

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: JUNE 26, 2019

CALENDAR: 1:30 P.M. CHAPTERS 11 AND 9 CASES

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-41

MOTION TO PAY
5-22-2019 [681]

PIONEER NURSERY, LLC/MV
PETER FEAR

Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobeck*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, QZ taxes specified in the motion shall be allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor in possession's motion for allowance of administrative expense has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court allows California 2019 state taxes payable to the Franchise Tax Board not to exceed \$10,000 as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

2. 06-10324-A-11 **IN RE: PROPERTY DEVELOPMENT GROUP, LLC**
BAE-1

CONTINUED MOTION TO ENFORCE SIXTH AMENDED PLAN OF REORGANIZATION

2-15-2019 [[1374](#)]

WELLS FARGO BANK, N.A./MV
RILEY WALTER
BRUCE ERICSON/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

3. 18-11651-A-11 **IN RE: GREGORY TE VELDE**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-26-2018 [[1](#)]

MICHAEL COLLINS

No Ruling

4. 18-11651-A-11 **IN RE: GREGORY TE VELDE**
ELR-3

MOTION FOR ADMINISTRATIVE EXPENSES
5-29-2019 [[2109](#)]

FRINGS RANCH, LP/MV
MICHAEL COLLINS
JOSEPH SOARES/ATTY. FOR MV.

Tentative Ruling

Motion: Allowance and Payment of Administrative Expenses

Notice: LBR 9014-1(f)(1); written opposition filed

Disposition: Denied

Order: Civil minute order

Description of Expenses: Deficiency claim on account of a contract to care for livestock belonging to the estate

Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

The movant and creditor, Frings Ranch, LP, seeks allowance of an administrative expense claim against the bankruptcy estate in the amount of \$3,665,806.57. The claim is for the movant's alleged post-petition care of livestock belonging to the bankruptcy estate.

The chapter 11 trustee, the Official Committee of Unsecured Creditors, and Overland Stockyard, Inc. oppose allowance of the claim.

Facts

The facts giving rise to this dispute, as largely outlined by the movant, are as follows. The movant had a contract with the pre-petition debtor to house, feed, and care (such as veterinary services) for livestock belonging to the debtor. Under the agreement, the movant would house, feed, and care for the livestock, at \$2.40 per head per day, until the livestock reached four to six months in age. At that point, the movant would return the livestock to the debtor, on the condition the debtor paid for the movant's services. Upon taking possession of the livestock back from the movant, the debtor would integrate the livestock into his herd for breeding and milking purposes. ECF No. 1899 at 8; ECF No. 2109 at 2, 4.

The debtor filed this chapter 11 bankruptcy case on April 26, 2018. As of the petition date, the movant had in its possession 5,460 head of livestock belonging to the debtor. On the petition date, the movant's claim against the debtor for the above-described services was in the amount of \$2,267,879. ECF No. 1899 at 8-9; ECF No. 2109 at 12.

Post-petition, the movant continued to accept livestock from the debtor in the ordinary course of business between the parties. On May 21, 2018, the movant filed a motion for relief from the automatic stay, seeking permission to sell the debtor's livestock it had possession of at that time, 5,552 head of livestock, foreclosing on its livestock service lien on the livestock. The motion was denied. The movant continued to accept livestock from the debtor. ECF No. 1899 at 2-3; ECF No. 2109 at 2-3.

On July 3, 2018, the debtor sent a \$500,000 check to the movant, seeking the release of some of his livestock. Pursuant to a motion by the movant, the court permitted the payment and release of 571 head of livestock (starting with the oldest) to the debtor. The movant received no more funds from the debtor and released no more livestock to the debtor. ECF No. 1899 at 3; ECF No. 2109 at 3.

On August 9, 2018, the movant filed a proof of claim in the amount of \$2,267,879, representing the amount owed by the bankruptcy estate for the movant's livestock services as of the petition date. ECF No. 1899 at 3; ECF No. 2109 at 3.

The U.S. Trustee filed a motion for the appointment of a chapter 11 trustee in the case. The court granted the motion on September 12, 2018. ECF No. 1899 at 3; ECF No. 2109 at 3; ECF No. 801.

The movant continued to house, feed, and care for the estate's livestock in its possession. ECF No. 1899 at 3-4; ECF No. 2109 at 4.

On October 8, 2018, the movant filed another motion for relief from the automatic stay, seeking once again to sell the livestock, foreclosing on its livestock service lien. At that time, the movant was caring for approximately 7,763 head of livestock belonging to the estate and was owed \$4,323,671. ECF No. 1899 at 4; ECF No. 2109 at 4. According to the movant, this amount represents invoices dating from May 22, 2017 through September 30, 2018. ECF No. 1899 at 4; ECF No. 2109 at 4; ECF No. 1901 at 10 (Exhibit B, ¶ 4).

According to the movant, the last time the debtor made a payment to the movant was on August 3, 2018. ECF No. 1901 at 10 (Exhibit B, ¶ 5). At the time of the October 8, 2018 motion for relief from stay, the movant had valued the 7,763 head of livestock in its possession at \$3,903,975. ECF No. 1899 at 4; ECF No. 2109 at 4-5.

The chapter 11 trustee filed an opposition to the October 8 stay relief motion. ECF No. 1069. He withdrew that opposition on November 13, 2018, one day prior to the court's hearing on the October 8 stay relief motion. ECF No. 1111.

The movant appears to dispute this, it is clear from the record that the trustee withdrew the opposition because the movant and the trustee had entered into a stipulation about the satisfaction of the movant's claim, disposal of the livestock in the movant's possession, and resolution of the October 8 stay relief motion ("Stay Relief Stipulation").

As part of the Stay Relief Stipulation, the movant agreed to waive its deficiency claim against the estate for what it was owed on its agreement to care for the livestock, in exchange for the estate:

- (1) withdrawing its opposition to the October 8 stay relief motion;
- (2) releasing its interest in the livestock and proceeds from the livestock that was in the movant's possession, thus clearing the way for the movant to foreclose on its lien on the livestock, sell the livestock through the state court process, and satisfy its claim from the sales proceeds; and
- (3) promising to indemnify the movant against any Oregon agricultural service lien claims against the livestock, thus clearing the way for the movant to foreclose on its lien on the livestock, sell the livestock through the state court process, and satisfy its claim from the sales proceeds.

ECF Nos. 2053, 2054, 2056; ECF No. 2018 Ex. 3; ECF No. 2148 Ex. 2.

The October 8 motion for stay relief was heard and granted on November 14, 2018. ECF No. 1899 at 4; ECF No. 2109 at 5-6. The order granting the motion was entered on November 20, 2018. ECF No. 1127; ECF No. 2112 Ex. D; ECF No. 2148 Ex. 2.

While the parties agreed that the Stay Relief Stipulation terms would be part of the order on the movant's stay relief motion, the court declined to incorporate them into the order granting the movant's stay relief motion. ECF No. 2018 at 26 (Ex. 4 at 15); ECF No. 2018 at 33-36 (Ex. 4 at 22-25).

Nevertheless, the order granting the movant's October 8 stay relief motion expressly relies on the Stay Relief Stipulation. The order says that "Prior to the hearing, the Chapter 11 Trustee withdrew his opposition to the Motion and the parties stated on the record that the matter has been resolved pursuant to the terms of this agreed order." ECF No. 1127; ECF No. 2112 Ex. D; ECF No. 2148 Ex. 2.

And, the Stay Relief Stipulation was discussed at length at the November 14, 2018 hearing on the movant's stay relief motion. ECF No. 2018 at 22-25 (Ex. 4 at 11-14); ECF No. 2018 at 33-36 (Ex. 4 at 22-25). In discussing the Stay Relief Stipulation, the trustee and the movant confirmed and did not dispute the terms of the stipulation.

The movant and the trustee also memorialized the Stay Relief Stipulation in an agreed form of order, signed by both counsel for the trustee and counsel for the movant. That order was submitted to the court for signing. ECF No. 2018 at 8-11 (Ex. 3).

The agreed order, while not signed by the court with the terms of the Stay Relief Stipulation, spells out the terms of the Stay Relief Stipulation as follows: "Trustee releases his interest in the subject livestock pursuant to the terms set forth in California Civil Code Section 3080.20; and states that the Estate is the legal and beneficial owner of the subject livestock, that the livestock in question and the amount of the lien are accurately described in the Declaration of Michael Frings filed herein as Dkt. No. 930, that the Trustee expressly waives the Estate's right to a Superior Court hearing on any sale of the livestock, that the Trustee is giving Frings Ranch, L.P. permission to sell the livestock in such manner as it deems fit, and that the Trustee is waiving any interest the Estate may have in the livestock or in the proceeds of sale." ECF No. 2018 at 10 (Ex. 3).

