Plan confirmation. *Id.* On that date, there was no collateral because it had already been sold at foreclosure. Debtor distinguishes the cases cited by Sandton in that each of these cases involved property that was going to be used for

something other than foreclosure. Thus, the statutory language of § 506(a)(1) provides that the property should be valued in light of the proposed disposition or use of the property. *Id.*, citing *Assocs. Com. Corp. v. Rash*, 520 U.S. 953, 962 (1997). Meanwhile, in *Sunnyslope*, the debtor's plan provided that the debtor would keep the property, so a foreclosure value was not used. *Sunnyslope*, 859 F.3d at 645.

Since, here, the properties were foreclosed upon well before confirmation and the Plan expressly acknowledged that the foreclosure had taken place, no further collateral existed to secure Sandton's claim, meaning that Sandton was treated as a completely unsecured claim. Consequently, post-petition interest is not allowed on unsecured claims.

As to Sandton's argument that 4-S is asserting significant personal property value in water owned by 4-S, Debtor says that if successful, Sandton would have a secured claim against 4-S, but not Debtor. That claim is specifically against 4-S outside of bankruptcy, so it will not affect Sandton's claim in this case.

DISCUSSION

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed, unless a party in interest objects.

Rule 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

First, as noted above, any objections to proofs of claim had to be filed not later than April 14, 2022.

This objection was not filed by that date and is untimely under the Plan. That is reason enough to overrule the objection. Nevertheless, even if the objection was timely, there are other reasons the objection should be overruled.

Second, the joint stipulation regarding stay relief between Debtor and Sandton is clear: Debtor and 4-S are jointly and severally indebted to Sandton in the amount of $66,240,535.64, increasing by $31,537.33 for every additional day after December 8, 2020. At the time the stipulation was executed, neither Hamburg Ranch nor 4-S Property had been sold. It was unknown whether Sandton was over or undersecured. Debtor argued Sandton was oversecured and Sandton argued the opposite. Now, the parties have adopted each other's prior arguments and positions.

But at no point prior to foreclosure or Plan confirmation did either party file any motions to value collateral under § 506(a), nor seek to estimate the value of the collateral pursuant to § 502(c). In abating automatic stay relief, Debtor asserted that Sandton was oversecured and Sandton continued to charge post-petition fees up until the properties were sold and collateral extinguished, at which point post-petition interest and late charges ceased.

Third, Debtor's argument that his and his estate's agreement to the stay relief stipulation and order ("stipulation") did not preclude this claim objection because of the different characterization of "indebtedness" and "claim" in this context is unpersuasive. Debtor (and 4-S) signed the stipulation in their capacities as debtors in chapter 11 cases. Both were debtors-in-possession. Both were acting as estate representatives under § 1107(a). They both had the power to bind the estate to the stipulation and did so.

The stipulation states, in part, "4-S and Sloan, jointly and severally, are indebted to Sandton in the following sums as of December 8, 2020. . ." The stipulation then itemizes the elements of the claim including accrued interest, accrued default interest, legal costs, and late charges. December 8, 2020 was nine months after Debtor filed the case. The elements were well known to the parties.

Debtor's position ignores the word "indebted" in the stipulation. "Indebted" is defined as "being under the obligation of paying or repaying money." *Webster's Third New International Dictionary* (1993). "Indebtedness" is defined as ". . . (2) Something owed; a debt." *Black's Law Dictionary* (10th Edition 2014). Under the Bankruptcy Code, "debt" means "liability on a claim." § 101(15). "Claim" means "right to payment. . . ." § 101(12). So, in the stipulation, Debtor affirmatively acknowledges his liability for Sandton's right to payment. Nothing in the stipulation equivocates or establishes a dichotomy between what is owed by Debtor and his estate's liability on Sandton's claim as of December 8, 2020. The components included some post-petition accruals.

Debtor's argument that he agreed to not contest the amount claimed by Sandton in the stipulation because often creditors state what they claim is owed in stipulations is likewise unpersuasive. The stipulation does more than state what Sandton claims is owed: Debtor and his estate agreed "unconditionally and absolutely" to the amounts owed. 4-S Bankruptcy, Doc. #346, *Ex. A*. Debtor's claim that, at the time he signed, he believed the Hamburg Ranch and 4-S Property were worth substantially more makes the objective construction and enforcement of contracts subject to one party's subjective beliefs or intentions. That is not the law without other facts absent here. Does the fact that Hamburg Ranch and 4-S Property fetched less than Debtor expected at the foreclosure invalidate the stipulation? Hardly. Both parties have been and are adequately and skillfully represented. There is no evidence that any party acted in an unreasonable or fraudulent manner. All parties avoided a two-day trial and a contested plan

confirmation. Debtor and 4-S received three additional months to sell or refinance both the Hamburg Ranch and the 4-S Property.

Additionally, the confirmed Plan is consistent with Debtor agreeing to the amount owed in the stipulation. The Plan was confirmed February 2, 2022. Plan, Doc. #483. Among its provisions, § 6.01 states: "At this time, Debtor does not intend to object to any claims." *Id.* However, the Plan was confirmed after the stay relief stipulation was signed and after the foreclosure sales. It was confirmed after Claim 1 was amended with Sandton's filing of Claim 1-2 on April 30, 2021. There also was no reservation of the right to object if foreclosure occurs and Debtor is dissatisfied with the amount received at the sales. Since Claim 1-2 was already on file at the time of confirmation, it appears that Debtor did in fact intend to object to the amount Claim 1-2 at that time. That is contrary to what is represented in the Plan.

Accordingly, for the above reasons, the court is inclined to OVERRULE this objection. Sandton's Claim 1-2 is deemed allowed in the amount of $40,823,797.25 as of April 30, 2021.

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[1] This amount is calculated by subtracting the total amount of legal fees stated in the status report from the amount of legal fees stated in Sandton's original Claim 1. Doc. #514.

2. 22-10061-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
1-17-2022 [1]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 14, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The court is in receipt of California Roofs and Solar, Inc.'s *Status Conference Report #2* dated May 18, 2022. Doc. #65. The hearing on Debtor's subchapter V plan is set for June 14, 2022. Doc. #50. Accordingly, this status conference will be continued to June 14, 2022 at 9:30 a.m. to be heard in connection with the hearing on the subchapter V plan set for that same date and time.

3. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-1

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
6-1-2022 [6]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
OST 6/1/22

NO RULING.

4. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-2

MOTION FOR ORDER PROHIBITING PG&E FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE AND/OR MOTION FOR ORDER DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES
6-1-2022 [10]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
OST 6/1/22

NO RULING.

5. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-3

MOTION TO PAY
6-1-2022 [13]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
OST 6/1/22

NO RULING.

1:30 PM

1. 22-10601-B-7 **IN RE: HECTOR ROSALES RAMIREZ AND FRANCES ROSALES**
MAZ-1

MOTION TO COMPEL ABANDONMENT
4-22-2022 [16]

FRANCES ROSALES/MV
MARK ZIMMERMAN/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.

Hector O. Rosales Ramirez and Frances A. Rosales ("Debtors") move for an order compelling chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in property used in the operation of joint debtor Hector Rosales Ramirez's sole proprietorship business, "Rosales Productions." Doc. #16. Rosales Productions is a sound engineering company and its assets (collectively "Business Assets") consist of audio equipment outlined below.

Neither Trustee nor any other party in interest timely filed written opposition.

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 the creditors, the Trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee

to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors seek to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	**Value**
1 - MACPRO QUAD CORE	$650
1 - NUENDO SOFTWARE	$600
1 - APOGEE AD16X AUDIO INTERFACE	$450
1 - APOGEE DA16X AUDIO INTERFACE	$450
1 - MIDAS AUDIO MIXER 32 CHANNELS	$1,000
1 - NUEMANN KMS 105 CONDENSER VOCAL MIC	$600
2 - SENHEISER MD421 MICROPHONES	$600
2 - AUDIX D6 MICROPHONES	$300
2 - AKG 414 CONDENSER MICROPHONES	$1,400
1 - SURE CONDENSER MIC SM81	$320
4 - COUNTRYMAN DIRECT BOXES	$600
1 - SURE BETA 52 MIC	$150
2 - KM 105 MICROPHONES	$1,250
1 - MANLEY VARY MU MASTERING COMPRESSOR	$2,000
TOTAL	**$10,370**
CCP § 704.060(a)(1) Exemption	$9,525
Unexempt Equity	**$845**
Invalid CCP § 704.060(a)(2) Exemption	~~$845~~

Docs. #1, *Sched. A/B*; #19, *Ex. A*. None of the Business Assets are encumbered by any secured creditors. Doc. #1, *Sched. D*. Debtors claimed two separate exemptions in the Estate Assets in the amounts of $8,725.00 and $1,645.00 under Cal. Code Civ. Proc. ("CCP") § 704.060.

CCP § 704.060(a)(1), as modified by EJC-156, allows the debtors to claim an exemption in tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property of up to $9,525 if reasonably necessary to and actually used by a joint debtor in the exercise of the trade, business, or profession by which the debtor earns a livelihood. Subsection (a)(2) permits an additional $9,525 for the other joint debtor — the spouse of the debtor in the exercise of the *same* trade, business, or profession by which both earn a livelihood.[2] CCP § 704.060(a)(1), (a)(2).

The court notes that Debtors exempted $8,725 and $1,645, and therefore can exempt up to $9,525. Doc. #1, *Sched. C*. However, to exempt the remaining $845 under CCP § 704.060(a)(1) and (a)(2), both debtors to be engaged in the same trade, business, or profession.

Here, joint debtor Hector Rosales Ramirez works for Rosales Productions, but Frances Rosales works for London Properties, Ltd. Doc. #1, *Sched. I*. Hector's declaration says that Debtors are qualified and eligible to claim the exemption under applicable law and agree to compensate Trustee if it is later determined that Debtors are not qualified to claim the exemption. Doc. #18. The declaration does not include any statements indicating whether Frances works in any capacity for Rosales Productions, part time after hours, or otherwise. *Id.* Thus, it appears that Debtors are not engaged in the same trade, business, or profession, so they are not qualified to claim more than $9,525 under CCP § 704.060(a).

However, Trustee did not oppose abandonment in this case. Further, on May 17, 2022, Trustee filed a *Notice of Filing Report of No Distribution*. Doc. #25. The deadline to object is June 16, 2022. Though the is non-exempt equity of $845 in the Business Assets, it appears that Trustee, by not responding, determined that such equity was of inconsequential value and benefit to the estate. No other parties in interest filed written opposition.

Accordingly, the court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted up to $9,525, and the remaining $845 is *de minimis* compared to the administrative expenses required to liquidate this small equity. Since no party in interest has filed opposition, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

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[2] EJ-156 (Rev. Apr. 1, 2022), https://www.courts.ca.gov/documents/ej156.pdf. The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

2. 20-13712-B-7 **IN RE: KAWALJEET KAUR**
ADJ-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LOVEPREET SINGH
4-18-2022 [29]

JAMES SALVEN/MV
MICHAEL REID/ATTY. FOR DBT.
ANTHONY JOHNSTON/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 with a stipulation attached as an exhibit. A copy of the stipulation shall be separately filed and docketed as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and third-party Lovepreet Singh ("Defendant") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #29.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Kawaljeet Kaur ("Debtor") filed voluntary chapter 7 bankruptcy on November 24, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on December 17, 2020. Doc. #2.

Defendant is Debtor's brother. Doc. #32, *Ex. A*. Prior to filing bankruptcy, Defendant and Debtor purchased real properly commonly known as 1216 South Bridle Avenue, Fresno, California ("Property"). *Id.* The $62,000 down payment was supplied entirely by Defendant. *Id.*

Thereafter, on or about June 29, 2020, Debtor executed a grant deed transferring her interest in Property to Defendant for no consideration. *Id. Id.*

As result of this pre-petition transfer, Trustee filed an adversary proceeding styled *James Edward Salven, Chapter 7 Trustee v. Kawaljeet Kaur and Lovepreet Singh*, Adv. Proc. No. 21-01022-B against both Debtor and Defendant to avoid an alleged fraudulent transfer of Property and for related relief. *Id.*

Defendant and Debtor filed an answer to the complaint alleging that (1) Debtor had no economic interest in property at any moment, but solely held "bare legal co-title" to the Property; and (2) Defendant had paid 100% of the funds to acquire the Property, regardless of what was stated in the documents. *Id.* Further, Defendant argued that any interest in Property held by Debtor was as involuntary trustee of a resulting trust because: (i) Debtor did not pay any amount for the down payment for purchase of the Property; (ii) Debtor did not pay any amount for any mortgage payment for Property; (iii) Debtor did not pay any taxes for Property; (vi) Debtor did not pay any insurance premiums for Property; and (v) Defendant and Debtor always agreed that Defendant was the true owner of the Property. *Id.*

Though that adversary proceeding is still pending, the parties have decided to forgo trial by settling the adversary proceeding as follows:

a. Defendant agrees to pay Trustee the sum of $9,000.00 by making twelve (12) equal payments of $750.00 due by the 15th day of each month until the entire sum is paid.

b. In return, Trustee will deem all claims satisfied that the bankruptcy estate has to Property, and the estate will waive any interest Trustee may have had in the Property, provided that the court approves the agreement. Upon approval of the compromise and receipt of $9,000, Trustee will dismiss the adversary proceeding with prejudice.

Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

(1) Probability of success in litigation: Defendant and Debtor contend that Property is the subject of a trust for the benefit of Defendant, rendering Defendant the sole equitable owner of Property, while Debtor held only bare legal title to the same with no equitable interest. Though there is no guarantee in litigation, Trustee concedes that Defendant and Debtor have a strong resulting trust defense. Doc. #29.

Property that a debtor holds in trust for another does not become property of the estate available for distribution to creditors. 11 U.S.C. § 541(d); *In re North American Coin & Currency, Ltd.*, 767 F.2d 1573, 1575 (9th Cir. 1985), *cert. denied sub nom.*, 475 U.S. 1083 (1986). California law will determine whether Debtor held Property in trust, and whether the estate can avoid any trust is governed by § 544(a).

Thus, under California law, whether Debtor held Property in resulting trust for the benefit of Defendant depends on whether Debtor intended Defendant to receive beneficial ownership of the Property. Doc. #29. When, as here, a person does not pay the purchase price for the property, the person is presumed to hold the property in a resulting trust for the party who paid consideration for its purchase. *Id.*, citing *Johnson v. Johnson*, 192 Cal.App.3d 551 (1987); *Emden v. Verdi*, 124 Cal.App.2d 555 (1954). Since Defendant has represented under penalty of perjury that he solely paid all obligations related to Property, including the down payment, mortgage, taxes, insurance, maintenance, improvements, and utilities, he will be presumed to be the equitable owner. Doc. #29. And because there is no evidence that Debtor has collected rent or otherwise treated Property as her sole assets, the facts appear to support the truth claim.

Therefore, Trustee says that the question will come down to whether the bankruptcy trustee's strong-arm powers under § 544(a)(3) will permit him to avoid the resulting trust for the benefit of the estate. Doc. #39. This will depend on whether Trustee had actual or constructive knowledge of a prior interest. Since Trustee acknowledges that he may have had constructive knowledge of Defendant's equitable interest, his success in litigation may be unlikely. *Id.* This factor weighs in favor of approving the settlement.

(2) Difficulties in collection: If Trustee prevails at trial, he likely will have no difficulty in obtaining approval to sell Property. Therefore, collection would not be difficult even though it would result in increased administrative expenses for the estate. *Id.* This factor weighs against approval of the settlement.

(3) Complexity of litigation: The legal issues in this case are somewhat complicated, but the material facts of the adversary proceeding do not appear to be in dispute. However, litigation would be expensive and delay the conclusion of the administration of the estate for a dispute that favors the finding of a resulting trust. This factor weighs in favor of approval of the settlement.

(4) Interest of the creditors: Trustee believes that the creditors would support the settlement agreement. Doc. #31. The waiver of claims in the Property in exchange for $9,000.00 is in the best interests of creditors because it avoids the risk and expense associated with trial while providing a guaranteed recovery for the bankruptcy estate.

Therefore, the settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED, and the settlement agreement will be approved.

Trustee shall separately file a copy of the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

3. 22-10516-B-7 **IN RE: JOSEFA VILLANUEVA**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-26-2022 [10]

TRAVIS POTEAT/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on April 25, 2022. Doc. #10.

Tonya Sue Thompson ("Debtor") timely filed written opposition. Doc. #13. Debtor declares that though she followed the instructions provided, she was unable to appear at the meeting of creditors via Zoom. *Id.* Debtor was unsuccessful in troubleshooting through the issue on her phone to resolve it in time. *Id.* Debtor has downloaded Zoom on

her desktop computer and expects to have the assistance of her daughter-in-law at the continued meeting of creditors. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for June 6, 2022 at 3:00 p.m. *See* Doc. #11. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

4. 22-10617-B-7 **IN RE: NICOLE SKELTON**
LEH-1

MOTION TO DISMISS CASE
5-9-2022 [11]

NICOLE SKELTON/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

Nicole Skelton ("Debtor") requests to voluntarily dismiss this case without entry of discharge pursuant to 11 U.S.C. § 707(b). Doc. #11.

However, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. When a motion is filed on fewer than 28 days' notice, LBR 9014-1(f)(2)(C) states that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit additional briefing and evidence.

This motion was filed on May 7, 2022 and initially set for hearing on June 1, 2022. Doc. #11. The court did not have a regularly scheduled chapter 7 calendar on June 1, 2022, so the Clerk of the Bankruptcy Court entered a memorandum directing Debtor to file an amended notice

of hearing. Doc. #12. On May 10, 2022, Debtor filed an amended notice setting this hearing for June 2, 2022. Doc. #13. June 2, 2022 is 23 days after May 10, 2022, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice provided:

> Opposition, if any, to the granting of the motion shall be in writing and shall be served and field with the Court by the responding party at least fourteen (14) calendar days preceding the date or continued date of the hearing. . . . Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition, the striking of untimely filed opposition, or the granting of the motion without further hearing and/or without the opportunity for oral argument.

Docs. #11; #13. This is incorrect. Even if the initial notice sent May 7, 2022 were considered, it is still 26 days before June 2, 2022. Since the hearing was noticed under the procedure specified in LBR 9014-1(f)(2), Debtor was required to inform respondents that written opposition was not required, any opposition shall be presented at the hearing, and if opposition is presented, or if there is other good cause, the court may continue the hearing.

Second, the pleadings were combined into and filed as one document. Doc. #11. The amended notice of hearing was filed with an attached proof of service. Doc. #13. LBR 9004-2(c)(1) requires that motions, declarations, exhibits, and other specified pleadings are to be filed as separate documents. LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served. LBR 9004-2(e)(1) and (e)(2) state that the proof of service shall itself be filed as a separate document and copies of the pleadings and documents served "SHALL NOT be attached to the proof of service filed with the court."

