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12 **UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF NEVADA**

14 In re:) Bankruptcy Case No.: 15-10110-GS
15)
16 AMERI-DREAM REALTY, LLC,) Chapter 7
17)
18 Debtor.) Hearing Date: OST Pending
19) Hearing Time: OST Pending

20 **MOTION TO APPROVE COMPROMISE**
21 **PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

22 Shelley D. Krohn, in her capacity as the successor Chapter 7 Trustee (the “Trustee”) of
23 the bankruptcy estate of Ameri-Dream Realty, LLC (the “Debtor” or the “Company”), by and
24 through her attorneys of record, Brownstein Hyatt Farber Schreck, LLP, hereby submits this
25 Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the
26 “Motion”). The Motion is based on the following Memorandum of Points and Authorities and the
27 Declaration of Samuel A. Schwartz In Support of the Motion to Approve Compromise Pursuant
28 to Federal Rule of Bankruptcy Procedure 9019 (the “Schwartz Declaration”), which is filed
separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Motion is also
based on the pleadings and papers on file herein, and any argument that may be entertained at the
hearing on the Motion.

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JURISDICTION AND VENUE

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2 1. The Court has jurisdiction over the bankruptcy case and the subject matter of this
3 Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C.
4 § 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
5 parties the Court cannot enter final orders or judgment regarding the Motion consistent with
6 Article III of the United States Constitution, the Trustee consents to entry of final orders and
7 judgment by this Court. Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and
8 1409. The statutory predicate for the relief requested in the Motion is FRBP 9019.

STATEMENT OF FACTS

10
11 2. On January 9, 2015, the Debtor filed a voluntary petition for relief under Chapter 7
12 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of
13 Nevada (the “**Bankruptcy Court**”), Bankruptcy Case No. 15-10110-LED (the “**Bankruptcy**
14 **Case**”).

15
16 3. The Debtor was a real estate sales and property management company based in
17 Las Vegas, Nevada.

18 4. The Trustee is the successor Court-appointed Chapter 7 Trustee over the
19 bankruptcy estate of the Company.

20 5. On May 21, 2015, the former Trustee, Victoria Nelson, in her capacity as Chapter
21 7 Trustee for the Company, initiated that certain adversary proceeding against Elise Peladas-
22 Brown (“**Ms. Peladas-Brown**”), a former manager of the Company, in the United States
23 Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LEB, due to Ms.
24 Peladas-Brown’s secret embezzlement of over \$1 million in security deposits from the Company.

25
26 6. In her complaint, the Trustee asserted four claims for relief against Ms. Peladas-
27 Brown: (i) breach of fiduciary duty; (ii) common law misrepresentation; (iii) negligent
28

1 misrepresentation; and (iv) declaratory relief that the Company and Mr. John Brown, Ms.
2 Peladas-Brown's ex-husband and former manager of the Company, are innocent and had no
3 knowledge of Ms. Peladas-Brown's wrongdoings (collectively, the "**Peladas-Brown Claims for**
4 **Relief**").

5
6 7. On October 27, 2015, the bankruptcy court entered an order granting summary
7 judgment on all Peladas-Brown Claims for Relief, with findings of fact and conclusions of law.
8 See Adv. Case No. 15-01087-LEB, Docket Nos. 20 and 21.

9 8. The Judgment against Ms. Peladas-Brown is in the amount of \$1,174,373.63,
10 together with prejudgment interest at the rate of 5.75%, compounded annually starting February
11 1, 2013, and post-judgment interest at the rate established by 28 U.S.C. § 1961, compounded
12 annually. See Adv. Case No. 15-01087-LEB, Docket No. 21.

13
14 9. Shortly after the entry of summary judgment against Ms. Peladas-Brown, on or
15 about December 22, 2016, previously named Trustee, Victoria L. Nelson, in her former capacity
16 as the Chapter 7 Trustee of the Debtor, filed suit against XL America, Inc., XL Insurance
17 American, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich Insurance
18 Group (collectively referred to herein as the "**Defendants**"), in the United States District Court
19 for the District of Nevada, case no. 2:16-cv-00060-JAD-GWF, seeking relief for various causes
20 of action including: (1) breach of contract; (2) breach of implied covenant of good faith and fair
21 dealing; (3) breach of fiduciary duty; (4) violations of NRS 686A.310; and (5) declaratory relief
22 (hereinafter the "**Lawsuit**").