The proposed order also clearly provides, as part of the Stay Relief Stipulation, that "Frings Ranch, L.P. waives any and all deficiency claims it may have against the Estate." ECF No. 2018 at 10 (Ex. 3).

As additional part of the Stay Relief Stipulation, the estate also promised to "indemnify and hold [the movant] harmless" "in the event an Oregon Agricultural Service Lien claimant asserts a senior lien to [the movant] on the subject livestock." ECF No. 2018 at 10 (Ex. 3).

Although the court declined to incorporate the specific terms of the Stay Relief Stipulation, the court recognized the Stay Relief Stipulation in the final version of the order granting the October 8 stay relief motion. The order says that "Prior to the hearing, the Chapter 11 Trustee withdrew his opposition to the Motion and the parties stated on the record that the matter has been **resolved pursuant to the terms of this agreed order.**" ECF No. 1127 (emphasis added); ECF No. 2112 Ex. D; ECF No. 2148 Ex. 2.

This is consistent with the court's comments during the November 14 hearing on the stay relief motion.

Speaking to Mr. Soares, counsel for the movant, at the November 14 hearing, the court said "I'm okay with[] the part about your client waives [sic] deficiency." ECF No. 2018 at 33 (Ex. 4 at 22). "It looked [sic] to me that, given the absence of Trustee's opposition, I'm prepared to grant this." ECF No. 2018 at 33 (Ex. 4 at 22).

After entry of the order granting relief from stay to the movant, excluding the above language of the Stay Relief Stipulation, the trustee did not pursue a motion for approval of the Stay Relief Stipulation until May 22, 2019 ("Compromise Motion") (DCN MB-50). ECF No. 2080. That motion is before the court now as well.

Armed with the order granting relief from stay and the trustee's release of interest in the livestock and proceeds from the livestock, the movant pursued an action in state court to foreclose on its livestock service lien, in accordance with state law. ECF No. 1899 at 5; ECF No. 2109 at 7-8; ECF No. 2148 Ex. 2.

The movant then proceeded to sell the livestock. The first sale took place on December 12, 2018, when the movant sold 4,828 head of livestock, generating \$1,825,071.75 in net proceeds. Such funds were deposited into an account with the state court. ECF No. 1899 at 5; ECF No. 2109 at 8.

The movant continued to care for the remaining 2,516 head of livestock. Another sale of 2,205 head of livestock took place on February 12, 2019, generating net proceeds of \$678,170.20. Additional sales took place on February 13 (151 head), February 20 (57 head), and February 27 (90 head), generating \$21,846.06 in net proceeds. ECF No. 1899 at 5; ECF No. 2109 at 8.

After the sales of the livestock, the movant obtained against the debtor from the state court a judgment for \$6,189,236.23 on March 26, 2019. ECF No. 1902 Ex. 6; ECF No. 2109 at 10.

The movant contends that it was forced to incur extra expenses in caring for the livestock, including \$50,000 for renting an additional facility to house the livestock and \$37,126.18 for additional equipment needed at the rental facility. These amounts, along with \$42,163.25 in attorney's fees, were made part of the state court's judgment. ECF No. 1899 at 6; ECF No. 1902 Ex. 6; ECF No. 2109 at 9.

The state court applied \$2,523,429.66 from the sale of the livestock, leaving \$3,665,806.57 of the state court judgment unsatisfied. ECF No. 1899 at 6-7; ECF No. 2109 at 9-10.

The movant filed this motion for the first time (DCN ELR-2) on April 11, 2019. ECF Nos. 1899-1904. The court denied it without prejudice due to service issues. ECF No. 2090. When the court denied this motion previously, it also outlined issues that the parties should address if and when the motion is refiled.

As a courtesy to the parties, below the court identifies issues that should be addressed, without limitation, if the movant decides to refile this motion:

- 1) Whether the absence of court approval of the stipulation between the trustee and the movant, associated with the movant's October 8, 2018 stay relief motion ("Stay Relief Stipulation"), renders the stipulation unenforceable;
- 2) Whether the absence of court approval of the Stay Relief Stipulation renders the stipulation non-binding;
- 3) Whether the trustee is prohibited from seeking court approval of the Stay Relief Stipulation at this time;
- 4) Whether state law has any relevance to the validity and enforceability of the Stay Relief Stipulation, given the absence of bankruptcy court approval;
- 5) Whether the movant is judicially estopped from taking the position that it did not waive a deficiency claim against the estate (it appears to the court that the movant's October 8 stay relief motion was granted because the trustee agreed to the granting of the motion, pursuant to the parties' Stay Relief Stipulation);
- 6) What portion, if any, of the movant's claim arose pre-petition;
- 7) What portion, if any, of the movant's claim represents actual and necessary expenses for the preserving of the bankruptcy estate;
- 8) What portion, if any, of the movant's claim represents direct and substantial benefit to the bankruptcy estate;
- 9) What portion, if any, of the movant's claim represents an actual benefit to the bankruptcy estate, measurable in assets distributable to creditors or by the elimination of claims which would otherwise require creditors to share the assets with others.

ECF No. 2090.

The motion has now been refiled (DCN ELR-3), i.e., the instant motion. ECF Nos. 2109-2113.

As the same motion has been refiled, seeking relief identical to the one sought previously and relying on the same authority relied upon previously, the record before the court now shall include the pleadings, including evidence and exhibits, filed in connection with the prior version of this motion.

The court is hearing this motion at the same time it is hearing the trustee's Compromise Motion.

Law

Section 503(b) (1) (A)

Section 503(b) of the Bankruptcy Code provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—(1) (A) the actual, necessary costs and expenses of preserving the estate."

The court has broad discretion to determine the allowance and amount of such administrative claims. *Microsoft Corp. v. DAK Indus., Inc.* (*In re DAK Indus., Inc.*), 66 F.3d 1091, 1094 (9th Cir. 1995) (citing *Burlington N. R.R. Co. v. Dant & Russell* (*In re Dant & Russell*), 853 F.2d 700, 706, 707 (9th Cir. 1988), superceded by statute on other grounds, 11 U.S.C. § 365(d)(3)). "The statute is explicit. Any claim for administrative expenses and costs must be the actual and necessary costs of preserving the estate for the benefit of its creditors." *Dant & Russell* at 706.

And, "[i]n order to keep administrative costs to the estate at a minimum, 'the actual, necessary costs and expenses of preserving the estate,' § 503(1) (A), are construed narrowly." *DAK Indus.* at 1094.

Section 503(b) (1) (A) requires that:

- (1) the claim has arisen post-petition, from a transaction with the bankruptcy trustee or the debtor-in-possession,
- (2) claim represents actual and necessary expenses, and
- (3) the claim has directly and substantially benefitted the estate.

In re Lazar, 207 B.R. 668, 674 (Bankr. C.D. Cal. 1997) (citing *Gull Indus., Inc. v. John Mitchell, Inc.* (*In re Hanna*), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) and *Dant & Russell* at 706); Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:507 (rev. 2017) (citing cases).

The burden of persuasion is on the claimant. *DAK Indus.* at 1094. The standard is preponderance of the evidence. Proof by preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not. *United States v. Arnold and Baker Farms* (*In re Arnold and*

Baker Farms), 177 B.R. 648, 654 (9th Cir. BAP 1994), *aff'd* 85 F.3d 1415 (9th Cir. 1996); *In re Cook Inlet Energy, LLC*, 577 B.R. 313, 323 (Bankr. D. Alaska 2017), *aff'd sub nom. In re Cook Inlet Energy LLC*, 583 B.R. 494 (B.A.P. 9th Cir. 2018); *Hanna* at 388.

Once the claimant has made a showing, the court has broad discretion to determine whether to grant such claims. *Audre Recognition Sys., Inc. v. Lundell (In re Audre Inc.)*, 59 F. App'x 925, 926 (9th Cir. 2003).

Discussion

To the extent applicable and relevant anywhere in this ruling, the court incorporates by reference its ruling, including, without limitation, its findings of fact, conclusions of law, and analysis, on the Compromise Motion (ECF No. 2080, DCN MB-50).

The motion will be denied for several reasons.

I. Preliminary Issue

First, as a preliminary issue, the court rejects the movant's assertion that this court required the movant to provide the services it provided the debtor and then the estate post-petition. Specifically, the movant refers to this court's denial of the movant's stay relief motion filed in May 2018. But, the order denying that motion simply says, "IT IS ORDERED that the motion is denied without prejudice." ECF No. 311. The order says nothing more, much else compelling the movant to continue providing services to the estate.