However, LBR 9014-1(d)(4) does permit the motion and memorandum of points and authorities to be combined into one document provided that the document does not exceed six (6) pages in length. Additionally, under LBR 9004-2(e)(3), multiple documents and pleadings related to papers with the same Docket Control Number may be included in one proof of service.

Here, Debtor filed as one document a notice of hearing, proof of service for the notice of hearing, a motion to dismiss with combined memorandum of points and authorities, and proof of service for the motion to dismiss with combined memorandum of points and authorities. Doc. #11. Additionally, the amended notice of hearing and proof of service should have been filed separately. Doc. #13. All of these documents except the motion and memorandum of points and authorities

(since it is less than 6 pages combined) should have been filed separately.

The court notes that only one certificate of service per Docket Control Number is needed provided that the certificate of service identifies by title each of the pleadings and documents served, and that documents and pleadings related to papers with a different Docket Control Number are not included in the same proof of service. LBR 9004-2(e)(2), (e)(3).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

5. 20-10024-B-7 **IN RE: SUKHJINDER SINGH**
RWR-4

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SUKHJINDER SINGH, MANJINDER SINGH, LAKHVIR SINGH AND BALWINDER KAUR
5-1-2022 [50]

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 with a stipulation attached as an exhibit. A copy of the stipulation shall be separately filed and docketed as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Sukhjinder Singh ("Debtor") and non-debtor third parties Lakhvir Singh, Balwinder Kaur, and Manjinder Singh (all four collectively "Defendants") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #50.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed voluntary chapter 7 bankruptcy on January 4, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on February 13, 2020. Doc. #2.

Defendants Lakhvir Singh and Balwinder Kaur are Debtor's parents, and Defendant Manjinder Singh is Debtor's cousin. Doc. #52. Through his investigations, Trustee learned that prior to filing bankruptcy, Debtor owned real property commonly known as 14225 Spyglass Circle, Chowchilla, California ("Property"). *Id.* Trustee learned that on or about July 15, 2018, within two years of the petition date, Debtor transferred the Property to Lakhvir Singh and Balwinder Kaur for no consideration. Prior to the transfer, Debtor made other transfers of his interest in Property to Manjinder Singh and pledging Property to secure three bail bonds. *Id.*

After completing his investigation, Trustee filed an adversary complaint against all four Defendants seeking to avoid transfers deemed fraudulent and to determine the validity, priority, or extent of liens and interests in the Property. Adv. Proc. No. 20-01036. Defendants retained counsel and filed answers to the complaint denying its allegations and the bail bonds company reconveyed the three deeds of trust and were dismissed from the case. Doc. #53, *Ex. A.* Trustee propounded extensive written discovery and took depositions. However, the court issued discovery sanctions against three of the four Defendants totaling $9,070, as well as issue preclusion sanctions.

After lengthy settlement negotiations, the parties have decided to forgo trial by settling the adversary proceeding as follows:

a. Defendants have paid Trustee the sum of $200,000, plus $9,070 in monetary sanctions ordered in the adversary proceeding.

b. Upon approval of the settlement, the sanction and settlement sum shall be considered paid in exchange for full payment of the disputed claims.

Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a

compromise must be based upon considerations of fairness and equity. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

(1) Probability of success in litigation: Although Defendants have denied the allegations in the complaint and have advanced theories as to why the transfer of Property may not have been fraudulent, the court has issued sanctions in favor of Trustee, including issue preclusion sanctions. Thus, Trustee is confident that he will prevail at trial. However, success in litigation is never assured and Trustee still bears the burden of proof. Doc. #54. This factor weighs slightly against approval of the settlement.

(2) Difficulties in collection: If Trustee prevails at trial, he likely will have no difficulty in obtaining approval to sell Property. Therefore, collection would not be difficult even though it would result in increased administrative expenses for the estate. *Id.* However, there could still be delays in taking possession of the Property following entry of judgment or any appeal. During that period, property taxes will likely not be paid, maintenance deferred, and attorney's fees incurred by Trustee. *Id.* This factor weighs slightly against approval of the settlement.

(3) Complexity of litigation: Trustee believes this case is both legally and factually complicated due to the intermingling of the business operations and assets throughout the extended family. *Id.*; Doc. #52.

(4) Interest of the creditors: Trustee believes that the paramount interests of creditors favor settlement. Though the fair market value of Property is approximately $450,000 less administrative expenses, the trial would likely be an "all or nothing" situation. The outcome of litigation is never certain, and Trustee would either recover $0 or $450,000 less expenses. The maximum potential recovery will decrease as litigation continues as additional attorney's fees and costs, expert witness fees, and translator fees continue to rise. By settling this case now for $200,000, which Trustee has already received, the estate will receive substantial liquidity that can be used for the benefit of unsecured claims. *Id.* Doc. #54.

Therefore, the settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED, and the settlement agreement will be approved.

Trustee shall separately file a copy of the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

6. 19-11269-B-7 **IN RE: SING SEECHAN**
MAZ-3

MOTION TO AVOID LIEN OF DISCOVER BANK
5-2-2022 [37]

SING SEECHAN/MV
MARK ZIMMERMAN/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.

Sing Seechan ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor") in the amount of $16,596.09 and encumbering residential real property located at 1780 Eaton St., Tulare, CA 93274 ("Property").[3] Doc. #37.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the creditors, the chapter 7 trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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 § 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 § 522(f)(1)(B). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of $16,596.09 on August 9, 2018. Doc. #39, *Ex. D*. The abstract of judgment was issued on September 12, 2018 and recorded in Tulare County on October 12, 2018. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual lien encumbering Property. *Id.*; Docs. #1, *Sched. D*.

