



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, January 31, 2023
Department B – Courtroom #13
Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, and all parties will need to appear at the hearing unless otherwise ordered. 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.

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-16](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM
NUMBER 8
4-11-2022 [[241](#)]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to February 28, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* dated January 24, 2023. Doc. #313. Since the parties are actively negotiating a settlement, they have jointly requested continuance of this matter to February 28, 2023. *Id.* Accordingly, this scheduling conference will be CONTINUED to February 28, 2023 at 9:30 a.m. Unless this objection is withdrawn, the parties shall file a joint or unilateral status report not later than seven (7) days before the continued scheduling conference.

2. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[HLG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HATMAKER LAW
GROUP FOR SUSAN K. HATMAKER, SPECIAL COUNSEL(S)
1-10-2023 [[213](#)]

SUSAN HATMAKER/MV
RILEY WALTER/ATTY. FOR DBT.
SUSAN HATMAKER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted provided Applicant files an amended certificate of service prior to the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Susan K. Hatmaker of Hatmaker Law Group ("Applicant"), special counsel to chapter 11, subchapter V debtor-in-possession Valley Transportation, Inc. ("Debtor"), requests interim compensation under 11 U.S.C. § 331 in the sum of \$140,034.56. Doc. #213. This amount consists of \$136,142.00 in fees as reasonable compensation for services rendered and \$3,892.56 in reimbursement for actual, necessary services between August 30, 2022 and November 30, 2022. *Id.*

Deborah Simpson—Debtor's President, CEO, and representative—filed a declaration indicating that she has reviewed the application, determined that the application reflects services rendered and costs incurred, and Debtor has no objection to payment of the proposed fees and expenses. Doc. #217.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED provided that Applicant files an amended certificate of service prior to the hearing. Otherwise, the motion will be DENIED WITHOUT PREJUDICE.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. ("Rule") 2002(a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a preliminary matter, the second certificate of service (Doc. #219) does not comply with LBR 7005-1, which is effective as of November 1, 2022 under General Order 22-04. *Cf.* Gen. Order 22-04 (Oct. 6, 2022). Though Applicant used the correct official form EDC 007-005, LBR 7005-1 requires the movant to attach the Clerk of the Court's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d).

Rule 2002(a)(6) requires *all creditors* to be notified at least 21 days before a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.00. The second certificate says that all creditors were served, but the LBR 7005-1 official matrix was omitted. Fed. R. Civ. P. 4(1)(3), *incorporated by* Rule 7004(a)(1), provides that failure to prove service does not affect the validity of service, and the court may permit the proof of service to be amended. Since this is Applicant's second attempt at filing this motion and Applicant's first certificate of service (Doc. #218) appears to include the correct attachments, the court may overlook the deficiency in the second certificate of service (Doc. #219) provided that Applicant files an amended certificate of

service that complies with LBR 7005-1 and evidences proper notice on all creditors.

Debtor filed chapter 11, subchapter V bankruptcy on September 1, 2022. Doc. #1. Debtor sought to employ Applicant as special counsel on September 29, 2022, which was approved on October 21, 2022 pursuant to 11 U.S.C. §§ 327(e) and 329-31, effective as of August 30, 2022. Docs. #65; #101. The employment order provided that no compensation was permitted except upon court order following application under § 330(a), and compensation shall be determined at the "lodestar rate" applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation pursuant to § 331 would be entertained if the combined fees and expenses sought exceed \$5,000.00. *Id.*

Additionally, the services rendered by Applicant as special counsel were authorized for matters relating to the following: (a) serving as general counsel for Debtor and providing consultation regarding general business and employment matters; (b) representing Debtor in and addressing issues arising from any further actions taken in Fresno County Superior Court Case No. 22CECG01786, entitled *Mendoza v. Valley Transportation, Inc.* ("VTI Action"), including but not limited to appearing for Debtor at the Bankruptcy Status Conference scheduled for March 10, 2023; (c) serving as litigation counsel in defense of Debtor with regard to the dispute alleged in the VTI Action, whether that disputes proceeds as an action in Bankruptcy Court or in State Court; (d) serving as litigation counsel in defense of Debtor's employees, Deborah Simpson and Rodney Heintz, in Fresno County Superior Court Case No. 22CECG02752, entitled *Mendoza v. Deborah Simpson, Rodney Heintz, and Barrett Business Services, Inc.* ["BBSI"], et al ("Simpson Action"), whether it proceeds in Bankruptcy Court or in State Court. *Id.* Applicant's services here were within the authorized time period and appear to relate to the matters on which Applicant was permitted to act as special counsel.

This is Applicant's first interim fee application. Doc. #213. Applicant's firm provided 519.80 billable hours of legal services at the following rates, totaling **\$136,142.00** in fees:

Professional	Rate	Hours	Fees
Susan K. Hatmaker, Attorney	\$325	121.90	\$39,617.50
Robert W. Branch, Attorney	\$305	221.80	\$67,649.00
Aimee Rainwater, Attorney	\$290	1.10	\$319.00
Ray S. Pool, Law Clerk	\$185	65.90	\$12,191.50
Melanie Salas, Paralegal	\$150	88.10	\$13,215.00
Kathy Giambalvo, Paralegal	\$150	21.00	\$3,150.00
Total Hours & Fees		519.80	\$136,142.00

Id.; Exs. B-D, Docs. ##215-16. These fees can be further delineated

as: (a) 316.30 hours totaling \$83,093.00 in fees for the VTI Action, (b) 84.00 hours totaling \$20,870.00 in fees for Simpson Action, and (c) 119.50 hours totaling \$31,179.00 in fees for matters relating to this bankruptcy case. *Id.*

Applicant also incurred **\$3,892.56** in expenses:

VTI Action	
Filing Fees	\$105.76
Reproduction	+ \$497.52
Postage	+ \$24.66
Process Service	+ \$5,950.43
Electronic Research	+ \$30.44
Overnight Fees	+ \$65.50
Credit by Process Service	- \$3,488.13
VTI Action Expenses	= \$3,186.18
Simpson Action	
Filing Fees	\$524.03
Electronic Research	+ \$182.35
Simpson Action Expenses	= \$706.38
VTI + Simpson Expenses	= \$3,892.56

Exs. E-F, id. These combined fees and expenses total **\$140,034.56**.

