

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**February 23, 2021 at 10:30 a.m.**

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<b>1.</b>	<b><u>20-24123</u>-E-11</b> <b><u>FWP</u>-2</b>	<b>RUSSELL LESTER</b> <b>Thomas Willoughby</b>	<b>CONTINUED MOTION TO USE CASH</b> <b>COLLATERAL AND/OR MOTION</b> <b>GRANTING REPLACEMENT LIENS</b> <b>8-31-20 [12]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. The initial emergency hearing was conducted on August 31, 2020, and the final hearing set by order of the court for September 17, 2020.

**The Court has authorized the Sixth Interim Use of Cash Collateral through and including March 26, 2021, and Extended Exclusivity for the Debtor in Possession pursuant to the Stipulation of the Debtor in Possession, The Prudential Insurance Company of America, and First Northern Bank of Dixon; and Extended the Exclusivity for the Debtor in Possession through and including March 26, 2021.**

**The court has also ordered that the hearings on the Motion to Use Cash Collateral, Motion to Approve Disclosure Statement, Motion to Extend Exclusivity, and Motion to Terminate Exclusivity, with the continued hearing dates and supplemental pleadings, if any, at the currently scheduled February 23, 2021 hearings.**

**Request for Continuance  
and Interim Extension of Exclusive Period**

On February 18, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to a date to be determined at the February 23, 2021 hearing. Dckt. 415. The parties informed the court that they have agreed to vacate the briefing schedule for all the hearings scheduled in this case related to the Motion to Use Cash Collateral (FWP-2), the Motion for Extension of Exclusive Period (FWP-17), the Motion to Terminate Exclusivity (NRM-1), and the Approval of the Disclosure Statement (FWP-14).

The parties have also agreed to an interim cash collateral order authorizing use of cash collateral in the amounts and for the purposes as stated in the present cash collateral budget attached as Exhibit A to this court's Fifth Interim Order on the Motion (Docket No. 306), through the week of a subsequent hearing date to be determined by the court provided that such subsequent hearing date is within thirty (30) days of the February 23 Hearing on cash collateral. *Id.*

The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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**The Court has authorized the Sixth Interim Use of Cash Collateral through and including March 26, 2021, and Extended Exclusivity for the Debtor in Possession pursuant to the Stipulation of the Debtor in Possession, The Prudential Insurance Company of America, and First Northern Bank of Dixon; and Extended the Exclusivity for the Debtor in Possession through and including March 26, 2021.**

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The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

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

Sufficient Notice Provided. The Proof of Service states that the **Notice of the Hearing** were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Court has authorized the Sixth Interim Use of Cash Collateral through and including March 26, 2021, and Extended Exclusivity for the Debtor in Possession pursuant to the Stipulation of the Debtor in Possession, The Prudential Insurance Company of America, and First Northern Bank of Dixon; and Extended the Exclusivity for the Debtor in Possession through and including March 26, 2021.**

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