UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 10, 2020 at 11:00 a.m.

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1. **20-20430-E-13** **RAFAEL DE LA TORRE**
20-2147 **BLG-2 Chad Johnson**

DE LA TORRE V. INDEPENDENCE BANK

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH INDEPENDENCE BANK
11-17-20 [10]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor's Attorney, Defendant, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2020. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Approval of Compromise is granted.

Rafael Palos De La Torre, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Independence Bank ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the instant adversary proceeding that at the time of the filing of the petition the business assets belonged to the sole proprietorship, not Los Arcos Livestock Feed Store, LLC and $20,000 of the Defendant's claim is nondischargeable.

Movant and Settlor 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. 12):

A. Debtor-Plaintiff agrees to pay Defendant $20,000 ("Settlement Amount") at a 0% interest rate and agrees that the $20,000 is nondischargeable.

B. Parties will submit a stipulated judgement within five days of the court approving the settlement finding that at the time of the filing of the petition the business assets belonged o the sole proprietorship, not Los Arcos Livestock Feed Store, LLC and $20,000 of Defendant's claim is non-dischargeable.

C. Defendant agrees to amend their proof of claim, within 30 days of settlement's approval, to a fully unsecured claim. If the case is dismissed, Defendant's entire claim will "spring back." With the $20,000 remaining non-dischargeable.

D. The parties have exchanged mutual release of all claims, excepting those rights and obligations related to this Settlement.

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 Constr.)*, 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 Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in 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 and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620

(9th Cir. 1988).

Movant argues that the four factors have been met. Movant asserts that by approving the settlement the estate avoids the high cost of litigation compared to the low value of the business assets. Moreover, the settlement allows Defendant to get a substantial portion of the value of the assets. The settlement will not impact the feasibility of the Chapter 13 plan. Additionally, the agreement protects the Defendant by having a court enter an order regarding the non-dischargeability of the $20,000 while Plaintiff completes his Chapter 13 case.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the agreement will allow Debtor to proceed in confirming a plan in the Chapter 13 case without the delay of a protracted litigation in the Adversary proceeding and limit the attorney fees and costs in the adversary proceeding. 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 Rafael Palos De La Torre, 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 for Approval of Compromise between Movant and Independence Bank ("Settlor") 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 (Dckt. 12).

2. **20-20430-E-13 RAFAEL DE LA TORRE** **CONTINUED STATUS CONFERENCE**
20-2147 **RE: COMPLAINT**
DE LA TORRE V. INDEPENDENCE BANK **8-31-20 [1]**

Plaintiff's Atty: Chad M. Johnson
Defendant's Atty: Kristofer R. McDonald

Adv. Filed: 8/31/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 11/18/20. Parties reported that this has been settled.

[BLG-2] Motion to Approve Settlement Agreement filed 11/17/20 [Dckt 10], set for hearing 12/10/20 at 11:00 a.m.

The Status Conference is xxxxxxx

3. **20-20978-E-7** **JEFFREY ANDERSEN** **MOTION TO DISMISS CAUSE(S) OF ACTION FROM AMENDED COMPLAINT**
20-2111 **GK-3 Jeffrey Meisner**

KELLY V. ANDERSEN ET AL **11-10-20 [158]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Defendant's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 7, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Cause (s) of Action from Complaint 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 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Cause (s) of Action from Complaint is granted.

Plaintiff Gregory Kelly requests the court an order authorizing Plaintiff to dismiss the fourth, fifth, and sixth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(3) and 727(a)(4)(A) against Jeffrey A. Andersen ("Debtor"), pursuant to Fed. R. Bankr. P. 7041.

On November 10, 2020, Plaintiff filed a Motion to Approve a Compromise. Dckt. 154. The settlement provides for a payment of $12,000 to Plaintiff Kelly and has the practical effect of a § 523 non-dischargeability stipulation.

Plaintiff asserts that because of this settlement there is no need to proceed with the other denial of discharge claims.

DISCUSSION

Federal Rule of Bankruptcy Procedure 7041 provides for the dismissal of an adversary proceeding, and states:

> Federal Rule of Civil Procedure Rule 41 applies in adversary proceedings, except that a complaint objecting to the debtor's

> discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

Fed. R. Bankr. P. 7041.

Objections to discharge under 11 U.S.C. § 727 generally involve allegations of conduct by debtor that are contrary to public policy and offensive to creditor body as a whole and it is with respect to such complaints that trustee must be notified of dismissal under Bankruptcy Rule 7041 and that receipt of consideration is proscribed. *In re Corban*, 71 B.R. 327 (Bankr. M.D. La. 1987).

Here, Plaintiff has provided notice to both Chapter 7 Trustee, Sheri Carello, and the Office of the U.S. Trustee on November 7, 2020. Dckt. 162. The Motion to Dismiss the Causes of Action from the Complaint was filed and was set for hearing. A total of 28 days was provided for filing of written opposition and/or responses.

These dismissals are part of a comprehensive resolution and substantial payment of the remaining obligation due Creditor Plaintiff. While not an "easy" path, the Parties have stayed focused on their respective better financial interests.