As of the petition date, Property had an approximate value of $190,000.00. *Id.*, *Sched. A/B;* Doc. #40. Property is encumbered by a single $162,033.00 deed of trust in favor of Freedom Mortgage. Doc. #1, *Sched. D*. Debtor claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 the amount of $100,000.00. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	$16,596.09
Total amount of unavoidable liens	+ $162,033.00
Amount of Debtor's claimed exemption in Property	+ $100,000.00
Sum	= $278,629.09
Debtor's claimed value of interest absent liens	- $190,000.00
Amount Creditor's lien impairs Debtor's exemption	= $88,629.09

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		$190,000.00
Total amount of unavoidable liens	-	$162,033.00
Homestead exemption	-	$100,000.00
Remaining equity for judicial liens	=	($72,033.00)
Creditor's original judicial lien	-	$16,596.09
Extent Debtor's exemption impaired	=	($88,629.09)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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[3] Debtor complied with Fed. R. Bankr. P. 7004(h) by serving James J. Roszkowsk, Creditor's CEO, by certified mail at 502 E. Market Street, Greenwood, DE 19950 on May 2, 2022. Doc. #41.

7. 22-10491-B-7 **IN RE: CHELSEA MCCAFFERTY**
SL-1

MOTION TO COMPEL ABANDONMENT
4-27-2022 [15]

CHELSEA MCCAFFERTY/MV
SCOTT LYONS/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.

Chelsea Paige McCafferty ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's sole proprietorship business, "Joyful Noise with Chelsea" ("Joyful Noise"). Doc. #15. Joyful Noise is a music teaching company, and its assets (collectively "Business Assets") consist of goodwill, an HP laptop, and a Yamaha keyboard.[4] Doc. #17.

Neither Trustee nor any other party in interest timely filed written opposition.

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 the creditors, the Trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
Goodwill	$0.00	$0.00	$0.00	$0.00
HP Laptop	$300.00	$300.00	$0.00	$0.00
Yamaha Keyboard	$200.00	$200.00	$0.00	$0.00
Total	**$500.00**	**$500.00**	**$0.00**	**$0.00**

Doc. #1, *Sched. A/B*. None of the Business Assets are encumbered by any secured creditors. *Id.*, *Sched. D*. Debtor exempted the Business Assets in the amount of $500.00 under Cal. Code Civ. Proc. ("CCP") § 704.060. All income from Debtor's businesses is the result of Debtor's labor, and the goodwill consists of personal relationships Debtor has developed with clients, which cannot be sold.

CCP § 704.060(a)(1), as modified by EJC-156, allows the debtors to claim an exemption in tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property of up to $9,525 if reasonably necessary to and actually used by a joint debtor in the exercise of the trade, business, or profession by which the debtor earns a livelihood.[5]

Trustee did not oppose abandonment in this case. Further, on April 21, 2022, Trustee filed a *Notice of Filing Report of No Distribution*. Doc. #13. The deadline to object was May 21, 2022. No parties objected to that notice, and no parties have objected here.

Accordingly, the court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

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[4] Debtor also owns a trucking dispatch business. Doc. #17.

[5] EJ-156 (Rev. Apr. 1, 2022), https://www.courts.ca.gov/documents/ej156.pdf. The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

8. 21-12598-B-7 **IN RE: YINGCHUN LOU**
UST-2

MOTION TO DISMISS CASE
4-19-2022 [62]

TRACY DAVIS/MV
SAM WU/ATTY. FOR DBT.
JASON BLUMBERG/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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order approving a stipulation to dismiss this chapter 7 case without entry of discharge with a 2-year bar to refiling pursuant to 11 U.S.C. §§ 105(a), 349(a), 708(a), and a stipulation with Yingchun Lou ("Debtor"). Docs. #62; #64.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the debtor, the creditors, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 7 bankruptcy on November 9, 2021. Doc. #1. The § 341(a) meeting of creditors was held on December 3, 2021, continued to January 4, 2022, and continued again to and concluded on January 18, 2022. Chapter 7 trustee Irma C. Edmonds filed a report of no distribution on January 18, 2022, so any dismissal would not prejudice the interests of creditors. Doc. #47.

The deadline to object to discharge under 11 U.S.C. § 727 or to file a motion to dismiss under § 707(b)(1) and/or (b)(3) was originally February 1, 2022. Doc. #7. The court approved a stipulation between Debtor and UST to extend this deadline to March 31, 2022. Docs. #53; ##58-59.

On March 30, 2022, the UST commenced Adversary Proceeding No. 22-01008-B against the Debtor seeking a judgment denying the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(4)(A) and (a)(5). The adversary proceeding alleges that Debtor made false oaths by not disclosing business income and business connections on her *Statement of Financial Affairs*, and that Debtor has not provided a satisfactory explanation for the disposition of income and sale proceeds received within one-year preceding the petition date.

Rather than litigate, Debtor and Trustee have stipulated to a resolution of the adversary proceeding. Doc. #64. Under the terms of the stipulation,

a. Debtor has consented to dismissal of the bankruptcy case with an order prohibiting Debtor from filing, or causing to be filed, any subsequent petition for relief under the Bankruptcy Code for a period of two years from the date of entry of the order; and

b. Upon dismissal of the bankruptcy case and entry of the order with a two-year bar to refiling, the UST will seek dismissal of the adversary proceeding without prejudice to UST's rights under 11 U.S.C. § 524(b).

Id.

A chapter 7 case may be dismissed only after notice and a hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. *See* 11 U.S.C. §§ 707(b)(1), (2), and 3).

Here, UST argues that there is cause to dismiss this case for two reasons. First, Debtor has consented to dismissal. Doc. #64. Second, the chapter 7 trustee has determined that this is a "no asset" case, so the dismissal would not prejudice creditors. Doc. #62, citing *In re Bartee*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004) ("In the Ninth Circuit, a 'voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no "legal prejudice" to interested parties.'")

Next, UST contends that dismissal with a two-year bar is appropriate because Debtor has expressly consented to the two-year bar. Additionally, under §§ 105(a) and 349(a), the bankruptcy court is empowered to prohibit bankruptcy filings for a period exceeding the 180-day bar specified in § 109(g). Doc. #62, citing *In re Casse*, 198 F.3d 327, 338-39 (2nd Cir. 1999); *In re Duran*, 630 B.R. 797, 809 (B.A.P. 9th Cir. 2021); *In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997); *In re Mitchell*, 357 B.R. 142, 157 (Bankr. C.D. Cal. 2006).

No creditors timely filed written opposition, and there does not appear to be any prejudice to creditors in dismissing this case.

Accordingly, this motion will be granted. The stipulation to dismiss Debtors' bankruptcy case without entry of discharge will be approved and the case will be dismissed. The proposed order shall include an attached copy of the stipulation as an exhibit.

