UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 1, 2020
Place: Department A – Courtroom #11
Fresno, California

Due to the recent appointment, all matters will be heard before the Honorable Jennifer E. Niemann.

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. 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.

9:00 AM

1. 20-11209-A-7 **IN RE: JENNIFER WILSON**
PBB-1

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
5-27-2020 [19]

JENNIFER WILSON/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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 amount of damages). Televideo Systems, 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.

This motion is GRANTED.

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir.

2003)(quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against the debtor in favor of American Express Centurion Bank, a Utah State Chartered Bank now known as American Express National Bank ("American Express"), in the sum of $8,557.51 on November 9, 2017. Doc. #22. The abstract of judgment was recorded with Madera County on February 28, 2018. Id. That lien attached to the debtor's interest in a residential real property in Coarsegold, California, which is the debtor's residence, commonly known as 28533 Cooper Creek Road, Coarsegold, California 93614 (the "Property"). Id.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The Property had an approximate value of $180,000.00 as of the petition date. Doc. #1. The Property is encumbered by an unavoidable lien totaling $120,869.46 as of the petition date, consisting of a first deed of trust in favor of NewRez Mortgage LLC. Doc. #1, Sched. D. American Express' claim totaled $10,564.80 on the petition date. Id. The debtor claimed an exemption in the Property in the amount of $100,000.00 under California Code of Civil Procedure § 704.730(a)(2). Doc. #1, Sched. C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. 20-10911-A-7 **IN RE: MARCO GARCIA RODRIGUEZ**
SL-1

MOTION TO COMPEL ABANDONMENT
5-12-2020 [19]

MARCO GARCIA RODRIGUEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
OST, ECF NO. 35

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 22, 2020 at 9:00 a.m. to allow debtor's counsel time to file amendments and re-notice the Motion for hearing.

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

Marco Garcia Rodriguez (the "debtor") filed a Motion for Order Compelling Abandonment of Sole Proprietorship Business Assets to

Debtor (the "Motion") on May 12, 2020. Doc. #19. This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2), on fewer than twenty-eight (28) days' notice, and originally set for hearing on June 1, 2020. Doc #20. A hearing on this motion was continued to and held on June 8, 2020. Doc. #27,

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. The debtor describes the assets that he seeks the Chapter 7 Trustee to abandon as a sole proprietorship as an independent contractor driver hired by XMR Transportation, Inc. Doc. #19. The debtor states he is the sole owner of the business. Id. The debtor states that he also has a commercial driver's license. Id. The debtor claims to own no commercial truck or trailer. Id. The debtor says that all income from the business is the result of the debtor's labor, and the only goodwill in the debtor's business is the personal relationships he has developed with clients over the course of doing business. Id. The debtor contends that these assets are of inconsequential value and benefit to the estate. Id.

At hearing on June 8, 2020, the court noted several inconsistencies between the relief sought in the Motion and the debtor's petition and schedules. The debtor's Schedule I lists the debtor as employed as a handy man, and XMR Transportation, Inc. as the debtor's employer. Doc. #29. There was no evidence in the Petition, Schedules, or Statement of Financial Affairs that the debtor is a sole proprietor or self-employed, see Doc. 1, Petition, Item 12, and Statement of Fin. Affairs, Item 27; holds a commercial driver license, see Doc. 1, Sched. B, Item 27; has any legal or equitable interest in business-related property, see Doc. 1, Sched. B, Item 37; or derives any income from operating a business, see Doc. 1, Sched. I, Item 8a. The court recognized that the Statement of Financial Affairs indicates the debtor had been self-employed. Item 27.

The court was inclined to deny the Motion without prejudice. However, the debtor's counsel raised a concern about the filing fee for another motion and requested time to correct and re-file the Schedules. Doc. #29. The court ordered these corrections to be filed by June 22, 2020, with a continued hearing scheduled for July 1, 2020. Id. The court also ordered the debtor to serve notice of the continued hearing on the Chapter 7 Trustee and all creditors by June 15, 2020. Id. Due to a calendaring error by the debtor's attorney, notice was not served on or before June 15, 2020. Doc. #33. The debtor sought an order shortening the time for serving notice of the continued hearing on June 16, 2020; and the court granted the order on June 17, 2020. Doc. ##33, 35.

On June 18, 2020, the debtor filed amended Schedules and Statement of Financial Affairs in an effort to make the evidentiary record

consistent. Doc. #38. The debtor amended Schedule B, Item 27 to include a commercial driver license with a value of $0. Id. The Motion claims the debtor exempted the entirety of the assets of the trucking business, consisting of his commercial driver license, under California Code of Civil Procedure § 703.140(b)(6). Doc. #19. However, this claim of exemption is not listed in the original Schedule C; and the debtor did not file an amended Schedule C. Doc. ##1, 38.

The debtor also amended the Statement of Financial Affairs, Item. 27 to clarify that within four years prior to filing for bankruptcy, the debtor was a sole proprietor or self-employed in as an independent contractor/truck driver. Doc. #38. However, the amended Schedule I still discloses the debtor's income as wages, salary, and commissions (Item 2) and not income from operating a business (Item 8a); and similarly, the amended Statement of Financial Affairs reports income earned from the start of this year until the petition date as wages, commissions, bonuses, tips, and not from operating a business (Item 4). Id. By contrast, the debtor reported gross income of $25,000.00 from operating a business in 2018. Id.