Applicant is currently holding a retainer in the amount of \$144,117.52. If applied to the fees and expenses requested here, there will be remaining balance of \$4,082.96 held in trust for future fee applications.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) assisting with securing employment (WJH-2); (2) assisting in the response to the opposition from Andrew Mendoza with respect to relief from the automatic stay; (3) assisting with the § 105(a) motion to enjoin further proceedings in the Simpson Action; (4) preparing for an *ex parte* proceeding in the VTI Action to schedule dates in light of this court's modification of the automatic stay and addressing pending matters, including a request for a discovery conference on the scheduling of Andrew Mendoza's deposition, and an *ex parte* application to add Deborah Simpson, Rodney Heintz, and a human resources service, BBSI, as DOE defendants, and whether adding DOE defendants falls

within the parameters of the modification of the automatic stay; and (5) preparing a demurrer and motion to strike in the Simpson Action. Exs. A-D, Docs. ##215-16. Debtor has consented to payment of the proposed fees from Applicant's pre-petition retainer. Unless opposition is presented at the hearing, the court intends to find the services and expenses actual, reasonable, and necessary.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED provided that Applicant files an amended certificate of service to cure the deficient second certificate of service (Doc. #219). Otherwise, the motion will be DENIED WITHOUT PREJUDICE.

If granted, Applicant will be awarded \$136,142.00 in fees as reasonable compensation for services rendered and \$3,892.56 in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be authorized to draw a total of \$140,034.56 from the pre-petition retainer for services rendered and expenses incurred between August 30, 2022 and November 30, 2022.

The court notes that this application would be approved on an interim basis. Though applicant's services in defending Ms. Simpson, Mr. Heintz, and BBSI were authorized, there may be defenses to Debtor's defense and indemnity obligations, if any. Any award is subject to full or partial adjustment or disgorgement should it appear the interests of the estate become in conflict with those of Ms. Simpson, Mr. Heintz, or BBSI.

3. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-20](#)

MOTION FOR AUTHORIZATION TO ASSUME SERVICE AGREEMENT
12-21-2022 [\[197\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied without prejudice or as moot in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Chapter 11, subchapter V debtor-in-possession Valley Transportation, Inc. ("Debtor") seeks (a) authorization to assume a payroll consulting services agreement (the "Agreement") with Barrett Business Services,

Inc. ("BBSI"), and (b) an order fixing the date by which any claim shall be filed. Doc. #197.

No party in interest timely filed written opposition. However, besides the prayer for relief in the motion, neither the motion nor the points and authorities include any discussion regarding the fixing of a claims bar date. The court is inclined to GRANT IN PART this motion with respect to assumption of the Agreement and DENY WITHOUT PREJUDICE IN PART or DENY AS MOOT IN PART the request to fix a claims bar date.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the subchapter V trustee, the U.S. trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

In 2015, Debtor entered into the Agreement with BBSI to obtain payroll consulting services. Doc. #200. A copy of an unsigned version of the Agreement was included as an exhibit. *See, Ex. A*, Doc. #199. Deborah Simpson—Debtor's CEO, CFO, and Secretary—declares that a signed copy of the Agreement could not be located, but the parties have operated in conformity with the terms of the unsigned Agreement at all times from 2015 to the petition date. Doc. #200.

In exchange for payroll consulting services, Debtor agreed to pay BBSI according to a fee schedule listed in an exhibit to the Agreement. *Id.* However, the unsigned Agreement's Fee Schedule is blank. *See Fee Schedule "1" to Ex. A*, Doc. #199. On or about May 1, 2016, the parties executed an addendum to the Agreement, which does include the required Fee Schedule and contains the necessary signatures. *See Ex. B, id.*

In exercising its business judgment, Debtor, through Simpson, has determined that the contract should be assumed based on Simpson's experience in the trucking industry and the needs of the Debtor.

Debtor filed chapter 11, subchapter V bankruptcy on September 1, 2022. Doc. #1. 11 U.S.C. § 1184 gives a chapter 11, subchapter V debtor-in-possession all rights and powers of a trustee and shall perform all functions and duties of a trustee, certain exceptions notwithstanding.

11 U.S.C. § 365(a) allows a trustee [or debtor-in-possession] to assume or reject any executory contract or unexpired lease of the debtor.

"Executory Contracts" have been defined as "a contract under which the obligations of both the bankrupt and the other party to the contract

are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973); see also, *In re Robert L. Helms Constr. And Dev. Co.*, 139 F.3d 702, 705 n.7 (9th Cir. 1998).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). As long as the decision to assume or reject such contracts is a reasonable exercise of business judgment, a court should approve the assumption or rejection of an executory contract. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

Here, Debtor argues that assumption of the Agreement is essential to its successful reorganization because the services subject to the Agreement are required to continue Debtor's business operations, including paying its employees and completing all necessary withholding. Docs. ##200-01. Assumption of the Agreement appears to be a reasonable exercise of Debtor's business judgment.

Other than a request at the end of the motion for the court to fix a date by which "any claim" shall be filed, the motion, supporting declaration, and memorandum of points and authorities are silent concerning the fixing of a claims bar date.¹ Docs. #197; ##200-01. On January 25, 2023, the court issued an order fixing March 3, 2023 at 5:00 p.m. as the deadline by which claimants must file requests for allowance of administrative expense claims arising under §§ 503(b) and 507(a)(2). Doc. #277. If BBSI's potential claim falls under either of these provisions, then this secondary request may be moot; if not, then Debtor has still failed to meet its burden of proof on this issue.

No party in interest timely filed written opposition. This matter will be called as scheduled to inquire about Debtor's request for the court to fix a claims bar date. The court is inclined to GRANT IN PART the motion with respect to the assumption of the Agreement and to either DENY WITHOUT PREJUDICE IN PART or DENY AS MOOT IN PART the request for the fixing of a claims bar date.

¹ Since the request to fix a claims bar date was not discussed in the motion or supporting documents, the court questions whether such inclusion was inadvertent.

4. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-7](#)

MOTION FOR ESTIMATION OF DISPUTED CLAIM
11-29-2022 [\[150\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation set forth below.

Valley Transportation, Inc. ("Debtor") moves to estimate disputed Proof of Claim No. 8 filed by Andrew Mendoza ("Mendoza") on November 2, 2022 in the amount of \$7.5 million dollars (\$7,500,000.00) (the "Mendoza Claim") pursuant to 11 U.S.C. § 502(c)(1). Doc. #150.

Mendoza timely opposed. Doc. #254

Debtor responded. Doc. #266.