The court also rejects the contention that the movant incurring costs for the post-petition care of the livestock was caused by the denial of the movant's May 2018 stay relief motion. The movant has presented nothing requiring it to continue doing business with the estate, post-petition. Specifically, the court has seen nothing in the record requiring the movant to continue to accept livestock for care from the estate. As such, as far as the court can tell from the record before it, the movant incurred costs for the post-petition care of the livestock because it chose to do business with the estate.

The continued existence of the automatic stay also does not compel vendors of the estate to perform under pre-existing agreements with the debtor. See 11 U.S.C. § 362(a).

II. The Compromise Motion Granted

Second, as the court is granting the Compromise Motion and approving the Stay Relief Stipulation, pursuant to which the movant waived its deficiency claim against the estate, the court will deny approval of the requested administrative expense. That expense is based entirely on the movant's deficiency claim from the sale of the livestock this court permitted in connection with the October 8 stay relief motion and the parties' Stay Relief Stipulation.

III. Case Law and Equities Require That the Stay Relief Stipulation be Binding

Third, as an alternative basis for denial of this motion, even in the absence of an order approving the Stay Relief Stipulation (*i.e.*, granting the Compromise Motion), case law and the equities in the case require that the Stay Relief Stipulation be binding on the movant.

An agreement by a debtor in possession to compromise litigation is generally binding upon all parties to the agreement pending bankruptcy court determination as to whether or not to approve the agreement. “[A]n agreement by a debtor in possession to compromise litigation should also be binding upon all parties to the agreement pending a Court determination as to whether or not to approve the agreement.” *Providers Benefit Life Ins. Co. v. Tidewater Group, Inc.* (*In re Tidewater Grp., Inc.*), 8 B.R. 930, 933 (Bankr. N.D. Ga. 1981) (citing *Frazier v. Ash*, 234 F.2d 320, 325 (5th Cir. 1956)).

The stipulation would be also binding on both the trustee and the movant, once the court approves it. *Am. Prairie Constr. Co. v. Hoich*, 594 F.3d 1015, 1024 (8th Cir. 2010). On the other hand, if the court does not approve the stipulation, it would not be binding. *Id.*

The equities in this case require that the Stay Relief Stipulation be binding because:

- (1) the Stay Relief Stipulation was reduced to writing and signed by both the movant and the bankruptcy estate;
- (2) both parties, including the movant, approached the court with the Stay Relief Stipulation as basis for the granting of the stay relief motion;
- (3) the trustee relied on and partly performed under the Stay Relief Stipulation, even before the court granted the October 8 stay relief motion;
- (4) The movant gave its assent to the Stay Relief Stipulation at the November 14 hearing on the October 8 stay relief motion, even after the court resolved the sale motion heard on November 14;
- (5) the movant already received the benefits of its bargained for consideration from the Stay Relief Stipulation;
- (6) the movant treated the Stay Relief Stipulation as binding and enforceable after the November 14, 2018 hearing; and
- (7) the court relied on the Stay Relief Stipulation in granting the October 8 stay relief motion.

(1) In this case, the Stay Relief Stipulation was reduced to writing and signed by both the movant and the estate. ECF No. 2018 at 10 (Ex. 3).

Just because the writing was a proposed order the parties were hoping the court would sign, does not take away from the binding nature of the Stay Relief Stipulation as an agreement reduced to writing and signed by both parties.

(2) Both parties approached the court with the Stay Relief Stipulation as basis for the granting of the stay relief motion. The proposed order with the Stay Relief Stipulation was how both the movant and the trustee approached the court on November 14, 2018, seeking to resolve the movant's October 8 stay relief motion.

In fact, it was the movant that submitted the proposed order to the court, incorporating the terms of the Stay Relief Stipulation. See ECF No. 1127. Although the court interlineated the terms of the Stay Relief Stipulation in the order, the order states on its face that it is an "**agreed order.**" ECF no. 1127 at 1 (emphasis added). It was prepared by the movant and, prior to its submission with the court, the order was approved as to form by the trustee's special counsel, Riley Walter. ECF No. 1127 at 3.

(3) The trustee relied on and partly performed under the Stay Relief Stipulation, even before the court granted the October 8 stay relief motion.

The binding nature of the Stay Relief Stipulation is signified by the trustee performing immediately under the terms of the stipulation. Pursuant to and relying upon the terms of the Stay Relief Stipulation, the trustee withdrew his opposition to the movant's October 8 stay relief motion and he released the bankruptcy estate's interest in the livestock in the movant's possession (and proceeds from the livestock). ECF No. 1111. Hence, even before the court granted the October 8 stay relief motion, the trustee was already in part performing under the terms of the Stay Relief Stipulation.

That performance under the Stay Relief Stipulation cleared the way for the movant to sell the livestock and satisfy its claim from the proceeds.

The estate's withdrawal of the opposition and release of interest in the livestock was bargained for, in exchange for the movant's waiver of its deficiency claim. See ECF No. 2018 Ex. 3.

The court rejects the movant's contention that the withdrawal of the trustee's opposition to the stay relief motion was of no consequence to the Stay Relief Stipulation because that opposition was filed late under the court's local rules and would not have been considered by the court in any event.

Assuming that the trustee's opposition was filed late, it would not have prevented the court from considering it. It would have been at the court's discretion whether to allow the late filing of the written opposition. There is a strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. See *Valley Oak Credit Union v. Villegas* (*In re Villegas*), 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991) (citing *Eitel v. McCool*, 782 F.2d 1470,

1471-2 (9th Cir. 1986)). This is even more true with respect to the court's local rules.

The tremendous size of this case also warrants the court to grant leeway to the parties in the consideration of late-filed pleadings and especially oppositions to requests for sale of thousands of livestock belonging to the estate, such as was the October 8 stay relief motion.

The trustee's withdrawal of the opposition to the October 8 stay relief motion, by itself, was sufficient as a viable and bargained for consideration for the movant's waiver of its deficiency claim.

(4) The movant gave its assent to the Stay Relief Stipulation at the November 14 hearing on the October 8 stay relief motion, even after the court resolved the sale motion heard on November 14.

In addition to the release of interest in the livestock (and proceeds from the livestock) and withdrawal of the opposition, the Stay Relief Stipulation further protected the movant from superior agricultural service lien claimants during the process of sale. This was quite important to the movant at the time.

At the November 14, 2018 hearing, the court started addressing the movant's stay relief motion but then, pursuant to the request of an unidentified attorney on the telephone, trailed the motion, in order to resolve another motion in the case, a motion to sell livestock. ECF No. 2018 at 26-28 (Ex. 4 at 15-17).

After the court resolved the motion to sell, the court said, "Let's return to the motion to sell though," erroneously referring to returning to the movant's stay relief motion, as the court had just resolved the motion to sell. ECF No. 2018 at 32-33 (Ex. 4 at 21-22).

The court then turned to Mr. Soares, counsel for the movant, addressing the language in paragraph three of the proposed stay relief order, which paragraph contains the movant's waiver of its deficiency claim language. ECF No. 2018 at 9-10 (Ex. 3 at 1-2).

The court told Mr. Soares, "**Mr. Soares, that language in paragraph 3 - I think the first phrase was okay, the waiver by your client. Beyond that, I got a bit sideways on it. Does this inspire you, Mr. Soares?**" ECF No. 2018 at 33 (Ex. 4 at 22).

Paragraph three of the order in question says "**Frings Ranch, L.P. waives any and all deficiency claims it may have against the Estate; provided however, in the event an Oregon Agricultural Service Lien claimant asserts a senior lien to [the movant] on the subject livestock** (an Oregon ASL Claim"), **the Estate shall indemnify and hold [the movant] harmless as to any and all such claims**, demands, losses, causes of action, costs, and attorneys [sic] fees incurred by [the movant] as a result of such Oregon ASL Claim from the proceeds of sale of other livestock owned by the Estate." ECF No. 2018 at 10 (Ex. 3 at 2) (emphasis added). It is clear from the instant record that the court was speaking to Mr. Soares about the

movant's October 8 stay relief motion and specifically about the movant's waiver of deficiency claim against the bankruptcy estate in the proposed stay relief order before the court.

In response to the court, Mr. Soares said the following about the movant's waiver of its deficiency claim and the language to that effect in the proposed stay relief order: "**Well, it certainly gives me more hope than before. But I would like to have some protection that the Agricultural liens are gone for the sake of our motion.**" ECF No. 2018 at 33 (Ex. 4 at 22) (emphasis added).

