



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

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Tuesday, April 18, 2023

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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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

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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. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-11](#)

MOTION TO EMPLOY DANIELLE J. BETHEL AS ATTORNEY(S)
3-15-2023 [[70](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order approving Debtor's retention of Wanger Jones Helsley ("Applicant") as general bankruptcy counsel for the estate during the pendency of this chapter 11 case, effective as of the petition date, March 10, 2023. Doc. #70. The application is supported by a verified statement of connections and the declaration of Danielle J. Bethel, who is a member of Applicant and attorney on this matter. Docs. ##72-73.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 U.S. Trustee ("UST"), 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Debtor seeks to employ Applicant pursuant to 11 U.S.C. §§ 327(a) and (c),

330, Fed. R. Bankr. P. 2013-14, 2016, 5002, 5004, and 9001, and LBR 2014-1. Doc. #70. Debtor argues it is necessary and essential to employ bankruptcy counsel because of the extensive legal services required in this ongoing chapter 11 proceeding. *Id.* The services performed by Applicant will include, but are not limited to, the following:

- (1) Taking all necessary actions to protect, preserve, and represent the Debtor, including, if required by the facts and circumstances, prosecuting actions and adversary or other proceedings on the Debtor's behalf; defending any actions and adversary or other proceedings against Debtor; negotiating all disputes and litigation in which Debtor is involved, and, where appropriate, filing and prosecuting objections to claims filed against Debtor;
- (2) Preparing, on behalf of Debtor, all necessary applications, motions, answers, orders, briefs, reports, and other papers in connection with the administration of the estate;
- (3) Developing, negotiating, and promulgating a plan; and
- (4) Performing other legal services as requested.

Id. at 2. Debtor selected Applicant for employment because of the experience and knowledge of Applicant's members and associates in the field of bankruptcy, insolvency, litigation, and debtors' and creditors' rights. Debtor believes Applicant and its attorneys are well qualified to provide representation in this case. *Id.*

Debtor proposes paying Applicant from the assets of the estate on an hourly basis at the hourly rates of Applicant's billable professionals using an "evergreen retainer" as follows:

- (a) There are four attorneys at Applicant's firm that may be involved in this case, which have billing rates ranging from \$180.00 to \$595.00 per hour. Applicant's paralegals and law clerks have billing rates ranging from \$125.00 to \$180.00 per hour.
- (b) Applicant seeks authority to allow Applicant to hold the retainer that was in existence on the date of the petition as an "evergreen retainer," as allowed in other chapter 11 cases, including *In re Insileo Techs., Inc.*, 291 B.R. 628, 632 (Bankr. D. Del. 2003) ("[I]n the case of an evergreen retainer, the funds are not intended to be used to pay approved fees until approval of the final fee application. Instead, the holder of an evergreen retainer intends to be paid its interim fees and expenses out of operating cash."), and *In re CTC Comms. Grp., Inc.*, Case No. 02-12873 (PJW) (Bankr. D. Del. 2002).
- (c) Debtor has neither shared nor agreed to share any compensation with any other person, except within Applicant's firm.

Id. at 2-3. Debtor also requests that monthly application for interim compensation pursuant to 11 U.S.C. § 331 be entered if the combined fees and expenses sought exceed \$5,000.00.

Included with this application is a verified statement of connections to Debtor pursuant to LBR 2014-1(a), which contains the following disclosures:

- (1) Applicant has represented Debtor since January 2023.
- (2) Applicant reviewed the list of creditors supplied by Debtor and does not have any connections with any of the creditors except for those who have been creditors in other bankruptcy proceedings handled by Applicant. Specifically, Applicant has represented New England Sheet Metal Works, Inc. ("NESMW") and Saint Agnes Medical Center ("SAMC") on totally unrelated matters, but Applicant says the attorneys involved in these matters will not be working on any matter relating to Debtor. Applicant also previously represented Trinity Health Care System ("THCS") on totally unrelated matters, but it is Applicant's position that the closed matters are not related to this bankruptcy case. Applicant has not obtained through previous representation the confidential information of a creditor in this case that could be used in a way that is adverse to that creditor in this case.
- (3) Applicant has no connections with other parties in interest.
- (4) Applicant has worked with and against proposed special counsel McCormick Barstow on unrelated matters in the past. WJH-13.
- (5) Applicant has no connections with any accountants.
- (6) Applicant has no known connections with the UST, or any person employed by the UST's office except attorney Gregory S. Powell, who is a former associate of Walter Law Group, which has morphed into Applicant's firm by merger. None of the attorneys employed by Applicant are related to the UST in this region.
- (7) Applicant has no connections with the bankruptcy judge presiding over this case except as noted above.
- (8) As of the petition date, Applicant was holding a retainer of \$173,628.80.
- (9) If additional connections are discovered, Applicant will disclose such connections.