This matter will be called and proceed as scheduled. This motion will be GRANTED. The court will adopt an estimation methodology for the Mendoza Claim and the related claims of Deborah Simpson and Rodney Heintz.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest except Creditor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Creditor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The Mendoza Claim is based on disputed liability for an alleged wrongful termination in violation of the Fair Employment and Housing Act ("FEHA") in Fresno County Superior Court. Debtor has objected to the Mendoza Claim, which is the subject of matter #5 below. No trial date has been set, so Debtor estimates that final judgment will likely not be entered for 18-22 months and will be subject to appeal.

Meanwhile, Debtor's chapter 11, subchapter V plan was set for confirmation hearing on January 24, 2023 until it was continued by *ex parte* order to February 28, 2023. WJH-8. Debtor requests an order estimating the Mendoza Claim so that it may proceed with plan confirmation and make distributions to undisputed creditors without delay while waiting for resolution of the Claim. Doc. #150.

Mendoza argues that this motion should be denied because: (1) estimation is moot because the deadline to vote on the chapter 11, subchapter V plan confirmation has already lapsed; (2) estimation is not necessary because Debtor could avoid undue delay if it stipulated to having the trial heard on preference; and (3) Debtor's proposed method for estimating the Mendoza Claim should be rejected because it attempts to circumvent California discovery rules, causes unnecessary delay, significantly increases legal fees, and Mendoza already has relief from stay to litigate the claim in state court. Doc. #254. If the court decides to grant the motion, Mendoza requests that the order include language clarifying that the estimation is a temporary measure for the sole purpose of determining plan confirmability and has no preclusive effect. *Id.*

Debtor replies: (1) although the motion may be moot as to confirmation, it is not moot as to distribution because the claim must be estimated to establish a reserve for disputed claims while undisputed creditors commence being paid; (2) estimation is necessary so undisputed creditors do not have to wait 22-24 months before receiving distributions; and (3) the estimation method is discretionary, and a mini trial allows for Debtor to learn the basis for the Mendoza Claim and put forth admissible evidence from which this court can estimate the claim. Doc. #266.

11 U.S.C. § 502(c)(1) requires estimation of any contingent or unliquidated claims, the fixing or liquidation of which would unduly delay administration of the case. The statute's "there shall be" phrasing indicates that such estimation of contingent or unliquidated claims is mandated if their fixing or liquidation would "unduly delay" the case's administration. *In re N. Am. Health Care, Inc.*, 544 B.R. 684, 688 (Bankr. C.D. Cal. 2016). The estimate is the court's "best estimate for the purpose of permitting the case to go forward." *Id.* at 688.

A court has "broad discretion" when estimating the value of an unliquidated claim and its decision is reviewed for an abuse of discretion. *In re Corey*, 892 F.2d 829, 834 (9th Cir. 1989).

The Mendoza Claim was disputed by Debtor before the petition and is disputed now. There is no evidence that a trial in the Superior Court can take place in a short amount of time. Indeed, when the case was filed Mendoza had noticed numerous depositions and the engaged or were about to be engaged in extensive law and motion. There can be no legitimate dispute that the fixing or liquidation of the Mendoza Claim will take time in the Superior Court. The administration of this case

including the path to confirmation will be delayed for many months and perhaps over a year and one half before the Mendoza Claim is liquidated. That unduly delays the administration of the case. So, this court is required to estimate the Mendoza Claim.

Additionally, two indemnity claims have been filed by Ms. Simpson and Mr. Heintz based upon statutory requirements of employers under Cal. Labor Code § 2802. These are the subjects of matters ##5-6 below. The fixing and liquidation of those claims is, in part, dependent upon the liquidation of the Mendoza Claim. These claims are the largest in the case and must be administered for the benefit of all creditors. Other creditors have claims which are undisputed.

True enough that estimation of the Mendoza Claim for voting purposes is presently moot since voting is completed. But estimation for voting is not its only purpose. Mendoza mischaracterizes *In re Bellucci*, 119 B.R. 763, 778 (Bankr. E.D. Cal. 1990). The court there stated, "one *pertinent question* is whether the uncertain status of the claim impedes the parties' ability to prepare a plan of reorganization within a reasonable time." (emphasis added) Voting is not the "only *pertinent question*" here. Reservation of dividends so undisputed claims could be paid is also a legitimate goal.

Nor is the court persuaded by Mendoza's claim that leaving liquidation entirely to the Superior Court is all that is necessary. Though a jury verdict may ultimately need to be reached on Mendoza's claim, the argument misses the point. Even if a jury verdict was quickly reached (presumably due to preferred trial setting) there is the post-judgment and appeal periods which could take substantial time.

The same issue would face the parties even if the Mendoza trial began on November 28, 2022 as Mendoza claims. The case could be mired in appeals and an estimation may still be necessary.

Mendoza disputes certain aspects of the proposed procedure offered by Debtor. First, Mendoza claims the proposed procedure attempts to circumvent California civil procedure dealing with discovery in two ways: another deposition of Mr. Mendoza when his deposition has been taken, and subjecting Mr. Mendoza to a mental examination without the necessary factual predicates.

This motion was filed November 29, 2022. Doc. #150. That was more than a month before Mr. Mendoza's deposition was taken. The court agrees that another deposition of Mr. Mendoza should not be allowed without substantial cause. See, Fed. R. Civ. Proc. 30(a)(2) (Rule 7032). Additionally, no factual basis for a mental examination of Mr. Mendoza has been established. Should there be any dispute about discovery, the affected party may file a motion to compel or as appropriate a motion for protective order supported by admissible evidence. See also, Fed. R. Civ. Proc. 35 (Rule 7035).

Second, Mendoza questions the attorney's fees the estimation process will require. Those fees would have been expended anyway in the Superior Court litigation. Also, there is no reason the discovery material generated in the estimation process cannot be used in the Superior Court litigation.

Finally, the court agrees with Mr. Mendoza that any order estimating the Mendoza Claim must be limited and have no issue or claim preclusion effects.

Other than the Mendoza deposition and mental examination discussed above, there appears to be no opposition to the actual procedure proposed by Debtor for claim estimation. The court GRANTS the motion. An order conforming to the above is to be prepared by Debtor's counsel and approved as to form by counsel for Mr. Mendoza.

The court will hold a status conference on the estimation process on February 28, 2023, at 9:30 a.m. The court will issue the order setting the status conference.

5. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-9](#)

OBJECTION TO CLAIM OF ANDREW MENDOZA, CLAIM NUMBER 8
11-9-2022 [[116](#)]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date determined at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Valley Transportation, Inc. ("Debtor") objects to Proof of Claim No. 8 filed by Andrew Mendoza ("Mendoza") on November 2, 2022 in the amount of \$7.5 million dollars (\$7,500,000.00) (the "Mendoza Claim"). Doc. #116.