9. 22-10698-B-7 **IN RE: AGRIGENIX LLC**
MB-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-2022 [9]

DEERPOINT GROUP, INC./MV
STEPHEN LABIAK/ATTY. FOR DBT.
HAGOP BEDOYAN/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 hearing.

Deerpoint Group, Inc. ("Movant") requests an order granting relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) to allow it to continue to a final judgment in an action pending in the United States District Court for the Eastern District of California since April 18, 2018, as well as its related counter claims, filed as Case No. 1:18-CV-00536-AWI-BAM ("District Court Action"). Doc. #9. This motion is based on discretionary abstention under 28 U.S.C. § 1334(c)(1). Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). Doc. #15.

Agrigenix, LLC ("Debtor") timely filed written opposition. Doc. #20. Debtor contends that granting relief from the stay will allow Movant to gain preference over other similarly situated creditors by depleting Debtor's assets due to legal costs and interfering with liquidation of Debtor's bankruptcy estate. *Id.*

Movant replied, arguing that (a) Debtor lacks standing to oppose the motion, (b) the court does not have core jurisdiction over the District Court Action, (c) Debtor's defense is being paid by insurance, and (d) the *Tucson Estates* factors favor stay relief. Doc. #23.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

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 the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Debtor 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 above-mentioned parties in interest except Debtor are entered.

Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

On April 18, 2018, Movant filed the District Court Action against Debtor and third-parties Sean Mahoney, Custom Ag Formulators, and Eva Kwong (collectively "Defendants"). Doc. #12. Attached as Exhibit A and part of the motion documents is the operative Second Amended Complaint for (1) trade secret misappropriations [18 U.S.C. §§ 1836 *et seq.*]; (2) trade secret misappropriations [Cal. Civ. Code § 3426.1, *et seq.*]; (3) false advertising [15 U.S.C. § 1125]; (4) breach of secrecy agreement; (5) breach of settlement agreement; (6) intentional interference with prospective economic advantage; (7) unfair competition [Cal. Bus. Prof. Code §§ 17200, *et seq.*]; and (8) patent infringement. Doc. #13, *Ex. A*.

Movant seeks compensatory and punitive damages and injunctive relief arising out of Defendants' current and/or imminent theft of Movant's propriety and trade secret information for the benefit of Debtor, which allegedly launched copycat products and unfairly interfered with Movant's customer relationships. Doc. #12.

On March 23, 2020, Debtor and Mahoney filed their answer to the Second Amended Complaint and Debtor asserted counterclaims against Movant. Doc. #13, *Ex. B*. Kwong was dismissed from the action. Custom Ag Formulators answered on April 3, 2020 and also asserted counterclaims against Movant. Doc. #12. Movant answered Debtor's and Custom Ag Formulators' counterclaims on April 10 and 17, 2020, respectively. Doc. #14, *Exs. C*, *D*.

After extensive litigation and discovery over four years, the Honorable Barbara A. McAuliffe issued an Amended Scheduling Order on February 14, 2022, which was based upon the stipulation of the parties. *Id.*, *Ex. E*. According to the scheduling order, non-expert discovery was to be completed on April 15, 2022, and all expert discovery completed on July 8, 2022. *Id.* The deadline for filing dispositive motions has been set for August 12, 2022. *Id.* Movant's attorney anticipates that the case will be ready for a trial-setting status conference sometime this fall. Doc. #12.

On April 21, 2022, Movant filed a motion for sanctions against Debtor and Mahoney, which was set for hearing on May 6, 2022 at 9:00 a.m. Doc. #14, *Ex. F*. This motion was later reset to June 3, 2022 at 9:00 a.m. Doc. #12.

However, on April 25, 2022, Debtor filed bankruptcy. Doc. #1. Movant now seeks relief from the automatic stay so that the District Court Action can proceed to trial. Doc. #9.

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).

Movant seeks relief from the automatic stay for cause based on permissive abstention under 28 U.S.C. § 1334(c)(1). Doc. #9. "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Debtor opposes Movant's request that this court abstain from proceedings by lifting the automatic stay. Doc. #20. Debtor claims that if stay relief is granted, Movant would gain a preference in two ways. First, allowing the District Court Action to continue would inflate Movant's claim against Debtor. The civil suit requests attorneys' fees and witness fees, as well as other litigation costs. Doc. #13, *Ex. A*, at 43. By allowing the case to continue, these costs will continue to increase the value of Movant's claim, which would cause harm to other creditors and show preference to Movant. Second, Movant would be allowed to pursue claims and assets of Debtor while all other creditors are barred from this action. Doc. #20.

In reply, Movant notes that Debtor's defense is being paid by its insurance provider. Doc. #23. So, allowing the District Court Action to proceed would not actually create any preferences.

Movant contends that Debtor lacks standing to oppose this motion because Debtor's interest in the District Court Action is now represented by interim chapter 7 trustee Irma C. Edmonds ("Trustee"). *Id.* Since Trustee has elected not to oppose the motion, Debtor does not have standing to supplant the Trustee's business judgment by opposing the motion. The court is inclined to agree. The *Tucson Estates* factors weigh in favor of abstention as follows:

1. Effect on administration of the estate if the court abstains: Granting relief from the stay to permit the District Court Action to continue will allow for Movant to liquidate its claims against the Debtor in the District Court. Doc. #15. Therefore, abstention would facilitate the administration of the estate.

In response, Debtor claims that allowing the District Court Action to continue would interfere with liquidation of the estate. Doc. #20. Rather than liquidating one set of claims by the Trustee, there will be a set of claims in this bankruptcy, the civil suit, and Movant's claim that is in flux until the civil suit is concluded. By allowing Trustee to liquidate the estate instead, Movant can file a claim and be paid with the rest of the creditors through this bankruptcy. *Id.*

However, it appears that Movant's claim will be "in flux" regardless of whether the court abstains or not. If this court declined to abstain, Movant would need to file the adversary proceeding here, which would still need to be liquidated prior to full administration of the case. Since the District Court Action has already been pending for four years with a scheduling order in place, it appears that administration of the estate would be hastened by abstaining.

Additionally, Debtor claims that allowing the stay to be lifted will cause harm to the estate because Movant's claim will be indeterminate and ever-increasing due to litigation costs and fees. Doc. #20.

In response to this contention, Movant notes that Debtor's defense is currently being paid for by Debtor's insurer. Doc. #23; *cf.* Doc. #21. Thus, it does not appear that the bankruptcy estate's assets would be depleted by allowing the District Court Action to proceed at this time.