The parties having settled the claims with stipulating to Defendant paying $12,000 to Plaintiff as a non-dischargeable judgment, the Motion is granted, and Plaintiff is authorized to dismiss the fourth, fifth, and sixth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(3) and 727(a)(4)(A).

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 Dismiss Causes of Action from the Complaint filed by Gregory Kelly ("Plaintiff") 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 Dismiss Causes of Action from the Complaint is granted, and Plaintiff is authorized to dismiss the fourth, fifth, and sixth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(3) and 727(a)(4)(A).
>
> The court will issue a separate order dismissing the Fourth, Fifth, and Sixth Causes of Action at the same time as issuing the Order approving the settlement (DCN: GK-17) of this Adversary Proceeding

4. 20-20978-E-7 **JEFFREY ANDERSEN** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DEFENDANTS JEFFREY A. ANDERSEN AND BRIDGETTE A. ANDERSEN**
20-2111 **GK-17 Jeffrey Meisner**

KELLY V. ANDERSEN ET AL

11-10-20 [154]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 10, 2020. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Gregory Kelly, the Plaintiff in this Adversary Proceeding, ("Plaintiff") requests that the court approve a compromise and settle competing claims and defenses with Jeffrey Alan Andersen ("Defendant"). The claims and disputes to be resolved by the proposed settlement are the adversary proceeding where Plaintiff alleges fraud, embezzlement, concealment of property, failure to keep records, false oaths and presentation of a false claim, pursuant to various sections of the bankruptcy code.

Plaintiff and Defendant 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. 156):

A. Defendant to pay $12,000 to Plaintiff at amounts and dates as specified in the agreement with a down payment of $7,000 due on December 15, 2020.

B. Parties agree that the amount is non-dischargeable under section 523 of the bankruptcy code.

C. In the event of default by Defendant, Plaintiff may petition the court for a non-dischargeable default judgment under section 523 at an interest rate of 10% per year on any remaining balance of the settlement amount.

D. Plaintiff will be entitled to fees and costs related to collecting the non-dischargeable default judgment.

E. Defendant agrees not to file any post nuptial agreement with his spouse until Plaintiff is paid the settlement amount in full.

F. Pending discovery will continue unabated until the parties have executed the agreement; the court has approved the agreement; and Defendant makes the $7,000 down payment.

G. Parties agree to remove all pending motions on the court's calendar after the agreement has been approved by the court.

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 Constr.)*, 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 Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in 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 and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Both Plaintiff and Defendant each believe they can prevail at trial. But after weighing all relevant and material factors, parties agree that given the uncertainties of trial, the agreement is fair and

reasonable.

Difficulties in Collection

This is one of the reasons Plaintiff wishes to settlement as Plaintiff believes that it is uncertain whether Defendant will be able to pay a non-dischargeable judgment in excess of $14,000. The amount of the settlement was designed so that it was payable by Defendant and would not thwart his chances of a fresh start after the bankruptcy.

Expense, Inconvenience, and Delay of Continued Litigation

Although the issues are not complex, litigation would deplete the financial resources of the parties, consume considerable time and attention, and expose the parties to the uncertainty of litigation.

Paramount Interest of Creditors

The settlement resolves the adversary action and has little to no effect on other creditors as the trustee has already filed a Report of No Distribution.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement avoids further litigation. 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 Gregory Kelly, the plaintiff in this adversary proceeding, ("Plaintiff") 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 for Approval of Compromise between Plaintiff and Jeffrey Andersen ("Defendant") 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 (Dckt. 156).
>
> **IT IS FURTHER ORDERED** that the Fourth, Fifth, and Sixth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(3) and 727(a)(4)(A) are dismissed.
>
> The Clerk of the Court shall not close the file (an administrative act) for this Adversary Proceeding until after **March 15, 2021**, to allow for the Parties to establish the continuing performance of the settlement before the file is closed.

5. 20-20978-E-7 JEFFREY ANDERSEN MOTION TO COMPEL
20-2111 GK-18 Jeffrey Meisner 11-19-20 [165]
KELLY V. ANDERSEN ET AL

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on November 16, 2020. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Compel was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Compel is dismissed without prejudice as moot, the parties having settled the adversary proceeding and agreeing pursuant to the Settlement Agreement (Dckt. 156) that pending motions shall be removed once the agreement has been approved by the court.

The Motion filed by Gregory Kelly ("Plaintiff") requests the court for an order compelling Jeffrey A. Andersen ("Defendant") to produce certain documents requested through Plaintiff's Request for Production of Documents, Set Two, accordance with Federal Rule of Civil Procedure 34(a)(1)(A).

On November 10, 2020, Plaintiff filed a Motion to Approve a Compromise. Dckt. 154. The settlement provides for a payment of $12,000 to Plaintiff Kelly and has the practical effect of a § 523 non-dischargeability stipulation ("Settlement Agreement"). Dckt. 156. The Motion to Approve Compromise was granted, and the Settlement Agreement was approved on December 10, 2020.

As part of the terms of the Settlement Agreement, parties agreed to:

16. Pending Motions. The Parties agree to remove all pending Motions on the

Court's Calendar after the Settlement has been approved by the Court.