This statement – made after the court had already resolved the motion to sell at the November 14, 2018 hearing – echoed Mr. Soares' concerns about superior agricultural liens, voiced in his emails with the trustee's counsel. ECF No. 2018 Ex. 1.

Outside of the court granting the trustee's motion to sell other livestock and paying off some Oregon agricultural service liens, it is clear that the movant wanted the additional protection of the Stay Relief Stipulation against such liens. In his comment to the court, Mr. Soares makes the connection between such liens and the stay relief motion, "our motion," indicating to this court that he wanted the protection of the Stay Relief Stipulation against such liens.

The movant had every reason to be concerned about senior Oregon agricultural liens in its sale of the livestock in its possession because there was a reference at the November 14 hearing of one such lienholder, Custom Feed, which had objected to the movant's proposed sale of the livestock in its possession. ECF No. 2018 at 35-36 (Ex. 4 at 24-25). That reference was made after the court had already resolved the motion to sell on November 14.

According to the movant's complaint to sell the livestock, filed in state court after the granting of the October 8 stay relief motion, there were a total of 12 creditors with claims against the livestock. ECF No. 2148 Ex. 2. While not all of them were for agricultural services, there may have been as many as eight such lienholders, potentially with objections against the movant's sale of the livestock. See ECF No. 2018 at 36 (Ex. 4 at 25) (the court commenting on the number of such liens).

The court rejects the movant's contention of lack of consideration in the indemnity promised by the trustee. The trustee's motion to sell, also heard on November 14, 2018 and resolved before the court resolved the October 8 stay relief motion, did not render the indemnity consideration promised by the trustee against any superior agricultural service liens as moot. The indemnity consideration promised by the trustee was recognized as needed by the movant after the court resolved the motion to sell.

As such, apart from the trustee's withdrawal of the opposition to the stay relief motion and his disclaimer of interest in the livestock, the trustee's indemnity promise to the movant was sufficient consideration to satisfy the requirement of mutuality for the Stay Relief Stipulation.

The court also rejects the movant's contention that the parties waived the Stay Relief Stipulation at the November 14 hearing. From the comments of the movant's counsel, Mr. Soares, it is clearly that the movant intended to be bound by the terms of the Stay Relief Stipulation beyond the November 14 hearing.

Nor did the trustee waive the Stay Relief Stipulation. As discussed above, the trustee started performing under the terms of the Stay Relief Stipulation even before the November 14 hearing, when he dismissed his opposition to the stay relief motion on November 13.

The November 14 hearing was not the parties' only opportunity to ask for approval of the Stay Relief Stipulation. The court advised the parties that they may notice a separate motion for approval of the Stay Relief Stipulation, which is what the trustee has done now by filing the Compromise Motion.

What transpired at the November 14 hearing indicates to the court that both the movant and the trustee desired to continue to be bound by the Stay Relief Stipulation beyond the November 14 hearing. The movant's present denial of the Stay Relief Stipulation is disingenuous in that it ignores what transpired at the November 14 hearing, it ignores what the trustee did under the terms of the Stay Relief Stipulation to clear the way for the movant to sell the livestock and satisfy its claim, and it ignores that the movant has already received the benefits of its bargained for consideration under the Stay Relief Stipulation.

(5) A significant reason for recognizing the Stay Relief Stipulation as binding is that the movant already received the benefits of its bargained for consideration from the Stay Relief Stipulation.

The movant benefitted from the trustee's withdrawal of his opposition to the October 8 stay relief motion. Without the trustee withdrawing the estate's opposition, the movant would have had to litigate against the trustee for relief from stay. The movant benefitted from the trustee's release of the estate's interest in the livestock, for purposes of the movant's state court sale of the livestock. Without such release, the trustee would have challenged the movant's sale of the livestock in state court. The movant also benefitted from the estate's protections against superior agricultural liens given by the estate to the movant, further incentivizing the movant to move forward with the state court sale of the livestock. Importantly and once again, at the November 14 hearing on the October 8 stay relief motion, the movant was particularly concerned with superior agricultural liens obstructing sale of the livestock in state court.

The movant has received the benefits of all consideration it was given under the Stay Relief Stipulation. Yet, the movant is now seeking to deny the bargained for consideration it gave to the bankruptcy estate under the same Stay Relief Stipulation, *i.e.*, the deficiency claim waiver. The court will not permit the movant to profit from such inequitable conduct, reneging on a waiver it gave the estate, inducing the estate to allow the movant to sell the

livestock and satisfy its claim. Notions of fairness and equity require that the Stay Relief Stipulation be binding on the movant even in the absence of a court order approving it. See 11 U.S.C. § 105(a).

The court rejects the movant's laches argument as well.

A successful laches defense requires proof of (i) lack of diligence by the party against whom the defense is asserted and (ii) prejudice to the party asserting the defense. *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 926-27 (9th Cir. 2002); *Sole Survivor Corp. v. Buxbaum*, Case No. CV 07-3858-GW, 2009 WL 210471, at *7 (C.D. Cal. Jan. 22, 2009) (upholding the bankruptcy court's ruling denying a motion for contempt as "unconscionably late" as the movant "waited more than two years and four months to bring [it]").

Stated little differently, "[a] party asserting laches must show that it suffered prejudice as a result of the plaintiff's unreasonable delay in filing suit." *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 835 (9th Cir. 2002)

"Equity . . . fashions its own time limitations, through laches, the doctrine . . . that equity will not aid a party whose unexcused delay would, if his suit were allowed, prejudice his adversary. (Citation omitted). The bare fact of delay creates a rebuttable presumption of prejudice. (Citation omitted)."

Fireside Thrift of Hawaii, Inc. v. Kealoha (In re Kealoha), 2 B.R. 201, 215 (Bankr. D. Hawii 1980) (quoting *Int'l Tel. and Telegraph Corp. v. General Tel. and Elecs. Corp.*, 518 F.2d 913, 926 (9th Cir. 1975) overruled on other grounds, *California v. American Stores Co.*, 495 U.S. 271 (1990)); *Shook v. CBIC (In re Shook)*, 278 B.R. 815, 830 (B.A.P. 9th Cir. 2002).

"The doctrine of laches is premised upon the same principles that underlie statutes of limitation: the desire to avoid unfairness that can result from the prosecution of stale claims."

United States v. Lee, No. C-08-2595 JCS, 2011 WL 1344215, at *6 (N.D. Cal. Apr. 8, 2011) (quoting *Goodman v. McDonnell Douglas, Corp.*, 606 F.2d 800, 804 (8th Cir. 1979)).

The trustee has demonstrated that his delay in bringing the Compromise Motion has caused no prejudice to the movant. Since November 14, 2018, when the court granted the October 8 stay relief motion until March 26, 2019, when the state court entered the judgment for the movant in the state court action, there has been no prejudice to the movant. ECF No. 2111 Ex. 6. The first time this motion was filed was shortly after the state court entered the judgment, on April 11, 2019.

During the period of delay, the movant has not been prejudiced. Conversely, the movant has been successful in enforcing its lien on the livestock in state court. It has benefitted from the terms of

the Stay Relief Stipulation, as the trustee has refrained from asserting any interest as to the livestock in the movant's state court action.

In other words, although the trustee delayed filing the Compromise Motion, he did not hold the lack of court approval of the Stay Relief Stipulation against the movant. The lack of court approval of the Stay Relief Stipulation did not prejudice the movant from its efforts to foreclose on its lien. Throughout the state court action, the movant was benefitting from the Stay Relief Stipulation as if it had been already approved by this court.

From the record before it, the court is satisfied that the presumption of prejudice due to the delay in bringing the Compromise Motion has been rebutted.

On the other hand, the movant has not satisfied its burden to show that the delay in the bringing of the Compromise Motion was somehow unreasonable.

A determination of whether a party exercised unreasonable delay in filing suit consists of two steps. *E.g., Danjaq*, 263 F.3d at 952-55. **First, we assess the length of delay, which is measured from the time the plaintiff knew or should have known about its potential cause of action.** *E.g., Kling*, 225 F.3d at 1036; *Portland Audubon Soc'y v. Lujan*, 884 F.2d 1233, 1241 (9th Cir.1989). **Second, we decide whether the plaintiff's delay was reasonable.** *E.g., Danjaq*, 263 F.3d at 954-55; *Couveau*, 218 F.3d at 1083. **The reasonableness of the plaintiff's delay is considered in light of the time allotted by the analogous limitations period.** *E.g., Sandvik v. Alaska Packers Ass'n*, 609 F.2d 969, 971 (9th Cir.1979). We also consider whether the plaintiff has proffered a legitimate excuse for its delay. *E.g., Danjaq*, 263 F.3d at 954-55 (outlining several legitimate excuses for delay in filing suit).