23
24 10. On or about September 21, 2017, the court granted Defendant Greenwich
25 Insurance Group's motion to dismiss without prejudice as to the first, second, third, and fifth
26 causes of action, and the coverage-related portion of her fourth cause of action. The court further
27 dismissed without prejudice Defendant Pearl Insurance Group, LLC and XL America, Inc., XL
28

1 Insurance American, Inc., and XL Select Professional as to all causes of action granting leave to
2 amend.

3 11. On or about October 12, 2017, Ms. Nelson filed her first amended complaint
4 against Defendants seeking relief for causes of action including: (1) violations of NRS 686A.310;
5 (2) breach of fiduciary duty to the Debtor; and (3) breach of fiduciary duty to tenants and
6 customers of the Debtor.

7
8 12. On or about January 19, 2018, Trustee Shelley D. Krohn was appointed as the
9 Successor Chapter 7 Trustee of the Debtor, in the place and stead of Victoria L. Nelson.

10 13. On June 4, 2018, the court entered an order dismissing the second and third claims
11 for relief in the first amended complaint with prejudice.

12 14. After substantial negotiations among the parties, which included a discussion of
13 the legal merits of the Trustee's remaining claims, the Trustee and Defendant have entered into a
14 settlement agreement (the "**Settlement Agreement**") that resolves all claims and disputes that
15 now exist or in the future may arise between the parties. A true and correct copy of the Settlement
16 Agreement is attached to the Schwartz Declaration as **Exhibit "1"**. The principal terms of the
17 Settlement Agreement are outlined below¹:
18

- 19 1. In consideration of a resolution of the dispute concerning the Lawsuit, Defendants
20 shall pay the Trustee the sum of \$15,000 (the "**Settlement Payment**");
21
22 2. Within five (5) days of payment as set forth above, the Parties shall execute and
23 file a stipulation and order for dismissal, with prejudice, of the Lawsuit;
24
25 3. Defendants shall remit payment of the Settlement Payment to the Trustee no later

26 ¹The description of the Settlement Agreement set forth herein and in the Schwartz Declaration is
27 a summary only and does not modify or otherwise affect the terms of the Settlement Agreement.
28 To the extent of any conflict between the Settlement Agreement and the description set forth
herein, the Settlement Agreement shall control. Capitalized terms used but not defined herein
shall have the meaning set forth in the Settlement Agreement.

1 than thirty (30) days after entry of a final non-appealable order approving the
2 Settlement Agreement pursuant to FRBP 9019;

3 4. The Trustee and Defendants shall execute mutual releases; and

4 5. The Trustee and Defendants have negotiated and reached the Settlement
5 Agreement in good faith.

6
7 15. The Trustee now files this Motion to obtain court approval of the Settlement
8 Agreement pursuant to FRBP 9019.

9 **LEGAL ARGUMENT**

10 **A. The Standard for Approval of Settlement Agreements Pursuant to FRBP 9019**

11 16. The Bankruptcy Court may approve a compromise or settlement between a debtor
12 and another party pursuant to Fed. R. Bankr. P. 9019(a), which provides the following:

13 Compromise. On motion by the trustee and after notice and a
14 hearing, the court may approve a compromise or settlement. Notice
15 shall be given to creditors, the United States trustee, the debtor,
16 and indenture trustees as provided in Rule 2002 and to any other
entity as the court may direct.

17 FED. R. BANKR. P. 9019(a).

18 17. Compromise and settlement agreements have long been an inherent component of
19 the bankruptcy process. The Ninth Circuit recognized that “[t]he bankruptcy court has great
20 latitude in approving compromise agreements.” See Woodson v. Fireman’s Fund Ins. Co. (In re
21 Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Accordingly, in approving a settlement, the Court
22 need not conduct an exhaustive investigation of the claims sought to be compromised. See United
23 States v. Alaska National Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982).
24 Rather, it is sufficient that the Court find that the settlement was negotiated in good faith and is
25 reasonable, fair, and equitable. See Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381
26 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986). The proponent of the settlement must also
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28

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1 persuade the court that the settlement is in the best interests of the estate. See Goodwin v. Mickey
2 Thompson Entertainment Group (In re Mickey Thompson Entertainment Group, Inc.), 292 B.R.
3 415, 420–21 (B.A.P. 9th Cir. 2003). It is within the sound discretion of the bankruptcy court
4 whether to accept or reject a compromise. See In re Carson, 82 B.R. 847 (Bankr. S.D. Ohio
5 1987).