Exhibit A, Dckt. 156, at 5.

Thus, the Motion to Compel is dismissed as moot, the parties having settled the adversary proceeding and agreeing to the removal of this pending motion as stated in the Settlement Agreement.

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 Compel having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the parties having agreed to its removal pursuant to the Settlement Agreement.

6. **20-20978-E-7** **JEFFREY ANDERSEN** **STATUS CONFERENCE RE: MOTION**
20-2111 **RHS-1 Jeffrey Meisner** **TO AMEND**
KELLY V. ANDERSEN ET AL **10-27-20 [128]**

Plaintiff's Atty: Pro Se
Defendant's Atty: Richard Kwun

Adv. Filed: 6/1/20
Answer: none
Amd. Cmplt. Filed: 6/22/20
Answer: 7/16/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Declaratory judgment

Notes:
Set by order of the court filed 11/2/20 [Dckt 145]. The court suspending the filing of any further pleadings with respect to the Motion to Amend.

The Motion to Amend is dismissed without prejudice, the Parties having settled this Adversary Proceeding.

The court shall issue an 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 Amend filed by Jeffrey Andersen, Defendant, having been presented to the court, the Parties having settled this Adversary Proceeding and all issues therein, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice as moot.

7. **20-20978-E-7** **JEFFREY ANDERSEN** **CONTINUED SETTLEMENT STATUS CONFERENCE RE: MOTION TO COMPEL**
20-2111 **GK-16**

KELLY V. ANDERSEN ET AL **10-5-20 [97]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor's Attorney on October 1, 2020. By the court's calculation, 15 days' notice was provided. The court required no less than 10 days' notice. *See* Dckt. 33.

The Motion to Compel Production of Documents, Set One was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Defendant-Debtor were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Compel is dismissed without prejudice as moot, the Parties having settled this Adversary Proceeding.

The Motion filed by Gregory Kelly ("Plaintiff") requests the court for an order compelling Jeffrey A. Andersen and Bridgette A. Andersen ("Defendants") to produce certain documents requested through Plaintiff's Request for Production of Documents, Set One, accordance with Federal Rule of Civil Procedure 34(a)(1)(A).

The Motion to Compel was granted on October 29, 2020. Civil Minutes, Dckt. 146. On November 2, 2020, the Motion was set for a November 18, 2020 Status Conference after the parties engaged in settlement discussions at the October 29, 2020 hearing. Order, Dckt. 141. At the November 18, 2020 hearing, the Status Conference was continued to 11:00 a.m. on December 10, 2020 to be conducted in conjunction with motions relating to the parties settlement of this adversary proceeding. Civil Minutes, Dckt. 172.

On November 10, 2020, Plaintiff filed a Motion to Approve a Compromise. Dckt. 154. The settlement provides for a payment of $12,000 to Plaintiff Kelly and has the practical effect of a § 523 non-dischargeability stipulation ("Settlement Agreement"). Dckt. 156. The Motion to Approve Compromise was granted, and the Settlement Agreement was approved on December 10, 2020.

As part of the terms of the Settlement Agreement, parties agreed to:

> **15. Pending Discovery.** The Parties agree that all pending Discovery in this case shall continue, unabated, including all Orders from the Court on Discovery, until such time where:
>
> a) The Parties have executed this Settlement Agreement; and
>
> b) The Court has approved this Settlement Agreement; and
>
> c) Andersen has made his Down Payment of $7,000.
>
> **16. Pending Motions.** The Parties agree to remove all pending Motions on the Court's Calendar after the Settlement has been approved by the Court.

Exhibit A, Dckt. 156, at 5.

Thus, the Motion to Compel is dismissed as moot, the parties having settled the adversary proceeding and agreeing to the removal of this pending motion as stated in the Settlement Agreement.

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 Compel having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the parties having agreed to its removal pursuant to the Settlement Agreement.

8.	**18-27755-E-7** **19-2042**	**MARK/RENEE EVANS** **PLC-5 Peter Macaluso**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARK W. EVANS AND RENEE EVANS** **O.S.T.** **12-2-20 [42]**
	SCHREIBER V. EVANS ET AL		

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 2, 2020. By the court's calculation, 8 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

A Motion to Shorten Time was filed on December 2, 2020. Dckt. 44. The court granted the motion on December 3, 2020 and set the hearing for December 10, 2020. Dckt. 51.

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Approval of Compromise is xxxxx.

Gazelle Schreiber, the plaintiff in this adversary proceeding, ("Plaintiff") requests that the court approve a compromise and settle competing claims and defenses with Mark Williams Evans and Renee Evans ("Defendants" and Debtors in the related Chapter 7 case) and United Global, LLC (collectively "Settlors"). The claims and disputes to be resolved by the proposed settlement are the adversary proceeding for fraud and dischargeability under 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).

Plaintiff 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 1 in support of the Motion, Dckt. 49):

A. Plaintiff shall dismiss Defendant Renee.

B. Defendant Mark shall stipulate to judgment in this adversary proceeding in favor of Plaintiff and against Debtors in the amount of $180,000.00, representing $150,000.00 in actual damages and $30,000.00 in attorney fees and costs. Plaintiff shall not submit a request for entry of judgment until approval of the settlement agreement by the court.