Jarrow Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d 829, 838 (9th Cir. 2002)

The delay in the bringing of the Compromise Motion was approximately six months, from November 14, 2018 (when the court told the parties that a Rule 9019 motion may be in order) until May 22, 2019 (when the Compromise Motion was filed).

Nevertheless, there is no statute of limitations for bringing compromise approval motions. Nor did the court ever set a deadline for the filing of the Compromise Motion.

Given this and given that the trustee treated the movant as if the Stay Relief Stipulation was approved by the court and was binding on him, there has been no showing that the delay in the bringing of the Compromise Motion was unreasonable. Accordingly, laches does not make the Stay Relief Stipulation non-binding.

(6) Another significant reason for recognizing the Stay Relief Stipulation as binding is that the movant treated the stipulation as binding and enforceable itself, after the November 14, 2018 hearing.

On November 21, 2018, one day after the court entered the agreed order on November 20 granting the movant's October 8 stay relief motion (ECF No. 1127), the movant filed in state court its complaint seeking enforcement of its livestock service lien. In the state court complaint, however, the movant does not name the chapter 11 trustee. ECF No. 2148 Ex. 2 at 1.

From this, the court infers that the movant was treating outside of bankruptcy court the Stay Relief Stipulation as binding and enforceable against the trustee.

This is consistent with the movant's comments at the November 14 hearing about its need for having the Stay Relief Stipulation in place due to concerns over superior agricultural service liens.

(7) The court granted the stay relief motion, also relying on the Stay Relief Stipulation. While the court declined to have the terms of the Stay Relief Stipulation incorporated in the final version of the order, the court recognized that the parties had resolved the October 8 stay relief motion and called the final version of the order an "agreed order."

The court granted the movant's stay relief motion on the basis of the existence of the Stay Relief Stipulation. See ECF No. 2018 at 24, 33 (Ex. 4 at 13, 22) (the court, in granting the stay relief motion, expressly noting that the estate is releasing its interest in the livestock and that the court is "okay with[] the part about [the movant] waiv[ing] deficiency").

While the court did not approve the Stay Relief Stipulation, the court also did not deem it necessary to approve the Stay Relief Stipulation prior to granting the stay relief motion.

In other words, if the court were to ignore the binding nature of the Stay Relief Stipulation, it would be undermining its own order granting relief from stay for the movant to sell the livestock. See 11 U.S.C. § 105(a).

The foregoing conclusion is consistent with the objective of favoring compromises in bankruptcy. "To minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed.1993)). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *John S. Marandas, P.C. v. Sassalos (In re Sassalos)*, 160 B.R. 646, 653 (D. Or. 1993).

Given the foregoing, the Stay Relief Stipulation is inextricably intertwined with the court's granting of the movant's October 8 stay relief motion, permitting the movant to sell livestock belonging to

the estate, to obtain a judgment on account of its claim against the livestock, and satisfy that judgment from the sale proceeds. Even in the absence of a court order approving it, case law and the equities in the case require that the Stay Relief Stipulation be binding on the movant.

IV. Judicial Estoppel

Fourth, even if the Stay Relief Stipulation were not binding and enforceable against the movant due to the absence of court approval, the movant is judicially estopped from denying its waiver of its deficiency claim against the estate.

At its discretion, a court may invoke judicial estoppel, an equitable doctrine "that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir.2001). The doctrine advances "'general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings,'" and "'protect[s] against a litigant playing fast and loose with the courts.'" *Id.* (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990)).

The court considers three factors in determining whether to apply the doctrine of judicial estoppel: (1) whether a party's later position is "clearly inconsistent" with its earlier position, (2) whether the first court accepted the party's earlier position, and (3) whether the party seeking to assert an inconsistent position would receive an unfair advantage if not estopped. *New Hampshire v. Maine*, 532 U.S. 742, 750-51, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001).

Becker v. Wells Fargo Bank, Nat. Ass'n, No. CIV. 2:12-1742 WBS, 2012 WL 5187792, at *3 (E.D. Cal. Oct. 18, 2012).

The application of judicial estoppel is not limited to bar the assertion of inconsistent positions in the same litigation, but is also appropriate to bar litigants from making incompatible statements in two different cases.

Hamilton at 783.

Here, in the movant's prosecution of its October 8 stay relief motion, in connection with negotiating the estate's interest in the livestock and withdrawal of the trustee's opposition to the motion, the movant advanced the position that it is waiving its deficiency claim against the estate. The movant's deficiency claim waiver constituted a position by the movant that it would not assert against the estate its claim for the care of the livestock, to the extent such claim is not fully paid from the proceeds of the sale of the livestock.

As noted above, at the November 14 hearing on the October 8 stay relief motion, it was counsel for the movant who wanted the Stay

Relief Stipulation in place, when he expressed concern to the court for protections against any superior Oregon agricultural liens.

The court incorporates by reference its discussion on this point from above in this ruling.

Mr. Soares, counsel for the movant, in commenting on that protection at the November 14 hearing, stated "[b]ut I would like to have some protection that the Agricultural liens are gone for the sake of our motion." ECF No. 2018 at 33 (Ex. 4 at 22). By seeking the protections of the Stay Relief Stipulation for his client, Mr. Soares was clearly taking the position as part and parcel of the Stay Relief Stipulation and thus effectuating the movant's waiver of the deficiency claim against the bankruptcy estate.

The movant's seeking "to have some protection that the Agricultural liens are gone" came **after** the court had already granted the motion to sell also heard on November 14, the trustee's motion to sell other livestock. As such, the court rejects the movant's contention that the Stay Relief Stipulation "became moot after the court granted the Trustee's motion to sale [sic] the Livestock of Lost Valley Farm free and clear of liens." ECF No. 2150 at 7.

In its opposition to the trustee's motion for approval of the Stay Relief Stipulation, the movant contends that by the court granting the trustee's motion to sell, "the Oregon ASL Claim and the claim of Custom Feed were paid and as such the creditors did not assert a claim against the Livestock held by [the movant]." ECF No. 2150 at 7.

This is not true, however. **After** the court had granted the trustee's sale motion, Custom Feed was identified as a lienholder which had objected to the sale of the livestock by the movant. ECF No. 2018 at 35-36 (Ex. 4 at 24-25); see also ECF No. 1037 (Opposition by Custom Feed to the movant's October 8 stay relief motion). And, as noted by the court, there were at least six or seven other holders of such liens, potentially with objections against the movant's sale of the livestock. ECF No. 2018 at 36 (Ex. 4 at 25).

From Mr. Soares' comment about the movant needing protection against superior agricultural liens, **after** the court had already granted the trustee's motion to sell, the court infers that the movant was agreeing to the Stay Relief Stipulation, including waiving any deficiency claim against the estate, when it brought its stay relief motion before the court at the November 14 hearing.

Now however, in connection with this motion, the movant is asserting a deficiency claim against the estate, complaining that it was not paid in full for the care of the livestock from the proceeds generated by the sale of the livestock.

Therefore, the movant's position in connection with the subject motion is inconsistent with the position it took in connection with its October 8 stay relief motion.

Further, when this court adjudicated the movant's October 8 stay relief motion, it accepted and relied on the movant's position that it had agreed to the Stay Relief Stipulation and that it was waiving its deficiency claim against the estate, as an integral part of the trustee's release of interest in the livestock, indemnification against superior Oregon Agricultural Service lien claimants, and withdrawal of the opposition to the stay relief motion.

The court incorporates by reference its discussion on this point from above in this ruling.

When the parties appeared at the November 14 hearing on the motion, they showed a proposed order to the court, signed by both the trustee and the movant, granting stay relief to permit the movant to sell the livestock and pay its claim. ECF No. 2018 at 23-24 (Ex. 4 at 12-13). In reviewing the order, the court noted that, as part of the trustee's withdrawal of his opposition, the estate is releasing any interest in the livestock and that the movant is waiving any deficiency claim on account of its care of the livestock. ECF No. 2018 at 24 (Ex. 4 at 13).

Speaking to Mr. Soares, counsel for the movant, at the November 14 hearing, the court said "I'm okay with[] the part about your client waives [sic] deficiency." ECF No. 2018 at 33 (Ex. 4 at 22). The court then stated "It looked [sic] to me that, given the absence of Trustee's opposition, I'm prepared to grant this." ECF No. 2018 at 33 (Ex. 4 at 22).