6
7 18. The Ninth Circuit has identified the following factors for consideration in
8 determining whether a settlement is reasonable, fair, and equitable: (a) the probability of success
9 in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the
10 complexity of the litigation involved, and the expense, inconvenience and delay necessarily
11 attending it; and (d) the paramount interest of the creditors and a proper deference to their
12 reasonable views in the premises. In re A & C Properties, 784 F.2d at 1381.

13
14 19. The moving party is not required to satisfy each of these factors as long as the
15 factors as a whole favor approving the settlement. See In re Pacific Gas & Electric Co., 304 B.R.
16 395, 416 (Bankr. N.D. Cal. 2004).

17
18 20. In considering the factors, “a precise determination of the likely outcome is not
19 required, since an exact judicial determination of the values at issue would defeat the purpose of
20 compromising the claim.” In re Telesphere Comm’s, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill.
21 1994) (internal quotations omitted). Thus, rather than determining various issues of fact and law,
22 the Court should “canvass the issues and fall[s] below the lowest point in the range of
23 reasonableness.” In re Lion Capital Group, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal
24 quotations omitted).

25 **B. The Settlement Agreement Is Fair and Equitable**

26 i) The Probability of Success in the Litigation

27 21. The Trustee believes that she would be successful if the claims for violation of
28

1 NRS 686A.310 alleged against the Defendants proceeded to trial. That said, the outcome of
2 litigation is never certain. While the Trustee believes the Defendants' insurance policies were
3 implicated by the actions of the Debtor's principal, the Defendants have argued that they had no
4 contractual relationship with the Debtor. If the Defendants are successful in arguing that they had
5 no contractual relationship with the Trustee or that Ms. Pelades-Brown's actions were not
6 covered by the pertinent insurance policies, then it is unlikely the Trustee would recover anything
7 by way of the Lawsuit. Moreover, given the limited nature of the Trustee's remaining claims, the
8 recovery is limited under Nevada law. The Settlement Agreement avoids the uncertainty of
9 further litigation and results in the recovery of \$15,000. Simply put, the Trustee values the
10 Settlement Agreement as a fair and reasonable means to settle the remaining NRS 686A.310
11 claims. For these reasons, this factor weighs in favor of the approval of the Settlement
12 Agreement.

13
14
15 ii) The Difficulties in Matter of Collection

16 22. In the event that the Trustee is successful in litigating her NRS 686A.310 claims
17 against Defendants, she does not anticipate any issues satisfying a judgment entered against
18 Defendants. This is because the Defendants are large insurance corporations that would not have
19 difficulty satisfying a judgment in the full amount at issue in the Lawsuit. As a result, this factor
20 is neutral.

21
22 iii) The Complexity of the Litigation Involved and the Expense, Inconvenience and
23 Delay

24 23. As explained herein, the merit of the claims for relief alleged by the Trustee
25 revolve around whether NRS 686A.310 was violated during the claim submission and analysis
26 process. Litigating whether the insurer properly vetted the Trustee's claims for the loss of security
27 deposits and other assorted funds, but not the losses themselves, is of limited value to the estate.
28 This process will likely be fact-intensive and may involve a trial on the merits. The Settlement

1 Agreement avoids the expense, inconvenience, and delay that would be involved in a trial on the
2 merits, not to mention the limited nature of the damages, and should be approved pursuant to
3 FRBP 9019.

4 iv) The Paramount Interest of the Creditors

5 24. The Settlement Agreement is in the best interests of creditors because it will result
6 in the recovery of \$15,000 that can be distributed according to the priority scheme under Section
7 726. The continued litigation of the claims related to the Lawsuit would have resulted in
8 increased administrative expenses and a reduced recovery for the Debtor’s creditors. Accordingly,
9 this factor supports approval of the Settlement Agreement.

10 CONCLUSION

11 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order:
12 (i) approving the Settlement Agreement attached as **Exhibit 1** to the Schwartz Declaration
13 pursuant to FRBP 9019; and (ii) for such other and further relief as is just and proper.

14
15
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