C. Defendant Mark shall stipulate to judgment in the State Court Action in favor of Plaintiff and against Debtors and United Global in the amount of $250,000.00, representing $150,000.00 in actual damages and $100,000.00 in attorney fees and costs.

D. Defendants individually and on behalf of United Global sell, assign, and transfer to Plaintiff all rights, title, and interest in any claims and causes of action that they have or may have, and that United Global has or may have, in the State Court Action against any other defendants, entities, or individual relating to the Property. Said claims and causes of action shall include, but are not limited to, those alleged in Plaintiff's State Court Action complaint and any amendments.

E. Defendant Mark agrees to cooperate with Plaintiff in pursuing said claims against other defendants in the State Court Action, but will not be liable for the ultimate outcome of the State Court Action.

F. "Within five (5) days of full execution of this Agreement, Schreiber shall file a dismissal of the Bankruptcy Action and Adversary Proceeding with prejudice."

G. Defendants-Debtors shall receive a discharge.

H. The bankruptcy court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

DISCUSSION

In the Motion, the dismissals referenced in paragraph E above are stated slightly differently, with the Plaintiff to act as follows:

> Within five (5) days of full execution of the Settlement Agreement, Plaintiff shall file a dismissals in Case No. 2018-27755 and the instant action (Adversary Case No. 2019- 02042) with prejudice; . . . .

Motion, p. 3:11-13; Dckt. 42. It is not clear what the "dismissal in Case No. 2018027755" references, as only the court may dismiss a Chapter 7 case as provided in 11 U.S.C. § 707. There are no pending Contested Matters being prosecuted by Plaintiff in the bankruptcy case.

At the hearing, xxxxxxxxxx

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982).

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 Gazelle Schreiber, the plaintiff in this adversary proceeding, ("Plaintiff") 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 for Approval of Compromise between Movant and Mark Williams Evans and Renee Evans ("Defendant") 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 1 in support of the Motion (Dckt. 49).

9. **17-22481-E-7** **WILLIAM LANDES** **STATUS CONFERENCE: MOTION FOR SUMMARY JUDGMENT**
20-2130 **MPD-1 Douglas Jacobs** **8-11-20 [12]**

REGER V. ESSEX BANK

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Trustee, Defendant and Office of the United States Trustee on August 11, 2020. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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 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). The defaults of the non-responding parties and other parties in interest are entered.

A The Motion for Summary Judgment is xxxxx.

John Reger ("Plaintiff-Trustee") filed the instant adversary proceeding on July 20, 2020, against Essex Bank ("Defendant"). Plaintiff filed a Motion for Summary Judgment on August 11, 2020. Dckt. 12. No answer has yet been filed, Defendant having filed a Motion to Dismiss the Complaint. The court has granted in part the Motion to Dismiss, with the second and fourth causes of action dismissed; and denied in part as to the first cause of action (to determine the extent, validity, priority of lien of Defendant in the monies at issue in this Adversary Proceeding) and the third cause of action (the Objection to Claim based on 11 U.S.C. § 502(d)).

OVERVIEW OF MOTION AND UNDERLYING FACTS APPEARING NOT TO BE IN DISPUTE

Plaintiff-Trustee requests the court determine that Defendant has no security interest over the funds in dispute; that the court sustain his objection to Defendant's proof of claim; seeks a determination that Defendant's Proof of Claim is disallowed, and further seeks declaratory relief confirming that Plaintiff may distribute the funds in dispute free and clear of Defendant's claim. Dckt. 1.

William Landes, the Chapter 7 Debtor, commenced his voluntary Chapter 7 bankruptcy case, 17-22481, on April 14, 2017. Six years prior to that, Marie Landes (Debtor's wife at the time) filed a petition for dissolution of marriage in 2011. No property division had occurred in the Dissolution

Action ("Dissolution Action") prior to the commencement of the bankruptcy case, and no information about any such division has been provided to this court.

On April 26, 2017, Plaintiff-Trustee, as the Chapter 7 Trustee in Debtor's bankruptcy case, filed and served a Notice of Intent to Sell Equity in Property. A copy of the Notice of Intent is included as part of the 113 page exhibit document filed in support of the present Motion. Dckt. 19.

The Notice of Intent includes the following information (identified by paragraph number used in the Notice of Intent) relating to the property to be sold as relevant to this Adversary Proceeding:

> 3. DESCRIPTION OF PROPERTY TO BE SOLD: The property to be sold consists of the debtor(s) non-exempt equity in a 2009 Audi A 4 convertible, with 60,000 miles (exempted for $3,000.00) and a 1992 Lexus with 230,000 miles. Vehicles valued at $15,050.00 and $500.00 respectively.
>
> 4. TERMS AND CONDITIONS OF SALE: These properties are being sold as is, where is, subject to all existing liens and encumbrances and without any warranty or representations of any kind. There is no right of refund or return. The trustee has received an offer from the debtor to purchase these properties for $12,500.00, with a onetime payment of $12,500.00. Source of payment is a credit line.
> . . .
> 7. AMOUNT OF LIENS AND IDENTITY OF LIEN HOLDERS: Reger is not aware of any liens or lien holders against the property to be sold. All prospective purchasers should conduct their own independent investigation as to the nature and status of any liens and lien holders against the property to be sold.
>
> 8. IDENTITY OF PURCHASER AND RELATIONSHIP, IF ANY, TO ANY CREDITOR OR PARTY IN INTEREST: Reger has received an offer from the debtor to purchase the property for $12,500.00, with a onetime payment. Reger wishes to accept this offer. Upon expiration of the time to object and completion of the sale Reger will file a Report of Sale.