The court's reliance on the Stay Relief Stipulation is further reflected in that it allowed the stay relief motion to be trailed in order to first resolve a motion to sell other livestock by the trustee, which was thought to have the potential to alter the outcome or basis for granting the stay relief motion. But, resolving the motion to sell first did not alter the outcome of or the court's reliance on the Stay Relief Stipulation to resolve the stay relief motion. Even after the motion to sell was resolved, the movant through Mr. Soares still sought protection against superior agricultural lien holders. ECF No. 2018 at 33 (Ex. 4 at 22).

Moreover, one such lienholder, Custom Feed - which had objected to the movant's sale of livestock - was identified. ECF No. 2018 at 35-36 (Ex. 4 at 24-25).

Finally, permitting the movant to assert that it did not waive a deficiency claim against the estate would clearly grant the movant an unfair advantage over the estate and other creditors of the estate. The movant gave the waiver to induce the estate to withdraw its opposition to the movant's October 8 stay relief motion, which is what enabled the movant to sell the livestock.

Hence, allowing the movant a deficiency claim, with or without administrative priority, would permit the movant to breach the very promise it gave to obtain the right to sell the livestock in the first place.

If it was not for the deficiency claim waiver, the estate would not have withdrawn its opposition to the stay relief motion, would not have released its interest in the livestock, and would not have granted the movant a right to indemnification against superior service lien holders, *i.e.*, protecting the movant from superior liens during the enforcement of its claim against the livestock in state court.

Given the foregoing, and especially that the movant's own attorney advocated for the Stay Relief Stipulation at the November 14 hearing, when he stated to the court that the movant needed protection from superior agricultural liens, it is disingenuous for the movant to argue now that it did not receive any consideration or benefit from the Stay Relief Stipulation.

The movant is judicially estopped from contending that it did not waive its deficiency claim against the estate.

V. Section 503(b) (1)

Fifth, even if the Stay Relief Stipulation were not enforceable against the movant and if judicial estoppel were improper, the movant has not established that it is entitled to an administrative expense claim under 11 U.S.C. § 503(b) (1).

Initially, the movant seems to assert that this court should simply adopt the state court's judgment. But, the movant offers no legal authority for this proposition. The state court judgment only liquidates the movant's claim. It says nothing about whether that claim arose post-petition, for example. The state court made no findings of fact or conclusions of law about the extent to which, if any, the movant's claim arose post-petition, about the actual and necessary nature of the claim, or about whether the claim has directly and substantially benefitted the bankruptcy estate.

Moreover, this question is governed by federal law, including 11 U.S.C. § 503 and corresponding case law.

As such, it is within the purview of this court to dissect the state court judgement to determine to what extent, if any, the movant's claim should be accorded administrative priority.

Turning to the merits of section 503(b) (1), the movant has not met its burden of persuasion that its claim arose post-petition. The motion gives virtually no details on the contract that gave rise to the movant's claim. The motion says only that, on or about May 22, 2017, the movant entered into an agreement with Lost Valley Farm and Pacific Rim Dairy to care for newborn calves. ECF No. 1899 at 2. The alleged service charge under the contract is \$2.40 per day per head.

However, there is no agreement between the movant and the debtor in the record before the court. And, any and all references by the movant in this motion are inadmissible hearsay. Fed. R. Evid. 801(c), 802. No foundation has been laid for the agreement either.

The same is true with respect to some of the figures proffered by the movant in the motion as basis for its claim. For example, the movant relies on the state court judgment (ECF No. 2111 Ex. 6) to establish attorney's fees and costs of \$42,163.25, but nothing in the record establishes what portion of those fees and costs were incurred by the movant post-petition.

While the state court's judgment is helpful in identifying the final figure for the movant's total claim against the estate (ECF No. 2111 Ex. 6), it is the prerogative of this court to dissect the final figure to distinguish between the pre and post-petition portions of the claim, and to determine what part of the claim represents the actual and necessary costs and expenses of preserving the bankruptcy estate.

Even if the court were to ignore the inadmissibility of the alleged contract terms, the court cannot conclude that the movant's costs of care for the 5,460 head of livestock the movant had in its possession on the petition date gave rise to a post-petition claim. The movant has not even produced invoices directed to the debtor-in-possession and bankruptcy trustee, reflecting the movant's care for the livestock.

The motion attaches the supporting declaration of Michael Frings to the movant's October 8 stay relief motion, which declaration refers to "invoices dating from May 22, 2017 to September 30, 2018." ECF No. 1901 Ex. B at 2; ECF No. 2112 Ex. B at 2.

Yet, the movant has not made the "invoices dating from May 22, 2017 to September 30, 2018" part of the record on this motion.

When the court examined the record of the movant's October 8 stay relief motion, it found these "invoices." They are actually not invoices but merely a one-page long summary of charges allegedly owed to the movant, through September 30, 2018. ECF No. 929. The summary does not even reference a start date for the charges, albeit Michael Frings says that the start date for the "invoices" is May 22, 2017. ECF No. 1901 Ex. B at 2.

This seems to indicate that a large portion of the movant's claim actually arose pre-petition. The record contains no accounting of what portion of the claim arose pre/post-petition and how the movant applied the sales proceeds to its claim.

From the foregoing, the court infers that the movant did not prepare and direct invoices to the debtor and/or the trustee.

Without more information about the movant's contract, invoices, and practices with the debtor, the court cannot conclude that the asserted costs of care gave rise to a post-petition claim.

In *California Dept. of Health Servs. v. Jensen* (*In re Jensen*), 995 F.2d 925, 928-31 (9th Cir. 1993), the Ninth Circuit analyzed four different tests for determining when a claim arises, pre or post-petition: (1) the claim arises when the right to payment accrues, (2) the claim arises when a relationship is established between the

debtor and the creditor, *i.e.*, the earliest point in the relationship between the debtor and the creditor, (3) the claim arises at the time of the debtor's conduct, or (4) the claim arises from damages that can be fairly contemplated by the parties at the time of the debtor's bankruptcy.

The motion makes little or no effort to address this question, even after the court highlighted these issues for the movant in connection with first time the movant filed this motion.

Further, the motion contains many other deficiencies. The movant makes virtually no effort to distinguish and account for the post-petition livestock care costs. There are no invoices or other documentation from the movant memorializing the timing and type of work performed by the movant post-petition. The motion relies on the state court judgment figure and few other figures from the movant's stay relief motions to reconstruct the amount it seeks allowed as an administrative claim.

As a way of example, the motion includes substantial charges that are clearly for pre-petition services provided by the movant. The \$6,189,236.23 state court judgment includes the \$2,267,879 the debtor owed on the petition date for pre-petition services.

In arriving at the \$6,189,236.23 state court judgment figure, the motion references several figures of outstanding debt, at different points of time, owed to the movant. ECF No. 1899 at 9-10. One of those figures is \$4,323,671 owed to the movant as of September 30, 2018, when the movant's October 8, 2018 stay relief motion was apparently prepared. ECF No. 1899 at 9; ECF No. 2109 at 12-15. The movant imports this figure from the supporting declaration for its October 8 stay relief motion. ECF No. 1899 at 9; ECF No. 2109 at 12-15.

However, the supporting declaration indicates that the \$4,323,671 figure owed through September 30, 2018 includes the \$2,267,879 the debtor owed as of the petition date. The stay relief motion's supporting declaration of Michael Frings refers, with respect to the \$4,323,671 figure, to "invoices dating from May 22, 2017 to September 30, 2018." ECF No. 1901 Ex. B at 2; ECF No. 2109 at 12-15.

Stated differently, the \$2,267,879 owed as of the petition date is included in the \$4,323,671 owed through September 30, 2018, and it is correspondingly included in the \$6,189,236.23 state court judgment figure, because the \$4,323,671 figure is cited as basis for the state court judgment. See ECF No. 1899 at 9-10; ECF No. 2109 at 12-15.

Importantly, the movant has not produced the "invoices dating from May 22, 2017 to September 30, 2018" with this motion. When the court examined the record of the movant's October 8 stay relief motion, it found these "invoices." They are actually not invoices but a one-page summary of charges, owed to the movant through September 30, 2018. ECF No. 929. Although this summary does not reference a start date for the charges, Michael Frings' supporting

declaration makes it clear that the start date for the summary of these invoices is May 22, 2017. ECF No. 1901 Ex. B at 2.