The evidentiary record remains too incongruous to support the relief requested in the Motion. Accordingly, the court cannot grant the Motion. If the debtor wants to amend his Petition, Schedules, and Statement of Financial Affairs to make them consistent with the facts presented in the Motion, the court is open to continuing the hearing on this Motion one more time to allow debtor's counsel time to file amendments and re-notice the Motion for hearing.

3. 20-11518-A-7 **IN RE: DAVID CHAVEZ**
MAZ-1

MOTION TO COMPEL ABANDONMENT
6-16-2020 [22]

DAVID CHAVEZ/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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." In order 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). And 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, Case No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

The debtor asks this court to compel the Chapter 7 Trustee to abandon the estate's 50% interest in real property commonly known as 3524 West Coppola Avenue, Visalia, California 93277 (the "Property"). The debtor scheduled the total value of the Property as $249,000.00, of which the debtor's 50% interest is valued at $124,500.00. Doc. #1, Sched. A. The Property is encumbered by a deed of trust in favor of US Bank Home Mortgage in the amount of $220,668.00. Doc. #1, Sched. D. This leaves potential equity totaling $28,332.00, minus costs of sale, between the estate and the debtor's aunt, who are co-owners of the Property, which is subject to the debtor's claim of exemption in his 50% interest in the Property in the amount of $16,500.00 under California Code of Civil Procedure § 703.140(b)(1). Doc. #1, Sched. C.

The court finds that the debtor's 50% interest in the Property is of inconsequential value and benefit to the estate. Therefore, this motion will be granted.

The order shall include a specific description of the property abandoned.

4. 20-11330-A-7 **IN RE: DENNIS/BROOKE SPURLOCK**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-2-2020 [22]

FORD MOTOR CREDIT COMPANY
LLC/MV
JEFFREY ROWE/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Ford Motor Credit Company LLC (the "Movant") moves for relief from the automatic stay of insurance proceeds resulting from the loss of its collateral, the debtors' 2012 Ford F150 (the "Vehicle"), for cause under 11 U.S.C. § 362(d)(1) and waiver of the 14-day stay set forth in Federal Rule of Bankruptcy Procedure 4001(a)(3). Doc. #22. The Movant is the holder of a claim in the approximate amount of $13,772.00 as of the petition date on April 6, 2020, secured by the Vehicle under the terms of a contract dated January 30, 2016 (the "Contract"). Doc. ##1, 24, 25. The Vehicle was involved in a collision on May 17, 2020 and declared a total loss, resulting in an insurance settlement from AAA Insurance in the amount of $23,023.86. Doc. ##24, 30. As of the date of the filing of the Movant's motion, the outstanding amount owed under the Contract was approximately $12,925.60. Doc. #24. The Movant is named as the loss payee on the insurance policy. Doc. #24.

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest." Pursuant to the Contract, the debtors gave the Movant a security interest in "[t]he vehicle and all parts or goods installed on it; [a]ll money or goods received (proceeds) for the vehicle; . . . [a]ll proceeds from insurance, maintenance, service, or other contracts we finance for you." Doc. #25. Further, the debtors agreed to "have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover [the Movant's] interest in the vehicle." Id. The Movant is listed as the lienholder on the Vehicle's certificate of title. Id. As the lienholder on the Vehicle, the Movant has an interest in the insurance proceeds to satisfy its lien on the Vehicle.

The Movant is entitled to relief from the automatic stay as to the insurance proceeds to the extent of satisfaction of its lien only. The Movant is the loss payee on the insurance policy. The Chapter 7 trustee has not filed any opposition to this motion. However, the Movant shall provide a complete accounting of the insurance proceeds to the Chapter 7 trustee and turn over any and all amounts in excess of the amount necessary to satisfy its lien to the trustee.

This motion is GRANTED.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show that the Vehicle has been declared a total loss, and it is necessary for the Movant to proceed to obtain and apply the insurance proceeds to the debtors' loan and account for and transmit the balance to the Chapter 7 trustee.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding, the order will be rejected. See In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

5. 20-11669-A-7 **IN RE: ADAM/CHRISTINA RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-8-2020 [23]

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the full filing fee has been paid.

6. 19-11076-A-7 **IN RE: RICHARD MILLER AND MINDI SAMUELS**
ICE-3

MOTION FOR COMPENSATION FOR IRMA CORRAL EDMONDS, TRUSTEES ATTORNEY(S)
5-26-2020 [46]

MARIO LANGONE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED.

The Chapter 7 Trustee's counsel, Irma Corral Edmonds of Edmonds Law Offices, requests fees of $6,573.75 and costs of $303.60 for a total of $6,877.35 for services rendered from July 9, 2019 through May 26, 2020.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) reviewing and analyzing the debtors' bankruptcy filings and exemptions related to veteran administration awards; (2) drafting an agreement in settlement with the Board of Veterans and submitting the agreement with a motion to approve the compromise to the court; and (3) preparing and filing employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $6,573.75 in fees and $303.60 in costs.

7. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
WF-26

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HAPPY ROCK MERCHANT SOLUTIONS, LLC
6-3-2020 [1075]

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Systems, 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.

This motion is GRANTED.

It appears from the moving papers that the Chapter 7 Trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;
b. the difficulties, if any, to be encountered in the matter of collection;
c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Chapter 7 Trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Randall Parker, the Chapter 7 Trustee (the "Trustee"), requests approval of a settlement agreement and release between the Trustee and Happy Rock Merchant Solutions, LLC ("Happy Rock") in Adversary Proceeding No. 19-010**60**-A, entitled Parker v. Happy Rock Merchant Solutions, LLC (the "Adversary Proceeding"). Doc. #1075.

The court notes that the motion inaccurately describes the adversary proceeding case number to be settled as Adversary Proceeding No. 19-01071-A, at Doc. #1075, Lines 18-20, which relates to Parker v. Targa Liquids Marketing and Trade LLC, dismissed May 13, 2020. The case number for Parker v. Happy Rock Merchant Solutions, LLC is Adversary Proceeding No. 19-01060. However, the court finds that this scrivener's error is immaterial, as the motion, declarations and exhibits in support thereof, and notice make it clear that the compromise is with Happy Rock, and the correct Adversary Proceeding case number is recited in the actual Settlement and Release Agreement. Doc. ##1075, 1076, 1077, 1078, 1080.

The Adversary Proceeding sought the avoidance and recovery of alleged preferential and/or fraudulent transfers to Happy Rock in the total amount of at least $219,900.00. Id. However, after the commencement of the Adversary Proceeding, the Trustee discovered that information about the alleged transfers in the debtor's Statement of Financial Affairs was incorrect and Happy Rock received much less than $219,000.00. Doc. #1078.

The Trustee and Happy Rock have agreed to a settlement under which Happy Rock will pay the estate $27,500.00, the Trustee agrees to dismiss the Adversary Proceeding, and each party agrees to release the other from any and all claims. Doc. #1078.

On a motion by the Trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. 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. Although the settlement amount of $27,500.00 represents only 13% of the amount sought in the Adversary Proceeding, the Trustee has learned that Happy Rock received much less than the alleged total amount of at least $219,900.00. Doc. #1078. Happy Rock contends any transfers were made in the ordinary course of business, which would eliminate recovery completely if

Happy Rock asserts this defense successfully. Id. The Trustee recognizes there is a possibility of loss at trial. Doc. #1078. Continued litigation of the Adversary Proceeding could last up to a year, incur significant attorneys' fees, and result in an uncertain outcome. Id. Even if the Trustee prevailed, Happy Rock's business is substantially suspended due to COVID-19 and its prospect for continuing in business is doubtful, so the Trustee does not know if he could collect a judgment. Doc. ##1078, 1080. The compromise will generate $27,500.00 for the estate for the benefit of the creditors without the expense of further litigation.

Therefore, the court finds the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is granted.

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

8. 20-11393-A-7 **IN RE: SALVADOR/PAMELA CHIARAMONTE**
MGG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-12-2020 [20]

POPPY BANK/MV
RILEY WALTER/ATTY. FOR DBT.
MITCHELL GREENBERG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted so long as movant's counsel files a notice of errata to correct the Docket Control Number in compliance with LBR 9004-2(b)(6).

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

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

LBR 9004-2(b)(6) provides that "[t]he Docket Control Number designated on the first document filed shall be the Docket Control Number listed on all related documents filed by any party." Here, the motion has Docket Control Number MGG-1, and all related

pleadings have Docket Control Number MBG-1. It appears that the original motion was mislabeled MGG-1, instead of MBG-1. Because the motion and related documents have different Docket Control Numbers, related pleadings are not linked to the original motion. To correct this error, counsel for the movant should file a notice of errata correcting the Docket Control Number for the motion from MGG-1 to MBG-1.

The movant, Poppy Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to real property located at 1944 West Tollin Road, Tulare, CA. 93274 ("Property"). Doc. #20.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least 7 complete pre- and post-petition payments. Movant has produced evidence that debtors are delinquent at least $16,252.85 and the entire balance of $427,202.68 is due. Doc. #27.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because debtors are in chapter 7. The property is valued at $700,000.00 and debtor owes $814,202.68. Doc. #27.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The court notes that the debtors filed a notice of non-opposition on 6/22/20. Doc. #34.

Prior to submitting a proposed order, Movant's counsel shall file a notice of errata to correct the Docket Control Number in compliance with LBR 9004-2(b)(6).

10:00 AM

1. 20-10705-A-7 **IN RE: NORMA KELLY**
20-1028

STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [1]

NUVISION FEDERAL CREDIT UNION
V. KELLY
ALANA ANAYA/ATTY. FOR PL.
RESCHEDULED 8/12/20, ECF NO. 10

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

DISPOSITION: Rescheduled to August 12, 2020 at 10:00 a.m.

NO ORDER REQUIRED: This matter is rescheduled to August 12, 2020 at 10:00 a.m. See Doc. #10.