Exhibit 3; Dckt. 13. The Certificate of Service for the Notice of Intent includes Defendant, providing services as follows:

> Essex Bank
> 9954 Mayland Drive Suite 2100
> Richmond VA 23233-1482

Exhibit 4; *Id*.

On May 18, 2017, Plaintiff-Trustee filed his Report of Sale, which states that the sale "to allow the Debtor(s) to buy back the equity in his 2009 Audi and a 1992 Lexus for $12,500.00" had been consummated. Exhibit 7; *Id*.

Proofs of Claim Filed by Defendant
In Debtor's Bankruptcy Case

On July 17, 2017, Defendant filed a Proof of Claim #4-1 in Debtor's bankruptcy case. A copy of Proof of Claim 4-1 is filed as Exhibit 15 in support of the Motion. *Id*. The information and documentation provided in and with Proof of Claim 4-1 is summarized as follows:

A. The amount of the claims is $857,159.86.

B. The Basis of the Claim is stated to be:

1. Judgment

a. Attached to the Proof of Claim as Exhibit 1 is a copy of a judgment from the Superior Court for the County of Butte in favor of Defendant and against JSB, LLC and Debtor in the amount of $739,994.08 ("Essex Judgment").

2. Abstract of Judgment

a. Attached to the Proof of Claim as Exhibit 2 is an Abstract of Judgment for the Essex Judgment, which in the upper right hand corner has information stating that it was recorded in Butte County, California on January 31, 2017.

3. Form JL-1

a. Attached to the Proof of Claim as Exhibit 3 is Notice of Judgment Lien (Form JL-1) for the Essex Judgment, which in the upper right hand corner has information stating that it was filed with the California Secretary of State on January 3, 2017.

(1) The name of the judgment debtor listed on the JL-1 is William Landes, the Chapter 7 Debtor, and JSB, LLC.

C. Security for the Claim is stated to be:

1. Real Property

2. Personal Property

3. With perfection of lien by recorded Abstract of Judgment and filed Form JL-1.

On December 29, 2018, Defendant filed Amended Proof of Claim 4-2, which is filed as Exhibit 16. *Id*. The Amended Proof of Claim includes the same information as in Proof of Claim No. 4-1, with the following additions or changes as relevant to the Motion now before the court:

A. For the basis of claim (Part 2, § 8 of Proof of Claim 4-2), "Notice of Lien" has been added.

B. For the identification of security for the claim (Part 2, § 9 of Proof of Claim 4-2), "Ntc of Lien" and "[See attached Summary and Exhibits 1, 2, 3, and 4]" have been added.

C. In the Proof of Claim Summary, page 4 of Exhibit 16, the following additional summary information has been added:

> A Notice of Lien regarding the 9/22/15 Judgment from the Butte County Superior Court civil case was filed in the Butte County Superior Court family law case regarding the pending divorce of William Landes and Marie Landes [Exhibit 4] and served on counsel for both of those parties, thereby creating a lien on everything involved in that case and preventing any actions involving William Landes and Marie Landes about their property without either a court order from that Superior Court or the written approval of Essex Bank.
>
> The Notice of Lien attached as Exhibit 4 affects the community personal property (guns, artwork, etc.) that William Landes and the Chapter 7 trustee proposed to sell to Marie Landes. That personal property was community property of William Landes and Marie Landes subject to the claims and liens and rights of Essex Bank. Essex Bank claims a right to 100% of the proceeds of that "sale". That "sale" is a sham sale between a husband and a wife of community property through a bankruptcy trustee where the purpose was to enrich William Landes, enrich Marie Landes, enrich the trustee, and enrich the trustee's attorney to the detriment of Essex Bank.

D. Added as Exhibit 4 to Proof of Claim No. 4-2 is a Notice of Lien for the Essex Judgment filed on February 14, 2017, in the *Marie Landes v. William Landes* dissolution proceeding in Butte County. *Id*.

In the Debtor's Bankruptcy Case, the Plaintiff-Trustee filed a Motion to Sell property of the bankruptcy estate identified as artwork and firearms for $20,000.00 to Marie Landes, the spouse of Debtor who commenced the 2011 dissolution action in state court. The bankruptcy judge entered an order approving the sale pursuant to 11 U.S.C. § 363(b). 17-22481; Motion and Order, Dckt. 63, 76.