Hence, the movant's state court judgment includes the \$2,267,879 the debtor owed on the petition date, which is clearly a pre-petition claim, not qualified for an administrative expense priority.

When one subtracts the \$2,267,879 the debtor owed on the petition date from the \$6,189,236.23 state court judgment figure, it leaves \$3,921,357.23 of charges for post-petition services. Once again, these charges are not memorialized by invoices or other documents generated by the movant when it provided the services to the estate.

When one subtracts the \$2,523,429.66 in livestock sales from the \$3,921,357.23 in charges for post-petition services, the movant is left with \$1,397,927.57 of unsatisfied charges for post-petition services. This figure is a far cry from the requested \$3,665,806.57 in administrative expenses.

The motion also fails to justify or explain any of the movant's expenses after the trustee disclaimed interest in the livestock when he entered into the Stay Relief Stipulation. The movant cannot seek an administrative expense claim for preserving property that is no longer property of the bankruptcy estate.

The foregoing issues are not addressed by the movant even though the court specifically asked the movant to address them. See ECF No. 2090.

Furthermore, the movant's "actual and necessary" analysis is also deficient.

As a way of example, the motion is devoid of analysis how the movant's attorney's fees, facility rental charges, and equipment rental charges can be actual and necessary costs within the meaning of section 503(b)(1).

The movant's attorney's fees are just that, fees incurred for the benefit of the movant. The fees were not necessary to benefit the estate or any of the other creditors. They benefitted solely the movant. The state court's inclusion of the fees in its judgment does not grant them administrative priority.

There has been no showing that the facility and equipment rental charges were necessary to benefit the estate or creditors either. The movant has not delineated the terms of its contract with the debtor. Without a showing that the contract permitted the movant to rent additional facility space and equipment, the court is unpersuaded that these charges were necessary in the care for the livestock.

The motion makes a case that the contract permits per-head livestock charge of the debtor. The court sees nothing in the record permitting the movant to rent additional facility space or equipment and charge the debtor with such extra expenses.

Nor is there a factual basis for the necessity of renting the additional facility space and equipment. For instance, the motion does not say how or why or to what extent the movant came to need the additional facility space and equipment.

More important, the motion fails to articulate how or why or to what extent any of the post-petition services the movant provided to the estate were necessary to benefit the estate.

The movant simply took livestock from the estate post-petition and kept livestock it had taken from the debtor pre-petition. Except for 571 livestock head the movant returned to the estate in July 2018 in exchange for a \$500,000 payment, *the movant returned no livestock it had taken possession of to the estate*. The movant then sold all that livestock to foreclose on its service lien against the livestock. Hence, all costs for the care of the livestock were incurred to preserve the over-encumbered collateral of the movant. None of the costs were necessary to benefit the estate or its creditors.

The estate or its creditors are not benefitted from a secured creditor preserving its over-encumbered collateral.

The *In re Azevedo*, 485 B.R. 596, 598 (Bankr. D. Idaho 2013) decision is unhelpful to the movant. That case is inapposite to the facts of this case. In *Azevedo*, the claimant was selling feed to the estate on credit. In other words, the claimant did not have possession of the livestock. The estate did. And, the claimant was unsecured.

Here, on the other hand, the movant was not selling anything to the estate. It was caring for livestock it had possession of and had a lien against. The movant returned no livestock to the estate (except for the 571 head the estate paid for). All the movant's care costs went into preserving its collateral, on which it eventually foreclosed.

Conversely, the claimant in *Azevedo* had nothing to foreclose on and its feed was used to benefit livestock of which the estate was in possession.

Finally, none of the charges submitted by the movant satisfy the "directly and substantially benefitted" prong. Once again, the motion fails to articulate how or why or to what extent any of the post-petition services the movant provided to the estate benefitted the estate.

There is no direct and/or substantial benefit to the estate identified in the motion.

Even though the contract between the movant and the debtor is not in the record before the court, the dealings between these parties indicate that the debtor could not take possession of livestock cared for by the movant until the debtor pays the movant for its services. This is reflected by the debtor's \$500,000 payment to the movant to take possession of 571 head of livestock post-petition, before the court appointed a chapter 11 trustee.

In other words, under their contract, the debtor did not have an unfettered right to its livestock that was cared for by the movant. Payment to the movant was required prior to the debtor taking possession back of its livestock.

From this, the court infers that the estate would have received benefit from the movant only if and when it would have received back the cattle taken for service by the movant. But, aside from the 571 head of livestock the debtor-in-possession paid \$500,000 for, the estate has received no cattle from the movant post-petition. The movant returned none of the livestock it cared for to the estate (except for the 571 head the estate paid for).

Section 503(b)(1)(A) includes only actual benefits that are "measurable in assets distributable to creditors, or the elimination of claims which would otherwise require creditors to share the assets with others." *Lazar*, 207 B.R. at 685; see also *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 482, 488 (Bankr. S.D.N.Y. 1991).

The motion identifies no actual benefits to the estate. For example, it says nothing about any assets having been distributed to creditors or the decrease or elimination of claims of other creditors against the estate.

The motion falls significantly short of the evidentiary standard for establishing the elements of an administrative expense claim.

Given the foregoing, the motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Frings Ranch, LP's motion for allowance of an administrative expense claim has been presented to the court. Having considered the motion and responses and replies pertaining to the motion,

IT IS ORDERED that the motion is denied.

5. 18-11651-A-11 **IN RE: GREGORY TE VELDE**
MB-44

CHAPTER 11 DISCLOSURE STATEMENT FILED BY TRUSTEE RANDY
SUGARMAN
5-5-2019 [2009]

MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

6. 18-11651-A-11 **IN RE: GREGORY TE VELDE**
MB-50

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FRINGS RANCH, L.P.
5-22-2019 [2080]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Tentative Ruling

Motion: Approve Compromise of Controversy

Notice: LBR 9014-1(f)(1); written opposition filed

Disposition: Granted

Order: Civil minute order

The chapter 11 trustee requests that the court approve a stipulation ("Stay Relief Stipulation") entered into between the estate and creditor Frings Ranch, LP, in conjunction with Frings' October 8, 2018 stay relief motion heard on November 14, 2018, involving Frings' desire to sell the estate's livestock in its possession and satisfy its livestock service lien claim against the proceeds from the sale.

To the extent applicable and relevant anywhere in this ruling, the court incorporates by reference its ruling, including, without limitation, its findings of fact, conclusions of law, and analysis, on the Admin Expense Motion (ECF No. ELR-3).

Frings opposes approval of the Stay Relief Stipulation, contending that:

- 1) the Stay Relief Stipulation was contingent on the court awarding the protection that Frings sought, in the stipulation;
- 2) the indemnification promised by the estate as part of the Stay Relief Stipulation was resolved by the court granting the trustee's motion to sell, heard on November 14, 2018, when the

October 8 stay relief motion was heard, and resolved prior to the stay relief motion;

3) the Stay Relief Stipulation became moot after the court granted the motion to sell by the trustee, heard on the same calendar the October 8 stay relief motion was heard, November 14, 2018;

4) laches, lack of consideration, and waiver require disapproval of the Stay Relief Stipulation; and

5) the trustee has not shown that the Stay Relief Stipulation was in the best interest of the estate;

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Discussion

(1) The court disagrees with Frings that the Stay Relief Stipulation was contingent on the court setting forth its terms in the order granting Frings' October 8 stay relief motion. This is not reflected by the signed writing that constitutes the Stay Relief Stipulation. See ECF No. 2084 Ex. 3. That document does not make the Stay Relief Stipulation contingent on the stipulation being memorialized in the order granting the October 8 stay relief motion.

Nor has Frings shown that anyone at the November 14 hearing asked for such relief from the court. When Mr. Soares expressed his concerns about the need for the indemnification protection for Frings, after the court had already granted the trustee's motion to sell, he did not say anything about wanting this protection to be in the order granting the stay relief motion. See ECF No. 2084 at 33, 36-37 (Ex. 4 at 22, 25-26).

No one requested the Stay Relief Stipulation to be memorialized in the order granting stay relief even after the court said he was leaving it out of the order. See ECF No. 2084 at 35 (Ex. 4 at 24).

It appears that Frings was comfortable with leaving out the Stay Relief Stipulation from the order granting stay relief because it

already had a signed agreement with the trustee. See ECF No. 2084 Ex. 3. This is evident from the fact that Frings did not name the trustee as a defendant in the state court action, one day after the court entered the order granting the stay relief. The state court action - for Frings to sell the livestock and satisfy its lien claim - was what the trustee had expressly agreed to in the Stay Relief Stipulation.