Ex. A, Doc. #73. The verified statement of connections is incorporated by reference in the declaration of Danielle J. Bethel. Doc. #73.

DISCUSSION

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

Under 11 U.S.C. § 327(a), a professional person, such as an attorney, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for

employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

Applicant's firm has represented NESMW, SAMC, and THCS on totally unrelated matters. The matter involving THCS is closed and Applicant has not obtained any confidential information that can be used against THCS or other creditors, so therefore Applicant believes such prior representation has no connection with this bankruptcy case. However, Applicant's obligations to NESMW and SAMC appear to be ongoing notwithstanding its contention that the attorneys involved in these matters will be screened from participating in this case. Applicant is not disqualified from representing Debtor solely because it previously represented creditors, but Applicant still must comply with California's informed written consent and/or written disclosure requirements for conflicts of interest.

Cal. R. Prof'l Conduct ("RPC") 1.7 provides:

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter.

(2) . . .

(d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented in the same litigation or other proceeding before a tribunal.

(e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

RPC 1.7(a)-(e) (asterisks omitted).

Here, Applicant's representation of Debtor does not appear to be directly adverse to NESMW or SAMC, and there does not appear to be a significant risk that Applicant's representation of Debtor will be materially limited by its responsibilities to or relationship with NESMW or SAMC. RPC 1.7(a), (b). However, Applicant has another lawyer, or other lawyers, in Applicant's firm who have an ongoing legal relationship with or responsibility to NESMW and SAMC, so it appears that Applicant is required to provide written disclosure to Debtor, NESMW, and SAMC under RPC 1.7(c)(1), and comply with RPC 1.7(d).

Applicant appears to have complied with RPC 1.7(a) and (b) as incorporated by RPC 1.7(d) for the reasons stated above, and Applicant reasonably believes it will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, and the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding. RPC 1.7(d).

The court notes that NESMW, SAMC, and THCS were served with notice of this motion, the motion, and supporting documents. But does such notice constitute adequate written disclosure?

Although "written disclosure" is not specifically defined, RPC 1.0.1(n) defines "written" as having the meaning stated in Cal. Evid. Code § 250:

handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other

means of recording upon any tangible thing, any form of communication or representation, including, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Cal. Evid. Code § 250. Meanwhile, Black's Law Dictionary defines "disclosure" as, among other things, "[t]he act or process of making known something that was previously unknown; a revelation of facts[.]" Black's Law Dictionary (11th ed. 2019).

The written motion and verified statement were served on Debtor, NESMW, SAMC, and THCS. These documents made known Applicant's concurrent representation, and therefore, Applicant appears to have provided the required written disclosures to these parties.

As noted above, no party in interest timely filed written opposition. The court finds Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

Therefore, this motion will be GRANTED. Interim requests for compensation under 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00, but such compensation will be subject to final review pursuant to § 330.

2. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-13](#)

MOTION TO EMPLOY MCCORMICK BARSTOW AS SPECIAL COUNSEL
3-15-2023 [\[74\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order approving Debtor's retention of McCormick Barstow ("Applicant") as special counsel for the estate during the pendency of this chapter 11 case, effective as of the petition date, March 10, 2023. Doc. #74. The application is supported by a verified statement of connections and the declaration of Daniel L. Wainwright, who is a member of Applicant and attorney on this matter. Docs. ##76-77.