DEFENDANT'S OPPOSITION AND CLAIM FOR SUMMARY JUDGMENT IN ITS FAVOR

Defendant filed an Opposition to the Motion to Sell, asserting a lien on the property to be sold and the right to 100% of the proceeds of the sale. *Id*.; Dckt. 70. Defendant asserted liens pursuant to the Abstract of Judgment, JL-1 filed with the Secretary of State, and Notice of Lien filed in the

dissolution proceeding. The bankruptcy judge to whom the case was assigned granted the Motion and authorized the sale, stating that he did not believe that the liens had attached to the property sold. *Id*.; Civil Minutes, Dckt. 74. The court's findings and order clearly state that the sale is authorized pursuant to 11 U.S.C. § 363(b), and do not approve the sale as being free and clear of liens pursuant to 11 U.S.C. § 363(f).

Defendant appealed the court's order authorizing the sale pursuant to 11 U.S.C. § 363(b), and on the issue of whether there was a lien created on the assets sold, Defendant prevailed. On this point, the decision of the Bankruptcy Appellate Panel includes the following:

> We also agree with the bankruptcy court that the JL-1 did not create a lien on the guns and artwork. In California, a JL-1 lien is similar to a UCC-1 lien and provides a judgment lien on a variety of personal property. See CCP § 697.530.5 Essex Bank argued at the sale hearing that the buy/sell agreement constituted an "accounts receivable" to William, which was covered by its JL-1 lien. The court disagreed, finding that the postpetition contract between Trustee on behalf of the bankruptcy estate and Marie was not a contract or receivable of William. And even if it was, the JL-1 lien did not encumber postpetition assets. § 552(a).
>
> However, we disagree with the bankruptcy court's ruling that the Notice of Lien did not create a lien on the guns and artwork and that Essex Bank was a general unsecured creditor and not entitled to any of the sale proceeds. . .
>
> If a judgment creditor has a money judgment against a judgment debtor who is a party to a pending action or special proceeding, the creditor **may acquire a lien to the extent necessary to satisfy the judgment on (a) any cause of action of the debtor for money or property that is the subject of the action or proceeding, and (b) the rights of the debtor to money or property under any judgment subsequently procured in the action or proceeding**. CCP § 708.410(a); 8 Witkin, Cal. Proc., Enforcement of Judgment § 297 (5th ed. 2008). The judgment debtor can be the plaintiff or the defendant. *Fleet Credit Corp. v. TML Bus. Sales, Inc.*, 65 F.3d 119, 121 (9th Cir. 1995). An action or proceeding remains "pending" until the time for appeal expires or an appeal is finally determined. CCP § 708.410(d).
>
> To obtain this type of lien, **the judgment creditor files in the pending action or proceeding a notice of lien and an abstract or certified copy of the judgment creditor's money judgment.** CCP § 708.410(b). The judgment creditor must also serve a copy of the filed notice of lien on all of the parties to the "action or special proceeding. . . . " CCP § 708.410(a). The notice of lien must contain certain language, which serves as a notice to the judgment debtor of his or her rights. CCP § 708.420.
>
> . . .
>
> It is undisputed, and the record establishes, that **Essex Bank did everything required to obtain and perfect a lien under CCP § 708.410.** It filed the Notice of Lien, which contained the necessary language under CCP § 708.420, and a copy of the Abstract of Judgment **in the Divorce Case**. It also served the

> Notice of Lien on the parties to the Divorce Case, including Marie and her divorce counsel. No one has asserted that William sought or obtained an exemption from the lien in accordance with CCP § 708.450.7 Thus, the lien appears to be prima facie valid.
> . . .
> While a marital dissolution proceeding might not seem like a "cause of action" that would fall under the statute, California courts have ruled that CCP § 708.410 liens do apply in such proceedings. *See In re Marriage of Katz*, 234 Cal. App. 3d 1711, 1719-21 (1991) (ruling that CCP § 708.410 liens and the associated remedies apply in marital dissolution proceedings and that wife's transfer to husband of more than one-half of community property interest during dissolution proceeding gave rise to liability to judgment creditor under CCP § 708.470(c)); *In re Marriage of Kerr*, 185 Cal. App. 3d. 130 (1986) (applying CCP § 708.410 in marital dissolution).
>
> The bankruptcy court erred, and thus abused its discretion, in ruling as a matter of law that Essex Bank did not have a CCP § 708.410 lien on the guns and artwork simply because the Notice of Lien was filed in a marital dissolution proceeding. Accordingly, we must REVERSE the Sale Order.

Essex Bank v. Reger et al, 2019 Bankr. LEXIS 3943 (B.A.P. 9th 2019); copy filed as Exhibit 19, Dckt. 19.

The Bankruptcy Appellate Panel reversed the sale order. When it returned to the Bankruptcy Court, the sale "fell through" and the $20,000.00 of sales proceeds was lost.

Asserted Lien on Proceeds from Sale of Non-Exempt Equity in the Vehicles

Defendant has asserted that it has a blanket lien on all assets of the Debtor and Marie Landes (who is identified as the "ex-wife," though the court is not aware of a conclusion to the Dissolution Action). Therefore, it has a lien on the $12,500.00 of proceeds from the sale of the non-exempt equity in the two vehicles back to the Debtor.