2. 20-10422-A-7 **IN RE: DAVID SERRANO AND RITA DE GUZMAN**
20-1025

STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [1]

NUVISION FEDERAL CREDIT UNION
V. SERRANO
ALANA ANAYA/ATTY. FOR PL.
RESCHEDULED 8/12/20, ECF NO. 14

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

DISPOSITION: Rescheduled to August 12, 2020 at 10:00 a.m.

NO ORDER REQUIRED: This matter is rescheduled to August 12, 2020 at 10:00 a.m. See Doc. #14.

3. 19-11033-A-7 **IN RE: JOHN/AMY KUHL**
19-1077
CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-21-2019 [1]

SEDRAK, M.D. ET AL V. KUHL ET
AL
WENDY BENGE/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

4. 19-13951-A-7 **IN RE: BHUPINDER MAVI**
19-1139

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-26-2019 [1]

TRANSPORT FUNDING, LLC V. MAVI
RAFFI KHATCHADOURIAN/ATTY. FOR PL.

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

DISPOSITION: The matter is continued to September 3, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to the same date and time as the continued hearing on the order to show cause in this matter.

5. 19-13951-A-7 **IN RE: BHUPINDER MAVI**
19-1139 FEC-1

CONTINUED ORDER TO SHOW CAUSE
3-2-2020 [16]

TRANSPORT FUNDING, LLC V. MAVI
RESPONSIVE PLEADING

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

DISPOSITION: The matter is continued to September 3, 2020 at 11:00 a.m.

ORDER: The court will issue the order.

The court reviewed the plaintiff's status report. This hearing on the order to show cause will be continued. The plaintiff shall file a status report not later than August 20, 2020.

6. 19-12763-A-7 **IN RE: ANTONIO/JUANA VELASQUEZ**
19-1124

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
11-4-2019 [1]

FORD MOTOR CREDIT COMPANY V.
VELASQUEZ ET AL
AUSTIN NAGEL/ATTY. FOR PL.

No Ruling

7. 19-13871-A-7 **IN RE: JENNA LONG**
20-1014

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-11-2020 [1]

LONG V. U.S. DEPARTMENT OF
EDUCATION ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

8. 19-13871-A-7 **IN RE: JENNA LONG**
20-1014 USA-1

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-15-2020 [13]

LONG V. U.S. DEPARTMENT OF
EDUCATION ET AL
JEFFREY LODGE/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

Jenna Long (the "debtor") commenced this adversary proceeding on March 11, 2020 against the United States Department of Education, among other defendants, seeking a determination of dischargeability of her student loan debts under 11 U.S.C. § 523(a)(8), damages, sanctions, and attorney's fees. Doc. #1. On April 15, 2020, the U.S. Department of Education filed a motion to dismiss the adversary proceeding. Doc. #13.

On May 8, 2020, the court issued an order continuing the hearing on the U.S. Department of Education's motion to dismiss from May 20, 2020 to July 1, 2020, and ordering the debtor and the U.S. Department of Education to meet and confer by June 3, 2020 as to whether the U.S. Department of Education should be dismissed, and to file a joint statement not later than June 17, 2020 either dismissing the U.S. Department of Education or indicating the motion to dismiss is ready for resolution at the continued hearing. Doc. #27. The court's order also provided that the failure to file a timely joint statement will result in the court summarily granting the U.S. Department of Education's motion to dismiss without further notice or hearing. Id.

The parties did not file a joint statement by June 17, 2020. Accordingly, the U.S. Department of Education's motion to dismiss the adversary proceeding is granted. The moving party shall submit a proposed order dismissing the adversary proceeding as to the U.S. Department of Education only.

9. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
19-1057

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-10-2019 [1]

PARKER V. B & L FARMS
DANIEL EGAN/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

10. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**
19-1060

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
6-13-2019 [6]

PARKER V. HAPPY ROCK MERCHANT SOLUTIONS, LLC
DANIEL EGAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 12, 2020 at 10:00 a.m.

ORDER: The court will issue an order.

The pre-trial conference is continued to August 12, 2020 at 10:00 a.m. because approval of the compromise (Item 7 on the July 1, 2020, 9:00 a.m. calendar) will cause the Trustee to voluntarily dismiss this adversary proceeding. The pre-trial conference is continued to allow the Trustee to file a notice of voluntary dismissal in accord with the approved compromise.

10:30 AM

1. 20-11552-A-7 **IN RE: MARIA PACHECO**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
6-10-2020 [18]

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

DISPOSITION: Dropped.

ORDER: No order required.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney and the debtor is in pro per. 11 U.S.C. § 524(d) requires the court to hold a hearing when the debtor wants to make a reaffirmation agreement as provided in 11 U.S.C. § 524(c) and was not represented by an attorney during the course of negotiating such agreement.

This reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. § 524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

2. 20-11464-A-7 **IN RE: JULIE VALENTINE**

REAFFIRMATION AGREEMENT WITH CARRINGTON MORTGAGE SERVICES, LLC
6-8-2020 [21]

MARCUS TORIGIAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: No order required.

Debtor’s counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. This reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-52

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GROWER CREDITORS
5-28-2020 [872]

PIONEER NURSERY, LLC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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 amount of damages). Televideo Systems, 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.

This motion is GRANTED.

It appears from the moving papers that the Debtor in Possession has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;
b. the difficulties, if any, to be encountered in the matter of collection;
c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Debtor in Possession's business judgment.