The Stay Relief Stipulation expressly provides that: "the Trustee expressly waives the Estate's right to a Superior Court hearing on any sale of the livestock;" and "the Trustee is giving Frings Ranch, L.P. permission to sell the livestock in such manner as it deems fit, and that the Trustee is waiving any interest the Estate may have in the livestock or in the proceeds of sale." ECF No. 2084 Ex. 3.

In other words, even after the court granted its October 8 stay relief motion, without incorporating the terms of the Stay Relief Stipulation, Frings was acting consistent with it having a binding Stay Relief Stipulation with the trustee.

(2) & (3) The indemnification promised by the estate to Frings was not resolved by the court granting the trustee's motion to sell on November 14 because Mr. Soares sought the protection of the indemnification promise and Custom Feed was still identified as an objecting service lienholder, after the court resolved the motion to sell. The indemnification promise by the trustee did not become moot after the court resolved the motion to sell on November 14, for the same reasons.

As discussed at length in the court ruling on the Admin Expense Motion, Mr. Soares sought the indemnification protections for Frings from the estate after the court resolved the motion to sell. And, Custom Feed was still identified as an objecting service lienholder.

Moreover, after the granting of stay relief to Frings, Frings treated the Stay Relief Stipulation as binding in that it failed to name the trustee as a defendant in the state court action.

Michael Frings' and Michael Soares' declarations, where they state that it was their understanding that the parties would be litigating "further issues" in the state court action, is directly contradicted by the terms of the Stay Relief Stipulation (by the trustee giving up any interest in the state court action) and by the fact that Frings did not name the estate as a defendant in the state court action. ECF No. 2151 at 2; ECF No. 2084 Ex. 3.

Frings keeps ignoring the fact that the Stay Relief Stipulation included more than just the estate giving an indemnification promise to Frings. It also included withdrawal of the trustee's opposition to Frings' October 8 stay relief motion, an unequivocal permission by the trustee for Frings to enforce its lien in state court, and release of the estate's interest in the livestock and sales proceeds.

(4) The court incorporates here by reference its analysis in the ruling on the Admin Expense Motion, of why laches, lack of consideration, and waiver are without merit.

As to laches, in addition to the court's ruling on the Admin Expense Motion, the court specifically rejects the argument that Frings would not have incurred the fees and costs associated with the filing of the state court action, had the trustee filed this motion to approve the Stay Relief Stipulation "sooner rather than later."

This argument is irrational because it was the Stay Relief Stipulation in the first place that expressly authorized Frings to prosecute the state court and enforce its lien against the livestock. The trustee moving for approval of the Stay Relief Stipulation "sooner rather than later" would have only affirmed Frings in what it was already doing, *i.e.*, prosecuting the state court action to enforce its lien against the livestock.

(5) The trustee has shown that the Stay Relief Stipulation is fair and equitable and in the best interest of the estate and creditors, given the facts in existence at the time when the parties entered into it.

The Stay Relief Stipulation allowed the estate to absolve itself of liability from any deficiency claim of Frings, which was uncertain at the time, while it allowed Frings to foreclose on its collateral that was in its possession.

Given the significant uncertainty, at the time, of Frings' eventual deficiency claim - as demonstrated by Frings' own admission that prices of livestock fell over the months after the parties entered into the Stay Relief Stipulation (ECF No. 2109 at 9) - the stipulation was in the best interest of the estate at the time it was entered into by the parties.

As admitted by Frings, market prices for livestock were constantly fluctuating. ECF No. 2109 at 9. At the time of the October 8 stay relief motion, Frings identified only an approximately \$427,000 lack of equity in the livestock. ECF No. 931. This is a far cry from the actual deficiency Frings has proffered in its Admin Expense Motion, \$3,665,806.57. ECF No. 2109 at 24. In many ways, this illustrates the volatility of the livestock markets. Rightly so, the trustee wanted to resolve the uncertainty of Frings' deficiency claim.

The trustee was also uncertain about the estate realizing any value from the livestock in Frings' possession. While he could perhaps defeat Frings' stay relief motion, by asserting necessity for reorganization, the aging livestock and volatility of the livestock markets raised significant questions about the estate realizing value from the livestock.

It was in the best interest of the estate and the creditors for the trustee to resolve these uncertainties.

On the other hand, Frings received the benefit of strong certainty that its stay relief motion would be granted and that it will satisfy its claim from the sale of the collateral livestock in state court, without having to worry about superior agricultural service liens (such as Custom Feed's lien) and the estate's interest in the livestock or the sale proceeds.

Frings was uncertain at the time that it could prevail on its October 8 stay relief motion and in the eventual state court action (assuming the stay relief motion was granted over the trustee's opposition). The court had denied Frings another stay relief motion just little over four months earlier, on May 30, 2018. See ECF No. 209. This undoubtedly gave the trustee some leverage, when he agreed to withdraw its opposition to the October 8 stay relief motion.

As to the state court action, while Frings held a service lien against the livestock, the estate owned the livestock and there were superior agricultural service lienholders against the livestock as well. Also, once again, market prices for livestock were constantly fluctuating.

Having the estate release its interest in the livestock and the sales proceeds and having it promise to indemnify Frings against superior service liens, removed most of the uncertainty for Frings to enforce its lien. Predictability in the state court action for Frings also translated into relative promptness in the sale of the livestock, removing some uncertainty attached to the volatile livestock markets.

Both parties also wanted to avoid the time and resources in litigating the stay relief motion and the state court action.

The Stay Relief Stipulation is reflected in the signed document (proposed order granting Frings' October 8 stay relief motion) attached to the motion as an exhibit. ECF No. 2084 Ex. 3.

Given the foregoing and the record before the court, the Stay Relief Stipulation is fair and equitable and in the best interest of the estate and creditors, considering the facts in existence at the time when the parties entered into it and the relevant *A & C Properties* factors.

The court is satisfied from the record that the Stay Relief Stipulation was negotiated in good faith and that the trustee had reasonable and sound basis to believe that the stipulation was the best that can be negotiated under the facts, as they were known at the time.

The motion will be granted and the Stay Relief Stipulation will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 11 trustee's motion to approve a stipulation has been presented to the court. Having considered the motion and any responses and replies pertaining to the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the stipulation compromise that is reflected in the document attached to the motion as exhibit and filed at Docket No. 2084, Exhibit 3.

7. 18-11651-A-11 **IN RE: GREGORY TE VELDE**
MB-52

MOTION TO SELL
6-3-2019 [2118]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Real Plane and Compensate Broker
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Property: 1979 Cessna P210N airplane, Serial Number P2100076

Buyer: Arrow Aviation, Inc.

Sale Price: \$160,000

Sale Type: Private sale subject to overbid opportunity

Broker: O'Brien Aviation, Inc.

Compensation Requested: 7.5% commission, plus up to \$6,000 in expenses

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by Fed. R. Bankr. P. 7055*, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11

reorganization case. See, e.g., 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion.

Section 330(a) of Title 11 authorizes “reasonable compensation for actual, necessary services” rendered by a professional person employed under § 327 and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

8. 18-11651-A-11 **IN RE: GREGORY TE VELDE**
WW-1

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO BORROW
5-2-2018 [64]

GREGORY TE VELDE/MV
MICHAEL COLLINS
RESPONSIVE PLEADING

No Ruling

9. 11-17165-A-11 **IN RE: OAKHURST LODGE, INC., A CALIFORNIA CORPORATION**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
6-22-2011 [1]

DONNA STANDARD

No Ruling

10. 11-17165-A-11 IN RE: OAKHURST LODGE, INC., A CALIFORNIA
CORPORATION
DMS-50

MOTION FOR DISTRIBUTION AND/OR MOTION FOR RELEASE OF FUNDS
HELD IN TRUST
5-24-2019 [582]

OAKHURST LODGE, INC., A
CALIFORNIA CORPORATION/MV
DONNA STANDARD

Tentative Ruling

Telephonic appearances are not authorized for this hearing. Any party/attorney wishing to be heard shall appear personally.

The court suggests that each appearing party bring to the hearing the following documents: (A) Plan, November 9, 2011, ECF # 79; (B) Order Confirming, February 29, 2012, ECF # 124; (C) Second Amended Order re Settlement, January 31, 2019, ECF # 512; (D) Memorandum Decision, May 28, 2018, ECF # 364; and (E) Proof of Claims (and amendments thereto) filed by Franchise Tax Board, Employment Development Department, County of Madera, Internal Revenue Service, Coller Partnership, Olson Family Trust, On Deck Capital, and Time Payment Corporation.