From the thirty pages of points and authorities, the court distills the following legal basis asserted by Defendant for having such a lien. First, the JL-1 filed lien with the Secretary of State, that lien has attached to the $12,500.00 paid to the Plaintiff-Trustee. It is asserted that the JL-1 Lien includes any accounts receivable that were owed to Debtor. As discussed below, Defendant asserts that the $12,500.00 paid to the Plaintiff-Trustee by a check issued by Landes Medical Group (the Debtor's medial corporation) necessarily had to be an accounts receivable that was owed by the Medical Group to the Debtor that was subject to the JL-1 Lien.

Defendant states that this JL-1 Lien was filed with the Secretary of State, and thereby perfected, 1010 days before Debtor filed his bankruptcy case (therefore, outside of the ninety-day non-insider preference period).

Second, Defendant asserts that the Notice of Lien filed in the dissolution proceeding has

attached to the $12,500. Defendant cites to the Bankruptcy Appellate Panel decision stating that such lien was created by the filing of the Notice of Lien in the Dissolution Action. As discussed above, this lien was created, and the transfer made thereby, within the ninety day preference period.

Third, Defendant argues that since the Plaintiff-Trustee's Notice of Intent to Sell states that "These properties are being sold as is, where is, subject to all existing liens and encumbrances," means that the entire transaction, including the monies paid to the Plaintiff-Trustee were subject to the liens, if any, that encumbered the property sold - the nonexempt equity in the vehicles. In substance, Defendant seems to argue that the Plaintiff-Trustee could create a lien on property without court authorization. *See* 11 U.S.C. § 364(c).

Fourth, Defendant argues that the Plaintiff-Trustee waived the mandate imposed by Congress in 11 U.S.C. § 502(d) for the disallowance of a claim by virtue of the language used in the Notice of Intent to Sell. This appears to be an argument that the Plaintiff-Trustee created a lien on the monies received by saying that the property sold was subject to the liens and encumbrances on such property sold.

The Defendant also asserts that because the deadline to file an action to avoid the transfer created by filing the Notice of Lien in the dissolution proceeding on the eve of Debtor's bankruptcy filing has expired, the disallowance of the claim pursuant to 11 U.S.C. § 502(d) is time barred.

These position are asserted long on argument and short on legal authorities and evidence. Defendant asserts a number of "it must be" as opposed to evidence of "this is."

PLAINTIFF-TRUSTEE'S GROUNDS ASSERTED FOR SUMMARY JUDGMENT IN HIS FAVOR

Plaintiff-Trustee begins first with the assertion that an Abstract of Judgment lien attaches only to real property, citing to California Code of Civil Procedure § 697.310.(a). Therefore, since the monies at issue are not related to any real property interest, there cannot be a lien pursuant to the Abstract of Judgment.

Going to the JL-1 Lien filed with the Secretary of State, the Plaintiff-Trustee cites to California Code of Civil Procedure § 697.530(a) to identify the personal property that is subject to a JL-1 Lien. Included in the list of items is "accounts receivable," which is what Defendant asserts the monies paid to the Plaintiff-Trustee were. Neither the Trustee nor Defendant provide the court with what constitutes, legally, an "account receivable" for purposes of the JL-1 Lien.

The Plaintiff-Trustee then addresses the Notice of Lien asserted to have been created within ninety days of the filing of the bankruptcy case pursuant to California Code of Civil Procedure § 708.5410. The Plaintiff-Trustee argues that the monies paid to the Plaintiff-Trustee by the Landes Medical are not monies that would be subject to the Notice of Lien since they are not "rights to money or property under a judgment" obtained in the Dissolution Action.

Then, the Plaintiff-Trustee asserts that the Bankruptcy Appellate Panel did not determine that a lien exists on the $12,500.00 in monies received for the sale of the non-exempt interest in the vehicles. While it is true that the $12,500.00 was not at issue on that appeal, as between Defendant and the

Plaintiff-Trustee it has been adjudicated that a lien was created on various assets by the filing of the Notice of Lien in the Dissolution Action on the eve of Debtor filing bankruptcy.

The Plaintiff-Trustee further asserts that California Code of Civil Procedure § 708.410 does not state that the lien created by the Notice of Lien applies to proceeds from the sale of property subject to such a lien.

With respect to the two vehicles and the asserted liens, the Plaintiff-Trustee cites to California Code of Civil Procedure § 697.530(d), which specifies the personal property subject to a judgment lien. Within this section is a specific exclusion from a judgment lien – vehicles:

> § 697.530. Property subject to judgment lien
>
> (a) A **judgment lien on personal property** is a lien on all interests in the following personal property that are **subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1** (commencing with Section 695.010) of Chapter 1 at the time when the lien is created if the personal property is, at that time, any of the following:
>
> (1) Accounts receivable, and the judgment debtor is located in this state.
>
> (2) Tangible chattel paper, as defined in paragraph (79) of subdivision (a) of Section 9102 of the Commercial Code, and the judgment debtor is located in this state.
>
> (3) Equipment, located within this state.
>
> (4) Farm products, located within this state.
>
> (5) Inventory, located within this state.
>
> (6) Negotiable documents of title, located within this state.
>
> (d) Notwithstanding any other provision of this section, **the judgment lien does not attach to**:
>
> (1) A **vehicle** or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

Cal. C.C.P. § 697.530. Included within Article 1 referenced in § 697.530(a) above is the JL-1 lien pursuant to California Code of Civil Procedure § 697.550 and this applies to the judgment lien created by the JL-1 filing with the Secretary of State. The Plaintiff-Trustee does not provide the legal tie in from Chapter 2 Liens, Article 1 for liens on real and personal property of the California Code of Civil Procedure to Chapter 6 Miscellaneous Remedies, Article 5 for liens in pending actions.