Pioneer Nursery, LLC ("Pioneer"), the Debtor in Possession in this Chapter 11 case, requests the court's approval of the settlement agreement entered into between Pioneer and certain growers of pistachios, as follows: (1) Lone Palm Ranch, LLC; (2) Terra Linda Farms I; (3) J G Boswell Company; (4) John Martins aka Johnny Martin; (5) King Gardiner Farms aka King & Gardiner; (6) Rod Stiefvater; (7) Charles and Susie Nichols dba Sierra View Farms; (8) JP Farms; (9) Olam Farming, Inc.; (10) Westside Ranch; (11) New Dawn Farms; (12) Kings Ranch; (13) Johnivia Farms (Macedo); (14) FAE Hoss Fresno, LLC; and (15) FAE Holdings 457722R, LLC (individually, the "Grower"; collectively, the "Grower Creditors"), who are creditors in this case. Doc. #872.

Each of the Grower Creditors purchased pistachio rootstocks from Pioneer, and allege that the rootstocks were diseased, contaminated, and/or defective causing the Grower to suffer damages. Doc. ##872, 874. Following Pioneer's bankruptcy filing, all the Grower Creditors filed proofs of claim in this case based on these claims, but each Grower used a different method for calculating its proof of claim resulting in significantly different claims for damages per tree. Doc. #872. The Grower Creditors are the only parties that have proofs of claim against Pioneer on account of or relating to diseased, contaminated, and/or defective rootstock and/or trees.

Pursuant to the settlement agreement between Pioneer and the Grower Creditors, (1) the Grower Creditors' claims are calculated as $52.96 per tree delivered to the Grower, Pioneer and the Grower Creditors agree to the number of trees in question, and the Grower Creditors agree to amendments of their claims to reflect this calculation; (2) the Grower Creditors consent to the sale of certain insurance policies to New Hampshire Insurance Company and the National Union Fire Insurance Company (collectively, the "Insurers") for the sum of $4,500,000.00; (3) Pioneer shall make an interim disbursement of the $4.5 million to the Grower Creditors on a pro-rata basis within 15 days of receipt of the sale proceeds from the Insurers, except that Pioneer shall withhold the sum of $204,260.00 from the interim distribution to JP Farms based on Pioneer's right to set-off, which amount will be treated as a collected accounts receivable; and (4) the Grower Creditors shall release Pioneer and the Insurers from further liability. Doc. #875.

On a motion by the Debtor in Possession and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper

deference to their reasonable views. 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. The settlement agreement between Pioneer and the Grower Creditors represents one part of a broader compromise among and between Pioneer, the Grower Creditors, and the Insurers reached through mediation. Doc. ##872, 878. This settlement resolves the amount of each Grower's claim. Doc. #872.

The Grower Creditors are the only parties that have proofs of claim against Pioneer on account of or relating to diseased, contaminated, and/or defective rootstock and/or trees. Doc. #872. All other proofs of claim are not related to these rootstock and/or trees, or have been withdrawn. Id. The Grower Creditors' proofs of claim compromise almost all the claims in this case. Id. However, each Grower used a different method for calculating its proof of claim, so the damages claimed per tree in these claims vary significantly. Id. Pioneer and the Official Committee of Unsecured Creditors (the "Committee") considered filing an omnibus objection to the Grower Creditors' claims. Doc. #874. Although the objections to claim would not have been overly complex and Pioneer believes it would have prevailed, litigation would have been expensive. Id. Such action would not be necessary in light of this settlement, resulting in significant savings to the estate. Id. The settlement agrees to the number of trees delivered to each Grower and fixes the amount of each claim to $52.96 per tree for every Grower. Doc. #875. The Committee believes the amended claim amounts more fairly allocate damages suffered by the Growers based on a per tree measure of damages using industry-standard farming practices and prices. Doc. #872. There is no issue of collection. Id. This settlement is in the best interest of the creditors as the Grower Creditors' claims represent substantially all the claims in this case, and the Grower Creditors have all agreed to the settlement. Id.

Therefore, the court finds the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is granted.

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

2. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-53

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NEW HAMPSHIRE INSURANCE COMPANY AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA
6-3-2020 [878]

PIONEER NURSERY, LLC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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 amount of damages). Televideo Systems, 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.

This motion is GRANTED.

It appears from the moving papers that the Debtor in Possession has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;
b. the difficulties, if any, to be encountered in the matter of collection;
c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Debtor in Possession's business judgment.

Pioneer Nursery, LLC ("Pioneer"), the Debtor in Possession in this Chapter 11 case, requests the court's approval of the settlement agreement entered into between Pioneer and New Hampshire Insurance Company and the National Union Fire Insurance Company (collectively, the "Insurers").

Prior to filing bankruptcy, Pioneer was in the business of selling tree rootstock or trees to commercial growers. (1) Lone Palm Ranch, LLC; (2) Terra Linda Farms I; (3) J G Boswell Company; (4) John Martins aka Johnny Martin; (5) King Gardiner Farms aka King & Gardiner; (6) Rod Stiefvater; (7) Charles and Susie Nichols dba Sierra View Farms; (8) JP Farms; (9) Olam Farming, Inc.; (10) Westside Ranch; (11) New Dawn Farms; (12) Kings Ranch; (13) Johnivia Farms (Macedo); (14) FAE Hoss Fresno, LLC; and (15) FAE Holdings 457722R, LLC (individually, the "Grower"; collectively, the "Grower Creditors"), each purchased pistachio rootstocks from Pioneer, allege that the rootstocks were diseased, contaminated, and/or defective, and that each suffered resulting damages. Doc. #878.