Further, Debtor argues that Trustee will not have the time or opportunity to evaluate the value and opportunity costs of prosecuting Debtor's counter claims. Doc. #20. Debtor compares this motion to "rushing the trustee" so that Movant will not have to pay any money to the estate, thereby putting creditors at risk of not being paid any funds out of the estate. *Id.*

Except, as noted by Movant, Trustee could have filed opposition requesting additional time to evaluate the District Court Action but did not do so. Doc. #23. This factor appears to either be neutral or weigh slightly in favor of abstention.

Lastly, Debtor has not provided evidence this estate is solvent. So, the Debtor really does not have an interest to protect now. There is no evidence the Trustee is incapable or unwilling to evaluate the viability of the counterclaim.

2. Extent to which state law issues predominate: State law issues (and non-bankruptcy federal law issues) predominate over bankruptcy issues because the District Court Action involves claims under state law and non-bankruptcy federal law. Doc. #15.

Debtor claims that federal law issues predominate over state law issues, so this factor should weigh against abstention. Doc. #20.

However, even though federal law issues do predominate over state law issues, such federal issues are exclusively non-bankruptcy issues. This factor weighs in favor of abstention because both the federal and state non-bankruptcy issues predominate over bankruptcy issues.

3. Difficulty or unsettled nature of the applicable law: The state law issues do not appear to be particularly unsettled or difficult. The federal issues in the District Court Action involve complex federal patent infringement claims. Doc. #15. Therefore, this factor substantially weighs in favor of abstention.

Debtor acknowledges that certain parts of the District Court Action are not unsettled or difficult. Doc. #20. However, since Movant does not present evidence of the difficulty or complexity of the federal patent claims, Debtor claims that this factor weighs against abstention. *Id.*

Contrary to Debtor's assertion, this factor weighs in favor of abstention. Movant included a copy of the Second Amended Complaint, which clearly involves complex patent infringement and trade secret misappropriation allegations. Doc. #13, *Ex. A*.

4. Presence of a related proceeding commenced in state or other non-bankruptcy court: Though there are no related, ongoing state court proceedings, the District Court Action has been pending since April 18, 2018. Doc. #12. Discovery has been largely completed, and the United States Magistrate has issued an Amended Scheduling Order that suggests a trial-setting scheduling conference will occur sometime in the fall of this year. *Id.*; Doc. #14, *Exs. E*, *G*.

Debtor says that it is not at fault for the amount of time the District Court Action has been pending. Doc. #20. Delays have been caused by COVID and by Movant filing multiple complaints. Debtor claims that discovery is not "largely completed" as evidenced by a pending discovery motion against Debtor. Trial-setting cannot occur until after the discovery motion has been resolved, so whether a trial will occur at some point in the future is unknown. *Id.* Debtor insists this factor weighs against abstention.

It is irrelevant which party is at fault for any delays in the District Court Action. The fact is that this case has been pending for four years, a scheduling order has been issued, and the case is on track to be set for trial sometime in the relatively near future should this court abstain from exercising jurisdiction here. In contrast, if this court does not abstain, the parties will be required to restart discovery and lose the progress already made in the District Court Action. This factor weighs in favor of abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: Movant claims that the only basis for jurisdiction is 28 U.S.C. § 1334. Doc. #15.

Without making any contentions, Debtor believes this factor is neutral and favors neither party. Doc. #20.

In reply, Movant says that it has not filed a proof of claim in this case at this time, so this court does not have "core" jurisdiction over the disputes in the District Court Action. Since the only basis for jurisdiction is 28 U.S.C. § 1334, this factor weighs towards abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: Movant claims that resolution of the District Court Action would liquidate its claim against the Debtor and also liquidate Debtor's and Custom Ag Formulators' counterclaims against Movant. Doc. #15.

In response, Debtor insists that Movant's claims are directly related to the bankruptcy case because Movant seeks money from Debtor, and by extension, the bankruptcy estate. Doc. #20. Allowing the District Court Action to proceed would prevent Trustee from making an informed decision as to whether to pursue Debtor's counterclaims and would deplete assets from the bankruptcy estate. *Id.*

As noted above, Trustee could have filed opposition but did not. There is no evidence that the Trustee is unable or unwilling to evaluate the counterclaims. The District Court Action involves exclusively non-bankruptcy federal and state law, so it does not appear to be related to the bankruptcy case. Further, Debtor's insurance company is providing Debtor's defense, so the estate should not be depleted by prosecution of the proceeding. Doc. #21. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Contrary to Debtor's contention, the District Court Action does not appear to involve any core proceedings. Debtor claims that the proceeding is core because it will affect administration of the bankruptcy estate. Doc. #20. However, as noted above, the District Court Action is not a core proceeding and the court does not have core jurisdiction because Movant has not filed a proof of claim. Further, administration of the estate should not be affected because Debtor's insurance company is providing Debtor's defense. Doc. #21.

8. Feasibility of severing state law claims from core bankruptcy matters: There are no core bankruptcy matters in the District Court Action, so there is nothing that could be severed from state or federal law claims. This factor appears to be inapplicable.

9. Burden on the bankruptcy court's docket: Lifting the automatic stay to permit Movant to proceed in District Court would free up the bankruptcy court's docket and eliminate any need to litigate the District Court Action through an adversary proceeding. Additionally, the District Court Action involves non-debtor third parties, federal patent law, and alleged misappropriation of trade secrets. The District Court is well experienced and equipped to handle these claims, as it has been doing for the four years this case has been pending.

Debtor claims that this case will have no burden on the bankruptcy court's docket, which will allow it to be resolved quickly. However, declining to abstain would result in having to "restart" the District Court Action, which has already been pending for four years. This factor weighs in favor of abstention.

10. Likelihood of forum shopping: Movant contends that Debtor, a corporation, filed this chapter 7 bankruptcy shortly before a scheduled hearing on its motion for sanctions. Doc. #15. As result, Movant claims that Debtor was forum shopping. *Id.*

In response, Debtor claims that "[t]here is always something happening in a civil case." Doc. #20, So, Movant would have complained if Debtor filed a bankruptcy at any point in the lawsuit. Debtor claims that the bankruptcy would have been filed sooner but for its difficulty in arranging funds to pay for a bankruptcy attorney. Since Movant has not filed a proof of claim, Debtor argues that there cannot even be any forum shopping at this point. *Id.*

Movant reiterates in its reply that the purpose of this bankruptcy filing was to stop the District Court Action from proceeding. Doc. #23. But since Movant has not filed a proof of claim, the bankruptcy court does not have core jurisdiction to hear this dispute, so Debtor is correct that forum shopping has not yet occurred. Notwithstanding, this factor also appears to weigh in favor of abstention.