Mendoza timely filed written opposition. Doc. #256.

Debtor responded. Doc. #273.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1) and will proceed as scheduled. The court intends to continue this objection for tracking

purposes while the court awaits the outcome of the parties' ongoing state court litigation.

6. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-15](#)

CONTINUED MOTION FOR ESTIMATION OF DISPUTED CLAIM
12-16-2022 [\[174\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation set forth below.

This motion was originally heard on January 24, 2023 and continued to January 31, 2023 to be heard in connection with above motion for estimation of the disputed Proof of Claim No. 8 in matter #4 above. Docs. #268; #278.

Valley Transportation, Inc. ("Debtor") moved to estimate disputed Proof of Claim No. 9 filed by Deborah Simpson ("Simpson") on November 7, 2022 in the amount of \$7.8 million (the "Simpson Claim") pursuant to 11 U.S.C. § 502(c)(1). Doc. #174.

Andrew Mendoza ("Mendoza") timely opposed. Doc. #220.

Debtor replied. Doc. #250.

This motion will be called and proceed as scheduled. For the reasons stated in matter #4 above, the court intends to GRANT Debtor's related motion to estimate the Mendoza Claim. Since the Simpson Claim is derivative of the Mendoza Claim, the Simpson Claim will be estimated using the same process as the Mendoza Claim to avoid duplication of efforts.

An order conforming to the above is to be prepared by Debtor's counsel and approved as to form by counsel for Mr. Mendoza.

The court will hold a status conference on the estimation process on February 28, 2023, at 9:30 a.m. The court will issue the order setting the status conference.

7. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-16](#)

CONTINUED MOTION FOR ESTIMATION OF DISPUTED CLAIM
12-21-2022 [\[191\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. Order preparation set
forth below.

This motion was originally heard on January 24, 2023 and continued to January 31, 2023 to be heard in connection with above motion for estimation of the disputed Proof of Claim No. 8 in matter #4 above. Docs. #269; #280.

Valley Transportation, Inc. ("Debtor") moved to estimate disputed Proof of Claim No. 10 filed by Rodney Heintz ("Heintz") on November 7, 2022 in the amount of \$7.8 million (the "Heintz Claim") pursuant to 11 U.S.C. § 502(c)(1). Doc. #191.

Andrew Mendoza ("Mendoza") timely opposed. Doc #210.

Debtor replied. Doc. #251.

This motion will be called and proceed as scheduled. For the reasons stated in matter #4 above, the court intends to GRANT Debtor's related motion to estimate the Mendoza Claim. Since the Heintz Claim is derivative of the Mendoza Claim, the Heintz Claim will be estimated using the same process as the Mendoza Claim to avoid duplication of efforts.

An order conforming to the above is to be prepared by Debtor's counsel and approved as to form by counsel for Mr. Mendoza.

The court will hold a status conference on the estimation process on February 28, 2023, at 9:30 a.m. The court will issue the order setting the status conference.

1:30 PM

1. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[SDN-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-6-2022 [[79](#)]

THE HUNTINGTON NATIONAL BANK/MV
DAVID JOHNSTON/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party shall
submit a proposed order after hearing.

This matter was originally set for hearing on less than 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and heard on December 20, 2022. Doc. #90. The Huntington National Bank ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to various logging equipment ("Equipment"). Doc. #79.

Chapter 7 trustee Lisa Holder ("Trustee") appeared and opposed at the hearing, and the defaults of non-responding parties were entered. Doc. #90. The motion was continued to January 31, 2023, Trustee was directed to file and serve any opposition not later than January 17, 2023, and Movant was directed to file and serve a reply, if any, by January 24, 2023. *Id.*; Doc. #91.

Trustee timely filed written opposition on January 17, 2023. Doc. #111.

Movant timely replied on January 24, 2023. Doc. #113.

On or about December 15, 2015, Stanford Chopping, Inc. ("Debtor") executed a Master Lease under which Movant agreed to lease certain items of personal property to Debtor. *Exs. B-C*, Doc. #115. Movant filed a UCC-1 Financing Statement with respect to that Master Lease and equipment schedule, which was filed with the California Secretary of State ("SOS") on December 17, 2015. *Ex. D, id.* When the Master Lease expired, a residual value was assigned to the Master Lease equipment.

Debtor executed three promissory notes, Notes 502, 504, and 506 (collectively "Notes"), in favor of Movant between July 2016 and October 2019. The Notes are cross-collateralized and perfected with recorded UCC-1 Financing Statements. The Notes, Financing Statements, and Equipment collateral to which they are secured are set forth in the accompanying exhibits. See Docs. #82; #115. As of the petition date, the outstanding balance due under the Notes was \$657,839.35. *Ex. J*, Doc. #82; Doc. #83.

In particular, Note 504 was used to finance the purchase of previously leased equipment under the Master Lease.

Trustee opposes because Movant failed to meet its initial burden of proof regarding perfection of the claimed security interests as follows:

Note 502: The UCC Financing Statement for Note 502 attached as an exhibit did not reflect that it had been filed with the California Secretary of State ("SOS"). See, *Ex. C*, Doc. #82.

Note 504: The UCC Financing Statement for Note 504 attached as an exhibit reflected that it was filed with the SOS on December 17, 2015 as Filing No. 157500020767. See, *Ex. F*, *id.* This Financing Statement expired five years thereafter: i.e., December 17, 2020, and no continuation statement was filed as evidence. Additionally, the Financing Statement refers to a Master Lease No. 0662088L dated December 15, 2015, but Note 504 is dated December 20, 2018, more than three years after the Financing Statement was filed.

Note 506: The UCC Financing Statement for Note 506 attached as an exhibit did not reflect that it had been filed with the SOS. *Ex. I*, *id.*

Doc. #111.

On December 27, 2022, Trustee filed a motion (1) for authority to sell certain property at public auction, and (2) to compensate the auctioneer for its services ("Motion to Sell"). LAH-2. Movant filed opposition to the Trustee's Motion to Sell, which included a declaration and exhibits in support of its opposition. Docs. ##104-05. Those exhibits included the same Notes and Financing Statements, as well as additional Financing Statements. Trustee replied to Movant's opposition to the Motion to Sell, and that reply is incorporated in Trustee's opposition by reference. Doc. #108.