Pioneer contends that the Insurers had issued insurance policies that actually or allegedly provide coverage to Pioneer, and the Insurers are liable for the Grower Creditors' damages. Doc. #878. The Insurers defended Pioneer with respect to the Grower Creditors' claims under a reservation of rights and disputed the extent of their liability for these claims under the insurance policies. Id. On July 3, 2018, Pioneer filed an adversary proceeding entitled Pioneer Nursery, LLC v. New Hampshire Insurance Company et al., Adversary Proceeding No. 18-01039 (the "Declaratory Judgment Action"), seeking declaratory judgment to determine the Insurers' obligations under the insurance policies. The Declaratory Judgment Action has been stayed to allow the parties to mediate these disputes.

Pursuant to the settlement agreement between Pioneer and the Insurers, the Insurers will pay to Pioneer the sum of $4,500,000.00 as the purchase price for the sale of (1) all the insurance rights, obligations, and policies issued to Pioneer by the Insurers and (2) any right that Pioneer actually or allegedly has to obtain coverage under a policy issued by the Insurers, free and clear of any and all interests, subject to the court's approval under 11 U.S.C. § 363(f); and upon payment of $4.5 million, the Insurers shall have no further obligation to Pioneer, the bankruptcy estate, or any other party that has or may assert a claim under or related to the insurance policies. Doc. #881.

On a motion by the Debtor in Possession and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it;

and (4) the paramount interest of the creditors with a proper deference to their reasonable views. 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. The settlement agreement between Pioneer and the Insurers represents one part of a broader compromise among and between Pioneer, the Grower Creditors, and the Insurers reached through mediation. Doc. ##872, 878. This settlement resolves the amount that the Insurers are required to pay to Pioneer on account of the Grower Creditors' claims. Doc. #878.

The dispute between Pioneer and the Insurers concerns the extent, if any, the Grower Creditors' claims are covered by the insurance policies. Doc. ##878, 880. However, the Grower Creditors' claims would have to be litigated before the issue of coverage of those claims with the Insurers. Doc. #878. Litigation regarding insurance coverage would be complex and expensive. Doc. ##878, 880. Competing arguments from Pioneer, the Insurers, and the Grower Creditors make it difficult to tell who would prevail at trial. Doc. #880. The Insurers contend that each of the contracts for the sale of rootstalk contained a limitation of damages provision that limited damages to the price of the trees. Id. Further, the Insurers argue that the insurance policies did not cover Pioneer's product so no insurance coverage would be available. Id. The Grower Creditors argue that the contractual limitation of liability provisions was not enforceable or that the contractual limitation applied only to the amount of damages and not the type of damages. Id. Pioneer believes it would have been successful in litigation to determine that the Insurers have at least some liability to the Grower Creditors' claims. Doc. #878. Pioneer does not believe it would have encountered difficulty in collection, but Pioneer believes the maximum amount of coverage under the insurance policies was $7 million. Doc. #880. This settlement would generate $4.5 million for the estate. Id. This settlement is in the best interest of the creditors as the Grower Creditors' claims represent substantially all the claims in this case, and the Grower Creditors have all agreed to the settlement. Doc. #878.

Therefore, the court finds the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is granted.

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

3. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-54

MOTION TO SELL FREE AND CLEAR OF LIENS
6-3-2020 [884]

PIONEER NURSERY, LLC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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 amount of damages). Televideo Systems, 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.

Pioneer Nursery, LLC ("Pioneer"), the Debtor in Possession in this Chapter 11 case, requests the court's approval to sell to New Hampshire Insurance Company and the National Union Fire Insurance Company (collectively, the "Insurers") (1) all the insurance rights, obligations, and policies issued to Pioneer by the Insurers and (2) any right that Pioneer actually or allegedly has to obtain coverage under a policy issued by the Insurers (the "Insurance Rights"), free and clear of any and all interests pursuant to 11 U.S.C. § 363(f) for the purchase price of $4,500,000.00.

Prior to filing bankruptcy, Pioneer was in the business of selling tree rootstock or trees to commercial growers. Doc. #884. (1) Lone Palm Ranch, LLC; (2) Terra Linda Farms I; (3) J G Boswell Company; (4) John Martins aka Johnny Martin; (5) King Gardiner Farms aka King & Gardiner; (6) Rod Stiefvater; (7) Charles and Susie Nichols dba Sierra View Farms; (8) JP Farms; (9) Olam Farming, Inc.; (10) Westside Ranch; (11) New Dawn Farms; (12) Kings Ranch; (13) Johnivia Farms (Macedo); (14) FAE Hoss Fresno, LLC; and (15) FAE Holdings 457722R, LLC (individually, the "Grower"; collectively, the "Grower Creditors"), each purchased pistachio rootstocks from Pioneer, allege that the rootstocks were diseased,

contaminated, and/or defective, and that each suffered resulting damages. Id.