No party in interest timely filed written opposition. This matter will be called as scheduled to inquire whether Applicant has obtained the informed written consent of Debtor and other parties in interest in this case who have retained Applicant for concurrent representation on other bankruptcy matters.

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 U.S. Trustee ("UST"), 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).

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Debtor seeks to employ Applicant pursuant to 11 U.S.C. §§ 327(a), (c), and (e), 328, 330, Fed. R. Bankr. P. 2013-14, 2016, 5002, 5004, and 9001, and LBR 2014-1. Doc. #74. Debtor argues it is necessary and essential to employ Applicant because of the non-bankruptcy transaction services required throughout this ongoing chapter 11 proceeding. *Id.* The services performed by Applicant will include, but are not limited to, serving as insurance defense counsel in defense of Debtor with regard to several pending and unexpected medical malpractice lawsuits. *Id.* Debtor selected Applicant because of the experience and knowledge of Applicant in the field of medical malpractice law and the knowledge and familiarity of Applicant with the facts and circumstances of this case. *Id.* Debtor believes Applicant and its attorneys are well qualified to provide representation in this case. *Id.*

Debtor proposes paying Applicant from the assets of the estate on an hourly basis at the hourly rates of Applicant's billable professionals, subject to court approval, up to the amount required by Debtor's self-insured retention ("SIR") deductible. After SIR is exhausted, Applicant will be paid by Debtor's insurer. Debtor also requests that monthly application for interim compensation pursuant to 11 U.S.C. § 331 be entered if the combined fees and expenses sought exceed \$5,000.00.

Included with this application is a verified statement of connections to Debtor pursuant to LBR 2014-1(a), which contains the following disclosures:

- (1) Applicant has represented Debtor since the 1990s as general counsel, litigation counsel, and insurance defense counsel for several pending and expected medical malpractice lawsuits.
- (2) Applicant has reviewed the list of creditors supplied by Debtor and does not have connections with any of the creditors, but Applicant currently represents Affiliated Physician Practice, Inc. ("APP") and Dr. Aftab Naz, M.D., who are creditors in this bankruptcy and have a pending chapter 7 case in this district, on totally unrelated matters. Additionally, Applicant's position is that closed matters are not related to this bankruptcy case, but it has not obtained through any previous representation any

- confidential information of a creditor in this case that could be used in this case in a way that is adverse to that creditor.
- (3) Applicant's connections to other parties in interest include its representation of APP, which has contracted with Debtor to provide physician services. APP is one of Debtor's debtors and owes Debtor several million dollars on account of loans received by APP. APP is also a tenant of Debtor under a long-term lease. Applicant also represents Madera Community Hospital Medical Staff, an incorporated association ("Association") in the creation of a non-profit corporation, Madera Community Physicians, Inc., and is currently holding \$101,485.92 in its trust account. These funds were received on March 10, 2023 by Cyril Revel, M.D., the Association's treasurer, and represent membership dues and other monies collection from the physicians of the Association.
 - (4) Applicant has previously worked with and against Wanger Jones Helsley, who is the proposed bankruptcy counsel in matter #1 above. WJH-11. Additionally, Garrett Leatham, one of Applicant's associates, was employed by Wanger Jones Helsey until the fall of 2022 before joining Applicant, but he will not be working on any matters relating to Debtor.
 - (5) Applicant has no connections with any accountants.
 - (6) Applicant has no known connections with the UST, or any person employed by the UST's office
 - (7) Applicant was not owed any fees as of the petition date.
 - (8) Applicant has no connections with the bankruptcy judge presiding over this case.
 - (9) If additional connections are discovered, Applicant will disclose such connections.

Ex. A, Doc. #77. The verified statement of connections is incorporated by reference in the declaration of Daniel L. Wainwright. Doc. #76.

DISCUSSION

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

Under 11 U.S.C. § 327(a), a professional person, such as an attorney, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

Pursuant to § 327(e), the trustee [debtor in possession], with the court's approval, may employ for an attorney that has represented the debtor for a specified special purpose if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Applicant's firm has represented APP, Dr. Naz, and the Association on totally unrelated matters from services proposed to be performed by Applicant. These parties are creditors of Debtor and Applicant has ongoing obligations to them. Applicant is not disqualified from representing Debtor solely because it previously represented creditors, but Applicant still must comply with California's informed written consent and/or written disclosure requirements for conflicts of interest.