The Plaintiff-Trustee cites the court to established Ninth Circuit law that the expiration of the time allowed in 11 U.S.C. § 546(a) to bring an action to avoid a preferential transfer does not waive or

make the provisions of 11 U.S.C. § 502(d) ineffective or unenforceable. In *In re America West Airlines, Inc.,* 217 F.3d 1161, 1163 (9th Cir. 2000), the Ninth Circuit Court of Appeals determined no prohibition against the trustee's asserting section 502(d) as an affirmative defense to a claim of a creditor even if the trustee's claim is time-barred or otherwise nonrecoverable. Plaintiff-Trustee asserts that even if Plaintiff-Trustee failed to bring an action to disallow the Notice of Lien under § 502(d) within the two-year statute of limitations, the Notice of Lien is an avoidable transfer pursuant to § 547(b) subject to disallowance. The Notice of Lien in the Dissolution Action was filed on February 14, 2017, 60 days prior to the filing of the bankruptcy, which was filed on April 14, 2017. Collier on Bankruptcy further elucidates this finding explaining that

> [t]he courts have based their holdings on several observations about section 502(d). First, the wording of section 502(d) refers to transfers "avoidable" under various sections and not to claims that have been avoided. Arguably, an avoidable transfer is one that meets the statutory requirement for avoidance despite a potential time-bar defense. Second, the purpose of section 502(d) is to promote the pro-rata sharing of the bankruptcy estate among all creditors as well as the coercion of the payment of judgments obtained by the trustee. Creditors who have received avoidable transfers to the detriment of the pool should not be entitled to make additional demands on the assets of the estate. The logic of cases permitting invocation of section 502(d) even when the trustee's avoidance claims are time-barred likely would not apply to claims that are outside a statute of repose treated under state law as an essential element of the cause of action.

4 Collier on Bankruptcy P 502.05 (16th 2020)

APPLICABLE LAW FOR A MOTION FOR SUMMARY JUDGMENT AND OBJECTION TO CLAIM

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545

F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

For an objection to claim, Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b).

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

DISCUSSION

For the Motion before the court, there appear to remain some evidentiary holes. Defendant contends that whatever money came from the Medical Group had to be an account receivable. But what can legally constitute an accounts receivable from a professional corporation where one is employed is not presented to the court.

The Dissolution Action was commenced in 2011. The sale of the non-exempt equity occurred in 2017, six years after the Dissolution Action was commenced. The court has not been presented with evidence of the Medical Group and Debtor's employment was subject to the Dissolution Action - or not subject to the Dissolution Action.

What has been established is that when the Notice of Lien was filed in the Dissolution Action on February 14, 2017 - fifty-nine (59) days before the filing of the Debtor's Chapter 7 bankruptcy case. Though the Plaintiff-Trustee has not connected the dots, based on the evidence presented by the Plaintiff-Trustee and Defendant, it appears that the elements of 11 U.S.C. § 547(b) for avoiding the transfer (the lien) are satisfied. The Plaintiff-Trustee did not seek to avoid the lien. Amended Proof of Claim 4-2 adding the Notice of Lien as a basis for securing Defendant's claim was not filed until December 29, 2018 - twenty months after the bankruptcy case was filed. It is not clear when the

Plaintiff-Trustee was given notice of this additional lien being asserted by Defendant.

Notwithstanding the failure to avoid the transfer, well established Ninth Circuit law provides that the provisions of 11 U.S.C. § 502(d) shall apply and the court shall "shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547 . . . ." Such a disallowance is based on the court determining that a lien on the vehicles was created by the Notice of Lien - which lien Defendant not only admits, but affirmatively asserts. But the Plaintiff-Trustee asserts that vehicles are excluded from the Notice of Lien.

The parties do not address the law, federal and state, that applies to the administration of a bankruptcy estate asset subject to a judgment lien. They do not address state law as to a purchaser of an asset from a judgment debtor subject to a judgment lien, and whether actual knowledge of the judgment lien is required.

December 10, 2020 Hearing

As of the court's December 8, 2020 review of the docket, no additional pleadings or a stipulation of settlement has been filed.

At the last hearing on October 29, 2020, the court stated that if no settlement was reached before the December 10, 2020, the court would set a further briefing schedule for the parties to address the following:

1. Applicable law and undisputed facts relating to the application of 11 U.S.C. § 502(d) on the Notice of Lien;

2. The Notice of Lien and its effects in the Dissolution Action; and

3. The Barton doctrine and the underlying concepts concerning bankruptcy trustee and claims made against trustee or professionals hired by the trustee which are to be addressed by the bankruptcy court.

At the hearing, xxxxxxxxxxxxxx