Pioneer contends that the Insurers had issued insurance policies that actually or allegedly provide coverage to Pioneer, and the Insurers are liable for the Grower Creditors' damages. Doc. #878. The Insurers defended Pioneer with respect to the Grower Creditors' claims under a reservation of rights and disputed the extent of their liability for these claims under the insurance policies. Id. On July 3, 2018, Pioneer filed an adversary proceeding entitled Pioneer Nursery, LLC v. New Hampshire Insurance Company et al., Adversary Proceeding No. 18-01039 (the "Declaratory Judgment Action"), seeking declaratory judgment to determine the Insurers' obligations under the insurance policies. The Declaratory Judgment Action has been stayed to allow the parties to mediate these disputes.

Pioneer's sale of the Insurance Rights to the Insurers represents one part of a broader compromise among and between Pioneer, the Grower Creditors, and the Insurers reached through mediation. See Doc. ##872, 878. In settlement of the dispute between Pioneer and the Insurers regarding what extent, if any, the Grower Creditors' claims are covered by the insurance policies, Pioneer agrees to sell the Insurance Rights to the Insurers for payment of $4.5 million to the estate. See Doc. #881. The settlement between Pioneer and the Grower Creditors agrees to the number of trees delivered and damages per tree, and amends the Grower Creditors' proofs of claim accordingly; obtains the Grower Creditors' consent to the sale of the Insurance Rights; provides for an interim disbursement of the $4.5 million from this sale to the Grower Creditors on a pro-rata basis (except to JP Farms); and releases Pioneer and the Insurers from further liability. See Doc. #875. Pioneer's settlements with the Insurers and the Grower Creditors are the subject of two concurrent motions to approve compromise, which this court grants. See Doc. ##872, 878.

Insurance policies are property of the estate. Minoco Grp. of Cos., Ltd. v. First State Underwriters Agency of New England Reinsurance Corp. (In re Minoco Grp. of Cos., Ltd.), 799 F.2d 517, 519 (9th Cir. 1986). Pursuant to 11 U.S.C. § 363(f)(2) and (4), a Chapter 11 trustee or debtor in possession may sell property of the estate outside the ordinary course of business, after notice and a hearing, "free and clear of any interest in such property of an entity other than the estate," only if "such entity consents" or "such interest is in bona fide dispute."

Pioneer has obtained the consent of all the Grower Creditors and all growers who might have asserted claims against Pioneer or the Insurers to the free and clear sale of the Insurance Rights. Doc. ##886, 887. Pioneer has provided notice of this bankruptcy case in several different ways to all of Pioneer's customers over the last several years. Pioneer scheduled all its customers from 2015 and 2016 as having potential disputed claims in this case. Doc. #884, see Doc. #41. Pursuant to the Notice of the Chapter 11 Bankruptcy Case, the deadline for filing a proof of claim against Pioneer was December 19, 2017. See Doc. # 8. The Grower Creditors are the only

parties that have proofs of claim against Pioneer on account of or relating to diseased, contaminated, and/or defective rootstock and/or trees. Doc. ##884, 886. All other proofs of claim in this case are not related to damages caused by the rootstock or have been withdrawn. Id. Other parties asserted claims similar to those of the Grower Creditors, but released their claims either pre-petition or post-petition in exchange for replacement trees. Id. Moreover, Pioneer provided notice of this motion to sell free and clear to an extensive service list that includes all of Pioneer's creditors and customers for several years pre-petition, including to the Grower Creditors, growers who released claims pre-petition and post-petition claims, parties with disputed claims, and other interested parties. Doc. ##887, 889, 890. Notice was proper and no opposition has been filed. The absence of objection to a properly noticed motion to sell free and clear of interests constitutes consent to such free and clear sale. See FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285 (7th Cir. 2002)(stating, in the context of § 363(f)(2), "lack of objection (provided of course there is notice) counts as consent"). Therefore, the court may authorize the sale of the Insurance Rights free and clear of the interests of any non-objecting party who received notice of this motion.

Pioneer seeks to have the interests of the Grower Creditors and any other customers who might have an interest in the Insurance Rights attach to the proceeds of the sale. Doc. #884. Pioneer sold rootstock that allegedly caused damages to its customers, and there is a bona fide dispute regarding how many trees were delivered and how much damages to allocate per tree; and to what extent, if any, these claims are covered under the Insurance Rights under, *inter alia*, California Insurance Code § 11580(b)(2). To the extent any of Pioneer's other customers assert claims that might be an interest in the Insurance Rights, such interest would be subject to a bona fide dispute pursuant to 11 U.S.C. § 363(f)(4). See In re Dow Corning Corp., 198 BR. 214, 245 (Bankr. E.D. Mich. 1996)(where "the Debtor vehemently denies liability to the tort claimants, it is easy to conclude that the interest, if any, of a tort claimant in any of the Debtor's insurance policies 'is in bona fide dispute'"). "In ruling on a motion to sell estate property free and clear under § 363(f)(4), 'a court need not determine the probable outcome of the dispute, but merely whether one exists.'" In re Kellogg-Taxe, Case No. 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, at *22-23 (Bankr. C.D. Cal. Mar. 17, 2014)(citing In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). The parties must establish factual grounds to show an objective basis for the dispute. Id. (citing In re Gaylord Grain L.L.C., 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004). "The purpose of § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001). The proceeds of the sale are typically held subject to the disputed interest, then distributed following the resolution of the dispute pursuant to the court's order and judgment. Id. This preserves all parties' rights by transferring interests from property to the proceeds that represent its value. Id. Accordingly, the court approves the sale of the Insurance Rights free and clear

of any interests, with any such interests attaching to the sale proceeds.

