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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 **PIMA COUNTY**

9 ARIZONA LA CHOLLA, L.L.C.

No. 4:14-bk-10254-BMW

10 Debtor.

11 **AMENDED**
12 **MOTION TO APPROVE SETTLEMENT**

13 Debtor Arizona La Cholla, L.L.C. ("Debtor") moved the Court on May 14, 2015 (Doc.
14 70) to approve a settlement with Debtor's primary creditor, Tucson Federal Credit Union
15 ("TFCU"). As shown below, the settlement would, as a practical matter, conclude this
16 Bankruptcy Case.

17 Debtor files this amended motion to correct omissions in notice regarding the prior
18 Motion. Debtor has also requested that TFCU consent to an extension of time for Debtor to
19 complete the conveyance of certain real property to TFCU as required under paragraph 2.3 of the
20 settlement agreement. Debtor is simultaneously requesting the Court, pursuant to Bankruptcy
21 Rule 2002(a)(3), to direct that notice not be sent.

22
23 Under the settlement, Debtor would convey two parcels of real estate (the "Combined
24 Properties") to TFCU in exchange for TFCU's releasing Debtor from its guaranty of a
25 promissory Note executed by Debtor's Manager, Steven L. Nannini ("Nannini") in favor of
26

1 TFCU. Simultaneously, a related Pima County Superior Court lawsuit filed by TFCU against
2 Nannini would be concluded, except for a deficiency claim by TFCU against Nannini which
3 would either be settled or litigated in Superior Court as provided in the settlement.

4 Upon settlement approval and implementation by completion of the conveyance of the
5 Combined Properties, this Bankruptcy would be dismissed.

6
7 The proposed settlement agreement is attached as Exhibit "A". This Motion is made
8 pursuant to Bankruptcy Rule 9019(a) and Local Rule of Bankruptcy Procedure 9013-1(k)(2).

9 **Statement of Facts**

10 1. Debtor is an Arizona limited liability company which owns the Combined
11 Properties. They comprise two parcels of real property located in Pima County, Arizona: the
12 "Main Parcel," Pima County Assessor parcel no. 22543015E, and the "Bubble Piece," Pima
13 County Assessor parcel no. 225435100. The Combined Properties are Debtor's only significant
14 assets.
15

16 2. On December 2, 2008, Nannini borrowed the original principal amount of
17 \$1,576,700.00 from TFCU, evidenced by a promissory note of that date (the "Note") in that
18 amount.
19

20 3. Also on December 2, 2008, Debtor executed a guaranty of the Note from Nannini
21 to TFCU, and a deed of trust (the "Deed of Trust") as Grantor and Trustor naming TFCU as
22 lender and beneficiary. The Deed of Trust encumbered the Main Parcel and secured performance
23 of Debtor's guaranty of Nannini's Note to TFCU. Thus, Nannini's individual debt to TFCU
24 under the Note was collateralized by the Debtor's guaranty, which was secured by the Deed of
25 Trust encumbering the Main Parcel.
26

5. Debtor acquired the Bubble Piece on April 19, 2013. The Bubble Piece adjoins Main Parcel. The Deed of Trust in favor of TFCU does not encumber the Bubble Piece, and the Bubble Piece is owned by Debtor free and clear of encumbrances.

7. On November 21, 2014, TFCU sued Nannini for breach of the Note in Pima County Superior Court action no. C20146073.

8. Debtor, Nannini, and TFCU have now entered into a settlement of the Litigation provided in the proposed Settlement Agreement, subject to this Court's approval of Debtor's settlement. Debtor has determined that the settlement of the Litigation is in its best interests and in the best interests of its primary creditor, TFCU.

Standards for Approval of the Settlement

10. When reviewing a proposed settlement under Fed.R.Bankr.P. 9019(a), courts must
determine whether a proposed compromise is “fair and equitable,” *Protective Comm. for Indep.*
Holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968). Central to that
analysis is a comparison of the terms of the compromise with the probable costs and benefits of

1 the litigation. 390 U.S. at 424–25. To this end, courts must estimate and consider, *inter alia*, “the
2 litigation's probability of success, complexity, and the litigation's attendant expense,
3 inconvenience, and delay.” *In re American Reserve Corp.*, 841 F.2d at 159-61 (7th Cir.1987);
4 *see also TMT Trailer Ferry, Inc.*, 390 U.S. at 424–25. *Id.* Courts should also consider any
5 creditors' objections to the proposed settlement; however, their views are by no means
6 controlling. *American Reserve Corp.*, 841 F.2d at 161–62.
7

8 11. Because the bankruptcy judge is “uniquely positioned to consider the equities and
9 reasonableness of a particular compromise,” reviewing courts will not overturn such a
10 determination absent a clear abuse of discretion. *Id.* If the proposed settlement is within the
11 range of reasonable possible outcomes were the matter tried on its merits, or at least within the
12 range of reasonable business judgment considering cost and litigation hazard, the settlement
13 should ordinarily be approved.
14

15 **Benefits of the Settlement**

16 12. Here the Debtor – the guarantor of TFCU’s loan to Nannini – pledged a
17 substantial asset, the Main Parcel, to secure its guarantee. The Debtor also owns additional real
18 estate: the “Bubble Piece,” which is unencumbered. Debtor believes that these two adjoining
19 “Combined Parcels,” valued together as a single parcel, exceed the amount due under the TFCU
20 loan. Debtor has therefore filed a Plan of Reorganization (Doc. 25-1) which provides for
21 conveying the Combined Parcels to TFCU in satisfaction of the TFCU loan to Nannini and the
22 Debtor’s guarantee.
23

24 13. The same valuation issues involved in Debtor’s Plan of Reorganization are
25 implicit in the Superior Court litigation against Nannini. The proposed settlement would resolve
26

1 this Bankruptcy by transferring the Combined Parcels to TFCU and allowing Nannini a credit for
2 the fair market value of both parcels. Absent the settlement, the judicial proceedings in this
3 Court and Superior Court would both have to proceed on substantially similar issues at great
4 expense to the parties, and huge burdens on this Court and the Superior Court.

5
6 14. At this point, TFCU and Pima County (as to real property taxes only) are the only
7 creditors in this Chapter 11 proceeding. All other debts of Debtor have been paid or settled. The
8 settlement would not prejudice Pima County, since its property tax lien would continue to
9 encumber the Combined Properties after the transfer to TFCU.

10
11 15. The form of order filed herewith expressly authorizes Debtor to implement the
12 settlement, including without limitation conveying the Combined Properties to TFCU.

13
14 16. Debtor anticipates filing a motion to dismiss this Bankruptcy Case conditioned on
15 approval and implementation of the Settlement. Thus, approval and implementation of the
16 Settlement would conclude this Bankruptcy Case.

17 Conclusion

18 For the foregoing reasons, Debtor requests that the settlement be approved.

19 Respectfully submitted June 14, 2015.

20 ALTFELD & BATTAILE P.C.

21
22 /s/ John F. Battaile
23 John F. Battaile
Attorneys for Debtor, Arizona La Cholla, LLC

24 Copy of the foregoing filed and served
25 electronically this June 14, 2015 and copy
26 sent via U.S. Mail to:

Arizona La Cholla, L.L.C.

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