

# Eastern District of California

**October 6, 2016, at 1:30 p.m.**

- Final Ruling:** No appearance at the October 6, 2016 hearing is required.

**October 6, 2016, at 1:30 p.m.**  
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2. [16-21089-E-13](#)      STEPHEN MAR  
[16-2051](#)              PLC-1  
MAR V. UNIFUND CCR, LLC ET AL

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
CITIBANK (SOUTH DAKOTA), N.A.,  
PILOT RECEIVABLES MANAGEMENT,  
LLC., UNIFUND CCR, LLC. AND ALLIED  
INTERSTATE LLC  
9-2-16 [12]**

**Final Ruling:** No appearance at the October 6, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 2, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Approval of Compromise is granted.</b>
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Stephen Mar, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Citibank (South Dakota), N.A.; Pilot Receivables Management, LLC; Unifund CCR, LLC; and Allied Interstate (collectively "Settlors"). The claims and disputes to be resolved by the proposed settlement are a complaint for objection to claim, declaratory relief, and related State and Federal causes of action.

Movant and Settlors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 14):

- A. By July 20, 2016, Movant will execute and return the Settlement agreement; provide a properly completed Form W-9 for each of Movant and Movant's counsel; and provide a stipulated order setting aside the Judgment to Unifund.
- B. Allied will send Movant's counsel an \$8,000.00 check made payable to the Law Office of Peter Cianchetta no later than fifteen (15) business days after Movant provides the stipulated order.
- C. Unifund shall return the Citi MasterCard credit card account ending in 3747 (the "Account") to the Citibank (South Dakota); execute and return the Stipulated Order to Movant's counsel; and issue a \$2,760.23 check payable to Movant.
- D. Citibank shall send a request to the three credit bureaus to which the Account was reported by Citibank to delete any reporting of the Account from Movant's credit history.

If at any time following sixty (60) days after the execution of the Agreement by all parties, Movant determines that one or more of the credit bureaus have not complied with Citibank's request, Movant agrees to provide prompt written notice to Citibank and provide copies of any credit bureau reports for which Movant contends the tradeline was not updated as reflected above. In that event, Citibank will re-contact the credit bureau(s) that have not updated the credit reports and again request that the Account be updated as reflected above.

- E. Movant will file a notice of dismissal of the Complaint and provide a copy to the Defendants. Thereafter, the Payment may be cashed or otherwise negotiated.

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). The reasonableness of a compromise is determined by the particular circumstances of each case. *In re Walsh Construction*, 669 F.2d at 1328.

Though filed in the Adversary Proceeding, the Motion has been served on all parties in interest listed on the Master Mailing List filed in Plaintiff-Debtor's bankruptcy case. 16-21089, Dckt. 4. Though a motion to approve a settlement or compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 should be filed in the bankruptcy case, not the adversary proceeding, notice having been given of the filing of the motion in this Adversary Proceeding is not fatal.

The proposed settlement resolves the dispute in a reasonable, business manner consistent with the fiduciary duties of the Plaintiff-Debtor to the Chapter 13 bankruptcy estate. The Chapter 13 Plan filed

in the Plaintiff-Debtor's bankruptcy case provides for a 100% dividend to creditors holding general unsecured claims. *Id.*, Dckt. 60.

The court finds the terms agreed to by the parties to be reasonable and the business judgment used by the Settlers to be sound. Therefore, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Stephen Mar, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Compromise between Movant and Citibank (South Dakota), N.A.; Pilot Receivables Management, LLC; Unifund CCR, LLC; and Allied Interstate ("Settlers") is granted, and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 14).