The settlement agreement between Pioneer and the Insurers providing for the sale of the Insurance Rights is conditioned on, among other things, the court ordering a supplemental, permanent injunction "enjoining the prosecution, continuation, assertion or commencement of any Interest or claim that any person or entity holds or asserts or may in the future hold or assert against the Insurers arising out of or in any way related to the Debtor's Insurance Rights." See Doc. #888. Pursuant to 11 U.S.C. § 105(a), the court has the authority to order such an injunction as necessary or appropriate to carry out the provisions of the Bankruptcy Code. Courts have long recognized that inherent within the authority to sell estate property free and clear of liens is the power to enjoin creditors from pursuing the purchaser of such property. See Dow Corning Corp., 198 BR. at 245 (citing Whitehead & Kales Co. v. Dempster (In re Wiltse Bros. Corp.), 361 F.2d 295, 299 (6th Cir. 1966)). By paying $4.5 million to Pioneer for the benefit of its creditors, the Insurers seek to be released from any further obligations under the Insurance Rights. The court recognizes that the issuance of an injunction is necessary to the successful resolution of the disputes that are at the core of Pioneer's bankruptcy. See In re Roman Catholic Bishop of Stockton, Case No. 14-20371, 2017 WL 118013, at *9 (Bankr. E.D. Cal. Jan. 10, 2017)(finding channeling injunctions were appropriate to effectuate a free and clear sale). Therefore, the court shall issue a permanent injunction that enjoins the prosecution, continuation, assertion, or commencement of any interest or claim against the Insurers arising out of or in any way related to the Insurance Rights.

The sale of the Insurance Rights by Pioneer to the Insurers is also conditioned on the court finding that the Insurers are good faith purchasers of the Insurance Rights pursuant to 11 U.S.C. § 363(m). Although the Bankruptcy Code does not define "good faith," "courts generally have followed traditional equitable principles in holding that a good faith purchaser is one who buys 'in good faith' and 'for value.'" In re Ewell, 958 F.2d 276, 281 (9th Cir. 1992). "Good faith" is a factual determination that can be defeated by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." In re Thomas, 287 B.R. 782, 785 (B.A.P. 9th Cir. 2002) (quoting Ewell, 958 F.2d at 281); Southwest Prods., Inc. v. Durkin (In re Southwest Prods., Inc.), 144 B.R. 100, 102-03 (B.A.P. 9th Cir. 1992). There is sufficient evidence to find the Insurers are good faith purchasers of the Insurance Rights. The dispute between Pioneer and the Insurers regarding the scope of coverage under the Insurance Rights goes back several years, and the Declaratory Judgment Action that seeks to determine the extent of the Insurer's liability to the Grower Creditors' claims remains pending. See Doc. #886, and Pioneer Nursery, LLC v. New Hampshire Insurance Company et al., Adv. Proc. No. 18-01039 (Bankr. E.D. Cal. filed July 3, 2018). Pioneer believes the maximum amount of coverage under its insurance policies was $7 million, but there is a chance of no recovery if the Insurers are successful in asserting their defenses, and the Insurers have agreed to settle the dispute and purchase the Insurance Rights for $4.5 million. Doc. #880. Pioneer believes that this purchase amount

is fair, reasonable, and in the best interest of the estate. See Doc. #874. The purchase amount was the result of arms-length mediation between all parties in interest and has received the consent of the Grower Creditors whose proofs of claims represent substantially all the claims filed in the bankruptcy case. See Doc. ##872, 878. The court finds that the Insurers are good faith purchasers of the Insurance Rights.

This motion is GRANTED.

4. 19-15278-A-11 **IN RE: THE MAGNOLIA GROUP, INC.**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION STATUS CONFERENCE
12-19-2019 [1]

JUSTIN HARRIS/ATTY. FOR DBT.

No Ruling

To be heard at 2:00 p.m. with the Status Conference in Adv. #20-1008.

5. 19-15279-A-11 **IN RE: MAGNOLIA PARK**

RESCHEDULED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
12-19-2019 [1]

JUSTIN HARRIS/ATTY. FOR DBT.

No Ruling

To be heard at 2:00 p.m. with the Status Conference in Adv. #20-1008.

2:00 PM

1. 19-15278-A-11 **IN RE: THE MAGNOLIA GROUP, INC.**
   20-1008

   RESCHEDULED STATUS CONFERENCE RE: NOTICE OF REMOVAL STATUS CONFERENCE
   2-7-2020 [1]

   ABLP REIT, LLC V. THE MAGNOLIA
   GROUP, INC.
   UNKNOWN TIME OF FILING/ATTY. FOR PL.

No Ruling