Trustee's opposition here and Trustee's reply in support of the Motion to Sell are silent as to whether the supplemental Financing Statements prove that Movant's security interest is perfected in Notes 502 and 506. *Id.*; Doc. #111. However, Trustee still contests whether Note 504 is perfected, whether the Notes are cross collateralized, and whether stay relief should be granted with respect to Note 502. Trustee's

written opposition does not address Note 506, so Trustee appears to be conceding that Movant has perfected its security interest in Note 506, and stay relief with respect to Note 506 is proper.

Note 502

Trustee's argument is that the value of the collateral securing Note 502 exceeds the amount due and owing on those Notes. Doc. #111. Debtor has alleged that the amount due and owing on Note 502 is \$20,996.01. *Sched. D*, Doc. #1. Meanwhile, the equipment securing Note 502 is valued by Debtor at \$80,000.00. *Sched. A/B*, *id.* If the Note 502 equipment is sold at that price, its sale could be illustrated as follows:

Sale price	\$80,000.00
Transport/hauling	- \$400.00
Auctioneer's 10%	- \$8,000.00
Gross proceeds	= \$71,600.00
Movant's lien payment	- \$20,996.01
Net proceeds to estate	= \$50,603.99

Doc. #111. Since Movant is adequately protected by a substantial equity cushion that could be realized for the benefit of the estate, Trustee contends that stay relief should be denied with respect to the Note 502 equipment. Doc. #111.

Movant replies that each of the Notes contains cross-collateralization clauses, so it does not matter that Note 502 is individually oversecured. Doc. #113. As a whole, the Notes are cumulatively undersecured because the collective debt owed exceeds the collective value of the security.

Note 504

Trustee contests whether Movant's lien is perfected with respect to the equipment securing Note 504. Doc. #111. Specifically, Note 504's Security Agreement pertains to used equipment, while the UCC Financing Statement securing it relates to new equipment. *Ex. E* at 12, Doc. #82. Additionally, Note 504 and the Security Agreement are dated December 20, 2018. However, the UCC Financing Statement for Note 504, which was part of Movant's opposition to the Motion to Sell, was filed three years earlier on December 17, 2015. *Ex. G* at 20, Doc. #106. An amendment to this Financing Statement was filed on July 27, 2018, which omits the 2013 Krone Easy Flow 380 or references to the Master Lease. *Ex. G*, at 21, *id.*

Since Movant has failed to present evidence that Note 504 has been perfected, stay relief with respect to the equipment securing it should be denied.

In reply, Movant included an explanation about the Master Lease and explained that its security interest was perfected prior to the execution of Note 504. However, such security interest is still perfected, so Trustee's objection on Note 504 is resolved.

Note 506

As suggested above, Trustee's opposition does not address Note 506, or whether stay relief should be granted with respect to the equipment securing Note 506.

Stay Relief

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

Based on the record, it appears that Debtor defaulted under the Notes pre-petition and has missed pre-petition payments totaling \$197,370.60 and post-petition payments totaling \$53,628.98. Docs. #81; #83. Therefore, cause exists under § 362(d)(1) to lift the automatic stay with respect to the equipment securing all three Notes because they are cross-collateralized.

Additionally, Debtor owes \$657,839.36 under the Notes and the value of the equipment secured by the Notes is \$310,000.00. *Id.*; Docs. #1; #84. Therefore, Debtor does not have an equity interest in the equipment secured by Notes and the equipment not necessary for an effective reorganization because this is a chapter 7 case.

This motion will be called and proceed as scheduled to inquire about Trustee's position in light of Movant's reply. The court is inclined to GRANT this motion pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[AKA-5](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2023 [\[505\]](#)

COMMERCIAL CREDIT GROUP, INC./MV
LEONARD WELSH/ATTY. FOR DBT.
ANDREW ALPER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Commercial Credit Group, Inc. ("Movant"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to ten 2023 Utility Trailers. Doc. #505.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibit index is filed as separate document as are the exhibits and are not consecutively numbered. Docs. ##510-539.

Second, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Movant does not attach true and correct copies of the Clerk of the Court's Matrices of Creditors. Doc. #540.

Though the court has temporarily delayed enforcement of LBR 7005-1 and Gen. Order 22-04 for a short period of time and motions filed after January 1, 2023 will be required to attach a copy of the official

Clerk's Matrices of Creditors downloaded within seven days of the filing of the motion, the other issues described above prevent the granting of this motion. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE. Although Movant stipulated to stay relief with the chapter 7 trustee, no proposed order with the stipulation attached as an exhibit has been lodged. Movant may separately seek approval of the stipulation.

3. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[AKA-6](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2023 [[541](#)]

M&T EQUIPMENT FINANCE CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.
ANDREW ALPER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

M & T Equipment Finance Corporation ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to ten 2023 Utility Trailers. Doc. #541.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibit index is filed as separate document as are the exhibits and are not consecutively numbered. Docs. ##546-556.

Second, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity

Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Movant does not attach true and correct copies of the Clerk of the Court's Matrices of Creditors. Doc. #557.

Though the court has temporarily delayed enforcement of LBR 7005-1 and Gen. Order 22-04 for a short period of time and motions filed after January 1, 2023 will be required to attach a copy of the official Clerk's Matrices of Creditors downloaded within seven days of the filing of the motion, the other issues described above prevent the granting of this motion. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE. Although Movant stipulated to stay relief with the chapter 7 trustee, no proposed order with the stipulation attached as an exhibit has been lodged. Movant may separately seek approval of the stipulation.

4. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[AKA-7](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2023 [[558](#)]

ASCENTIUM CAPITAL, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
ANDREW ALPER/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Ascentium Capital, LLC ("Movant"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to ten 2023 Utility Trailers. Doc. #558.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibit index is filed as separate document as are the exhibits and are not consecutively numbered. Docs. ##563-569.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

Here, Movant does not attach true and correct copies of the Clerk of the Court's Matrices of Creditors. Doc. #570.

Though the court has temporarily delayed enforcement of LBR 7005-1 and Gen. Order 22-04 for a short period of time and motions filed after January 1, 2023 will be required to attach a copy of the official Clerk's Matrices of Creditors downloaded within seven days of the filing of the motion, the other issues described above prevent the granting of this motion. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE. Although Movant stipulated to stay relief with the chapter 7 trustee, no proposed order with the stipulation attached as an exhibit has been lodged. Movant may separately seek approval of the stipulation.

5. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[CDK-1](#)

MOTION TO COMPEL AND/OR MOTION FOR RELIEF FROM AUTOMATIC
STAY
1-13-2023 [\[497\]](#)

APERIA TECHNOLOGIES, INC./MV
LEONARD WELSH/ATTY. FOR DBT.
CHRIS KUHNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as indicated below.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Aperia Technologies, Inc. ("Movant"), seeks (i) an order compelling chapter 7 trustee Jeffrey M. Vetter ("Trustee") to abandon the estate's interest in an executory contract pertaining to a Software License, and (ii) relief from the automatic stay under 11 U.S.C. § 362(d)(1) and 362(d)(2) with respect to a Halo Connect Hardware ("Equipment"). Doc. #28.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) with an order shortening time (Doc. #578) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 365(a) allows a trustee to assume or reject any executory contract of the debtor. Under § 365(b)(1)(A), if there has been a default in an executory contract, the debtor may not assume it unless, at the time of assumption, the trustee either cures the default or provides adequate assurances that it will be promptly cured.

After review of the included evidence, the court finds that "cause" exists to lift the automatic stay because Debtor has failed to make any pre-petition payments or any post-petition payments. Movant has produced evidence that Debtor owes \$293,626.50 to Movant. Doc. #500.

Additionally, Movant has indicated that to cure the default, Trustee would have to pay the subscription fee for the license in the amount of \$25,200.00. Since this does not appear to be an option for a non-operating chapter 7 bankruptcy case, and since the Software License will not be of any use without the Equipment, both the assumption and purchase of the Equipment would be required, totaling payment of \$293,626.50. Lastly, the warranty of the Equipment is not assignable, so the system has little value without such warranty.

Accordingly, and in the absence of opposition, the motion for stay relief will be GRANTED as to the Equipment.

The Software License is another issue. The court does not have the authority to compel Trustee to reject the license under § 365. Movant also cited no such authority. Trustee determines whether to assume or reject the executory contract. Trustee can do either subject to the

court's approval. § 365(a). The motion here alleges the trustee has no interest in assuming the license and does not oppose rejecting the license. Consequently, absent any opposition, any order submitted should clarify the court approves the Trustee's rejection of the license. The court is not compelling the Trustee to reject the license.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived since there may be public safety issues concerning the Equipment that is the subject of the motion.

6. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DAD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2023 [\[571\]](#)

CHANNEL PARTNERS CAPITAL, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
ALEX DARCY/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Channel Partners Capital, LLC ("Movant"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to ten 2023 Utility Trailers. Doc. #571.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005.

Here, Movant's certificate of service does not use the current Form EDC 007-005 (10/22). Doc. #576.

Second, Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee and the Debtor must be served in accordance with Rule 7004.

Jeffrey Vetter ("Trustee") and Freon Logistics, Inc. ("Debtor") may have been served by U.S. mail, but it is not clear. On page 3 of the certificate of service, the "U.S. Mail" box is checked at 6B2 but does indicate which parties were served by U.S. mail. The Clerk's Matrix of Creditors or list other than the Clerk's Matrix of Creditors (6B2a) and Other Parties in Interest (6B2c) were not checked. Doc. #576

Movant includes Attachment 6B1 (electronic service email addresses) only. Attachment 6B2 is not included. It is unclear whether the Trustee and Debtor were in fact served by mail, which is required under Rule 7004(b)(1) and 7004(b)(9).

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Rule 7004(b)(9) requires service upon the Debtor by mailing a copy of the pleadings to the address shown in the petition or to such other address as the Debtor may designate in a filed writing. Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Trustee and Debtor were not properly served in accordance with Rule 4001(a)(1).

7. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-2](#)

MOTION TO SELL
1-10-2023 [[469](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sell the estate's interest in commercial real property located at 235 Mt. Vernon Ave., Bakersfield, CA 93307 ("Property") to Stanford Transportation, Inc. ("Proposed Buyer") for \$1.8 million dollars (\$1,800,000.00), subject to higher and better bids at the hearing.²

Trustee also requests to pay a six percent (6%) commission to the real estate brokers, which will be split evenly between the estate's broker, Watson Realty ("Broker"), and the buyer's broker.

Though not required, secured creditor Fruitvale Financial, LLC ("Fruitvale") filed conditional non-opposition to the motion. Fruitvale indicates that its lien on Property was approximately \$1,279,428.87 as of December 27, 2022. Fruitvale does not oppose the motion provided that its lien is fully satisfied from escrow.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion and proceed with the sale.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Freon Logistics ("Debtor") filed chapter 11 bankruptcy on November 8, 2022. Doc. #1. On December 14, 2022, the case was converted to chapter 7 and Trustee was appointed as the chapter 7 trustee. Docs. ##291-92. In the course of administering the estate, Trustee investigated the estate's assets and now moves to sell Property pursuant to 11 U.S.C. § 363(b). Doc. #469.

Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Trustee wishes to sell Property to Proposed Buyer. There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are not listed in the schedules, original and amended master address lists, or the lists of equity security holders and 20 largest creditors. Docs. #2; #5; #40; ##193-96; #199.

Debtor's fee simple interest in Property is listed in the schedules with a value of \$1 million dollars (\$1,000,000.00). *Sched. A/B* ¶ 55 at 5, Doc. #193. Trustee says that Property consists of a commercial truck lot with garages and office space. Doc. #471. Property is subject to the following encumbrances: (a) a \$10,826.09 tax lien in favor of the Kern County Tax Collector ("KCTC"), (b) a \$1,240,000.00 first deed of trust in favor of Fruitvale Financial, LLC ("Fruitvale"), and (c) an \$85,000.00 tax lien in favor of the Internal Revenue Service ("IRS"). *Id.* Trustee believes that Property has a fair market value of \$1.8 million, which would be sufficient to pay all liens while still providing significant net proceeds to the estate to pay unsecured claims. *Id.*

If sold at the proposed sale price, the sale would be illustrated as follows:

Sale price	\$1,800,000.00
KCTC tax lien	- \$10,826.09
Fruitvale deed of trust	- \$1,240,000.00
IRS tax lien	- \$85,000.00
Broker fees (6% split)	- \$108,000.00
Estimated net proceeds to estate	= \$356,173.91

Based on Fruitvale's conditional non-opposition, its lien has increased by \$39,428.87 since Trustee made this calculation. With this adjustment, there still should be approximately \$316,745.06 in net proceeds remaining for the benefit of the estate.

The sale under these circumstances should maximize the potential recovery for the estate. The sale of Property appears to be in the best interests of the estate because it will pay off the tax liens and deed of trust while providing liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Unless any party presents opposition at the hearing, this sale appears to be an appropriate exercise of Trustee's business judgment, which will be given deference.

Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

Trustee moved to employ Broker on December 27, 2022. Doc. #401. The court approved Broker's employment on January 4, 2023 under 11 U.S.C. §§ 327 and 329-31. Doc. #443. The order provided that all compensation would be subject to court approval on a noticed motion. *Id.*

Pursuant to the employment order, Trustee requests to compensate Broker and the buyer's broker with a 6% commission, to be evenly split at 3% each.

If sold at the proposed sale price, Broker and the buyer's broker will split \$108,000.00 in compensation: \$54,000.00 each. The court will authorize Trustee to pay the brokers' compensation as prayed.

Overbid Procedure

Any party wishing to overbid shall complete the following prior to the hearing:

1. Provide certified funds to Trustee in the amount of \$55,000.00 plus the initial overbid amount of \$10,000.00 for a total of \$65,000.00 no later than three days prior to the time of the hearing on this motion, and any unsuccessful bidder's deposits shall be returned at the conclusion of the hearing.
2. Provide proof in the form of a letter of credit, or some other written pre-qualification, for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount.
3. Provide proof that any successful overbidder can and will close the sale within 45 days of delivery of a copy of the order approving the sale and execute a Purchase Agreement for the Property.
4. Any successful overbid shall have the \$65,000.00 deposit applied to the successful overbid price.
5. In the event a successful overbidder fails to close the sale within 45 days of delivery of a certified copy of the order approving the sale and execute a Purchase Agreement for the Property, then the \$65,000.00 deposit shall become non-refundable.
6. Any party wishing to overbid may do so only by meeting the above requirements and being present at the hearing, or in their absence, have an authorized representative with proof of authority to bid on behalf of the prospective overbidder.

7. Overbids may also be made by attending the hearing telephonically by dialing 1-866-582-6878, however, all of the requirements still must be met to be qualified to bid as an overbidder at the time of the sale.
8. All overbids shall be in the minimum amount of \$10,000.00 such that the first of any overbid shall be in the minimum of \$1,810,000.00 (one million, eight hundred, and ten thousand).
9. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing on this motion to sell.
10. Any party wishing to overbid must acknowledge that there are no warranties or representations included with the Property; it being sold "as-is, where-is."

Conclusion

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED, and the court will solicit higher and better bids at the hearing. Trustee will be authorized to sell Property to the highest bidder as determined at the hearing, to pay all costs, commissions, and expenses from escrow, and to execute any documents necessary or convenient to close the sale. In the event that the Property is sold by way of overbid to any party satisfying the overbid requirements, the court will order that the sale is in "good faith" within the meaning of 11 U.S.C. § 363(m) based on that party's compliance with the overbid procedures.

² Trustee filed a *Notice of Errata* on January 12, 2023, to correct a reference to an address in Morro Bay, California in the opening paragraph of the motion. Doc. #489. The correct address for Property is 235 Mt. Vernon Ave., Bakersfield, CA 93307.

8. [22-11929](#)-B-7 **IN RE: JACOB/SARAH WERNER**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-2022 [\[13\]](#)

SYSTEMS & SERVICES
TECHNOLOGIES, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers were not properly served on the U.S. Trustee at the correct address in Fresno, California. Doc. #18.

9. [22-11830](#)-B-7 **IN RE: MIGUEL AVILA GUERA AND ALMA RAMIREZ AVILA**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-30-2022 [\[19\]](#)

NOBLE FEDERAL CREDIT UNION/MV
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Movant to prepare a conforming order.

Noble Federal Credit Union ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Nissan Rogue ("Rogue" or "Vehicle 1") and a 2016 Chevrolet Silverado Truck ("Silverado" or "Vehicle 2") (collectively "Vehicles"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Miguel Avila Guera and Alma Ramirez Avila (collectively "Debtors"), *pro se*, filed an opposition "Answer" on January 19, 2023, but it was not timely. Doc. #26. The deadline to oppose was January 17, 2023. However, it appears that Debtors filed the opposition dated January 13, 2023 by mail. The certificate of service indicates that Debtors mailed the opposition to Movant on January 15, 2023, which was prior to the deadline. Doc. #27. The court will overlook the late filing date because the opposition was timely served.

Movant replied. Doc. #28.

This matter will be called and proceed as scheduled. The court intends to GRANT the motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Debtors to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtors are entered. Upon default, factual allegations will be taken as true (except those

relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

First, Debtors have the burden of proof on this motion under § 362(g) as to all issues except the equity, if any, in the Vehicles. The burden of proof on that issue is on Movant. Movant satisfied that burden by conceding the value of the Vehicles as claimed by Debtors for purposes of this motion only. Debtors and Movant each conceded the value of the Vehicles continues to depreciate.

But the Debtors presented no evidence disputing the facts stated in the motion and established in Movant's declaration. Debtors "denied" certain allegations in the motion but presented no evidence supporting the denials.

Second, it appears that both the note secured by Vehicle 1 (Nissan Rogue) and the third note specifically provide for cross-collateralization. All collateral securing all obligations of Debtors to Movant (with narrow exceptions not applicable here) secures all obligations of Debtors to Movant. That means the Nissan Rogue (and the Silverado if there is any equity) secures all three obligations.

The court does note Movant neglects to clearly state what, if any, balance remains on the first note secured by the Nissan Rogue. Even so, that does not change the fact the Rogue remains as collateral for the other obligations.

Third, though Debtors claim their daughter is the true owner of one of the Vehicles (presumably the Nissan Rogue since the Silverado was surrendered), the evidence does not support the claim. Title is held by Debtor Miguel Guera. If Debtors' daughter made payments, that does not change ownership.

Fourth, Debtors claim the Vehicles should be returned by Movant to comply with Chapter 7. There is no valid dispute that Movant has a perfected lien on both vehicles. Further, Debtors voluntarily surrendered the Silverado to Movant. It is a bit unclear who has possession of the Nissan Rogue, but presumably it remains with the Debtors because of the automatic stay.

Fifth, Debtor's Statement of Intention stated they intend to redeem the Nissan Rogue. Debtors should do so if they still have that

intention. See § 722 and Rule 6008. The court can authorize redemption under those statutes, but it requires payment of the allowed amount of Movant's secured claim. The court is not ruling on the allowed amount of the claim in this motion.

The motion will be GRANTED. The 14 day stay of the effectiveness of the order under Rule 4001(a)(3) will be waived since the collateral is depreciating and at least part of the collateral is in Movant's possession.