11. Existence of a right to a jury trial: All parties have requested a jury trial, so this factor weighs in favor of abstention.

Debtor claims the same fact makes this factor neutral. Doc. #20. But as noted by Movant, this court cannot conduct a jury trial. Doc. #23; 28 U.S.C. § 157(e); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989). So, this factor weighs in favor of abstention.

12. Presence of non-debtor parties in related proceedings: The District Court Action currently involves two non-debtor defendants: Mahoney and Custom Ag Formulators. However, Debtor says that it is the primary party that Movant is seeking action against since the first, second, and third causes of action are against Debtor. Doc. #20. The fourth and fifth causes of action are against Debtor's CEO, and the sixth and seventh causes of action are against Debtor and Debtor's CEO. Since only the eighth cause of action is solely against a non-debtor party, "this clearly favors the debtor," claims Debtor. *Id.*

Though true, the fact remains that the fourth, fifth, sixth, seventh, and eighth causes of action involve non-debtor third parties. This factor clearly favors abstention.

Most of the *Tucson Estates* factors weigh against this court abstaining from exercising its jurisdiction over the claims between Movant and Debtor that have been subject to ongoing federal litigation since April 18, 2018. The court finds that cause exists to modify the automatic stay to permit Movant to take necessary actions to liquidate its claim against Debtor in the District Court Action pending bankruptcy court approval on any ordered sales with regular notice. No collection proceedings against the Debtor or the bankruptcy estate will be permitted absent further order of this court.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "*Curtis* factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

> 1. Whether the relief will result in a partial or complete resolution of the issues;
> 2. The lack of any connection with or interference with the bankruptcy case;
> 3. Whether the foreign proceeding involves the debtor as a fiduciary;
> 4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
> 5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
> 6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
> 7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
> 8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
> 9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004) citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); *see also Kronemyer*, 405 B.R. at 921.

1. Partial or complete resolution of the issues: Modification of the stay to allow the state court litigation to proceed will allow for partial or complete resolution of the factual and legal issues in the District Court Action. The District Court will also be able to proceed with the lawsuit, which has been pending for over four years before this bankruptcy case was filed. This factor weighs in favor of stay relief.

2. Lack of connection with or interference with the bankruptcy case: The District Court Action is connected with the bankruptcy case insofar as the bankruptcy estate may be liable to Movant. However, Movant has not filed a proof of claim, so the court does not have jurisdiction to try this matter. This militates in favor of granting the motion so a court with appropriate jurisdiction can proceed with litigation.

3. Debtor as a fiduciary: Debtor does not appear to be a fiduciary in the District Court Action. This factor is inapplicable.

4. Specialized tribunal: The District Court has expertise in federal patent and trade secret misappropriation claims. This factor weighs in favor of stay relief.

5. Insurance carrier's assumption of responsibility in defending litigation: Debtor's insurance carrier is defending Debtor in the District Court Action. Doc. #21. As result, the bankruptcy estate should not be impacted by prosecuting the action. This factor weighs in favor of stay relief

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: Debtor is not functioning as a bailee for goods or proceeds. However, the action does involve two third parties. This factor is either neutral and inapplicable, or slightly favors stay relief.

7. Prejudice to other creditors and interested parties: Debtor claims that other creditors will be prejudiced through depletion of the bankruptcy estate. Additionally, Debtor claims that Trustee has not had time to evaluate counterclaims. However, Trustee or any other creditors could have filed opposition, but did not. Further, Debtor's

insurance carrier is paying for its defense, so the bankruptcy estate will not be depleted by defense costs. This factor favors stay relief.

Additionally, Debtor insists that creditors and the bankruptcy estate will be prejudiced because one unsecured creditor — Movant — will be able to liquidate assets for its benefit only. Movant will be permitted to liquidate its claim against Debtor's insurance only. No sales of any estate assets will be permitted without approval by this court on regular notice by motion conforming to the bankruptcy code, the relevant federal and local rules, and such sale shall be subject to higher and better bids. No collection is authorized against the Debtor or the estate without further order of this court.

8. Equitable subordination: Equitable subordination may be applicable insofar as that Debtor's insurance carrier is providing Debtor's defense, and Trustee may step in to prosecute Debtor's counterclaims. If Trustee does not want to prosecute the counterclaims, it may abandon or sell those claims back to Debtor. This factor appears to be neutral.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The outcome of the District Court Action could not result in an avoidable judicial lien because Debtor is a corporation. Therefore, Debtor cannot avoid any liens under § 522(f) because it will not be entitled to any exemptions that could be impaired. This factor favors stay relief.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Judicial economy favors stay relief because the District Court Action has been pending for four years and could potentially be ready to be set for trial later this year.

11. Progressed to the point of trial: This factor further supports stay relief. As noted above, this case has been pending for more than four years. The District Court has issued an amended scheduling order under which the District Court Action may be ready to be set for trial later this year.

12. Impact of the stay and the "balance of hurt": Debtor contends that the balance of hurt weighs against stay relief because the costs of litigation will be high, creditors will be prejudiced, and the Trustee will not have time to evaluate Debtor's counterclaim. However, Debtor's insurance carrier is covering its defense, so costs of litigation and prejudice to creditors will not be an issue. Modification of the stay does not preclude Trustee from litigating Debtor's counterclaims against Movant. This factor is neutral.

The *Curtis* factors weigh in favor of modifying the automatic stay to allow the District Court to continue with the ongoing District Court Action.

This matter will be called and proceed as scheduled. The court is inclined to find that cause exists to lift the stay. This motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and the automatic stay will be modified to permit the United States District Court to resolve the District Court Action. Movant will be permitted to only liquidate its claim. Defense costs and payment of any claim by the insurance carrier will be permitted. Movant will not be permitted to enforce its claim against Debtor or the bankruptcy estate.

Given the length of time this litigation has been pending, the lack of any opposition from Trustee, or any other creditors, the court is inclined to GRANT Movant's request for waiver of the 14-day stay under Rule 4001(a)(3).