10. [22-10870](#)-B-7 **IN RE: BETTY EDELBROCK**
[FW-3](#)

MOTION TO SELL AND/OR MOTION TO PAY
1-3-2023 [\[36\]](#)

PETER FEAR/MV
LAYNE HAYDEN/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids, only.

DISPOSITION; Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in residential real property located at 236 Hill Street, Crescent City, CA 95531 ("Property") to Penny A. Roberts ("Proposed Buyer") for \$75,000.00, subject to higher and better bids at the hearing. Doc. #36. Trustee also requests to pay a five percent (5%) commission to the real estate brokers, split evenly between the estate's broker, RE/MAX Coastal Redwoods ("Broker"), and the buyer's broker, and waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h). *Id.* Since Broker represents Proposed Buyer, it would receive the entire 5% commission unless there is an overbid, then it will be split 2.5% each. *Id.*

Trustee filed a status report on January 17, 2023, indicating Proposed Buyer wishes to add her son, Wayne R. Roberts ("Proposed Co-Buyer"), as co-buyer on the contract. Doc. #42. Since Trustee does not oppose, Proposed Buyer and Co-Buyer executed an addendum to the contract. *Ex. C*, Doc. #43. Trustee requests to add Proposed Co-Buyer to the order approving sale provided that they are the prevailing bidders. Doc. #42.

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Betty Edelbrock ("Debtor") filed chapter 7 bankruptcy on May 24, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on June 27, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. On September 12, 2022, the court granted Trustee's motion to sell Property to John T. Cole for \$81,000.00, from which there would be an estimated \$40,197.07 in net proceeds for the estate. See, Doc. #35; FW-2. Unfortunately, the sale fell through, so Trustee had Broker re-list Property. Doc. #38. Trustee secured an offer and executed a contract to sell Property to Proposed Buyer for \$75,000.00, and now Trustee seeks authority under 11 U.S.C. § 363(b) regarding the same. Doc. #36.

Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Trustee wishes to sell Property to Proposed Buyer and Co-Buyer. There is nothing in the record suggesting that Proposed Buyer or Proposed Co-Buyer are an insiders with respect to Debtor. Proposed Buyer and Proposed Co-Buyer are neither listed in the schedules nor the master address list. Docs. #1; #4.

Property is listed in *Schedule A/B* with a value of \$45,000.00. Doc. #1. Debtor did not claim any exemptions in Property. *Id.*

Trustee entered into a contract with Proposed Buyer to sell Property for \$75,000.00, subject to a number of relevant terms and conditions: (1) the sale of Property is as-is, where-is, and the buyer will pay all escrow fees, the owner's title insurance policy, and all county transfer taxes and fees. Doc. #38; *Ex. A*, Doc. #39. Proposed Co-Buyer has agreed to join the sale as a co-buyer. *Ex. C*, Doc. #43.

Trustee included a copy of the preliminary title report as an exhibit. *Ex. B*, Doc. #39. Property is subject to a deed of trust in the original amount of \$37,000.00—estimated now at \$38,314.16 with costs—in favor of Greg Forsht, Trustee of the Greg Forsht Trust dated June 13, 2002. *Ex. B* ¶ 7 at 60, *id.*; Doc. #38. Additionally, taxes are currently owed or in default, which Trustee estimates total \$1,959.19. *Id.*; *Ex. B* ¶¶ 2-3 at 59. Both the deed of trust and the taxes will be paid through escrow.

If sold at the proposed sale price, the sale of Proposed could be illustrated as follows:

Sale price	\$75,000.00
Greg Forsht deed of trust & costs	- \$38,314.16
Estimated taxes	- \$1,959.19
Estimated costs of sale	- \$100.00
Estimated broker fee (5%)	- \$3,750.00
Estimated recording & transfer costs	- \$134.00
Estimated net proceeds to estate	= \$30,742.65

Doc. #39.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the deed of trust in favor of Greg Forsht and provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On July 7, 2022, Trustee moved to employ Broker to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #13. The court authorized Broker's employment on July 11, 2022 under 11 U.S.C. §§ 327 and 328. Doc. #17.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 5%, which will be split equally between Broker and the buyer's real estate broker. Doc. #36. Since Broker represents Proposed Buyer and Proposed Co-Buyer, Broker would receive the full 5% commission unless there is a successful overbid, in which case the commission would be split at 2.5% each.

If sold at the proposed sale price. Broker would receive a commission of \$3,750.00, which represents a commission of \$1,875.00 each to the seller's and buyer's brokers. The court will authorize Trustee to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the following overbid procedures:

1. Deposit with counsel for Trustee certified monies in the amount of \$1,000.00 prior to the time of the hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing.
2. Provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount.
3. Provide proof that any successful overbidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property.
4. Any successful overbid shall have the \$1,000.00 deposit applied to the successful overbid price.
5. In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the

- Property, the \$1,000.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer.
6. Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder.
 7. All overbids shall be in the minimum amount of \$1,000.00 such that the first of any overbid shall be in the minimum amount of \$76,000.00.
 8. The sale of the Property is in "as-is" condition with no warranty or representations, express, implied, or otherwise by the bankruptcy estate, the Debtors, or their representatives. The buyer will pay all escrow fees, the owner's title insurance policy, and all county transfer taxes and fees.

Waiver of 14-day Stay

Trustee requests waiver of the 14-day stay of Rule 6004(h) because Trustee does not anticipate that anyone will appeal this motion, and thus, there is no reason for the 14-day stay. Doc. #36. The court will not grant waiver for this reason. However, as noted above, the court previously approved the sale of Property for \$81,000.00 in which \$40,197.07 in net proceeds were estimated to remain for the estate. Doc. #35. That sale fell through. Now, this sale is \$6,000.00 less and payoff amounts for liens have increased slightly, causing the estimated net proceeds to the estate to decrease by \$9,454.42. Therefore, the 14-day stay of Rule 6004(h) will be ordered waived because the previous sale failed, causing the estate to diminish in value. *See also, In re Ormet Corp.*, 2014 Bankr. LEXIS 3071 (Bankr. D. Del. July 17, 2014) (waiving 14-day stay because previous sale failed, and new buyers required closing to occur before cutoff date).

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell the Property to the prevailing bidder at the hearing, to execute all documents necessary to effectuate the sale of the Property, to pay broker commission in the amount of 5% of the total sale price to be split evenly between Broker and the buyer's broker, to pay all costs, commissions, and real property taxes directly from escrow. The request for waiver of the 14-day stay under Rule 6004(h) will be GRANTED.