Cal. R. Prof'l Conduct ("RPC") 1.7 provides:

(a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.

(b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

(c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:

(1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal,

business, financial, professional, or
personal relationship with or
responsibility to a party or witness in the
same matter.

(2) . . .

(d) Representation is permitted under this rule
only if the lawyer complies with paragraphs (a),
(b), and (c), and:

(1) the lawyer reasonably believes that the
lawyer will be able to provide competent
and diligent representation to each
affected client;

(2) the representation is not prohibited by
law; and

(3) the representation does not involve the
assertion of a claim by one client against
another client represented in the same
litigation or other proceeding before a
tribunal.

(e) For purposes of this rule, "matter" includes
any judicial or other proceeding, application,
request for a ruling or other determination,
contract, transaction, claim, controversy,
investigation, charge, accusation, arrest, or
other deliberation, decision, or action that is
focused on the interests of specific persons, or
a discrete and identifiable class of persons.

RPC 1.7(a)-(e) (asterisks omitted).

Here, Applicant's concurrent representation of Debtor, APP, Dr. Naz, and the Association do not appear to be directly adverse to each other. RPC 1.7(a). The scope of Applicant's employment involves the prosecution of medical malpractice actions, so it will not be heavily involved in this bankruptcy case. However, there may potentially be a significant risk that Applicant's concurrent representation will be materially limited by its responsibilities to or relationships with each client. APP is a debtor and a tenant of Debtor under a long-term lease and owes Debtor "several million dollars." *Ex. A, Doc. #77*. Meanwhile, the Association is a non-profit organization comprised of physicians working for Debtor and is currently holding over \$100,000 in funds from these individuals.

Though Applicant may be a "disinterested person" in the context of the medical malpractice action(s) in which it will be involved, there appears to be a risk that Applicant's concurrent representation may be impacted from owing duties to Debtor, APP, Dr. Naz, and the Association simultaneously. Therefore, it appears Applicant is required to obtain the informed written consent of Debtor, APP, Dr. Naz, and the Association under RPC 1.7(b), and comply with RPC 1.7(d).

RPC 1.7(d) requires compliance with paragraphs (a), (b), and (c), which require either informed written consent or written disclosure depending on the circumstances.

RPC 1.0.1(e-1) defines "informed written consent" as meaning that the disclosures and "informed consent" required by paragraph (e) are required to be in writing. Paragraph (e) defines "informed consent" as a person's agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances, and (ii) the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct. Thus, such informed written consent would necessarily include written disclosure that satisfies RPC 1.7(c), and therefore RPC 1.7(d).

No party in interest timely filed written opposition. This matter will be called as scheduled to inquire about whether Applicant has obtained the informed written consent of Debtor, APP, Dr. Naz, and the Association. If so, the court may find that Applicant does not hold any interest adverse to the estate and is a "disinterested person." This motion may be GRANTED provided that copies of such informed written consent are filed with the court before the hearing.

The request for setting the terms and conditions of employment under § 328 is unclear because no hourly rates, commissions, or other terms or conditions are referenced in the pleadings. Applicant does indicate that it will be paid its hourly rates, subject to court approval, up to the amount required by Debtor's SIR deductible, and then it will be paid by Debtor's insurer. Approval of any hourly rate, commission, or other terms or conditions will be subject to court review and the provisions of 11 U.S.C. §§ 328 and 330. So, the court's approval of the retention of Applicant is under § 327 of the Bankruptcy Code and not § 328. The order submitted shall so provide.

If granted, interim requests for compensation under 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00, but such compensation will be subject to final review pursuant to § 330.

3. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-14](#)

MOTION TO EMPLOY WARD LEGAL, INC. AS SPECIAL COUNSEL
3-15-2023 [\[78\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order approving Debtor's retention of Ward Legal, Inc. ("Applicant") as special counsel for the estate during the pendency of this chapter 11 case, effective as of the petition date, March 10, 2023. Doc. #78. The application is supported by a verified statement of connections and the declaration of Robert E. Ward, who is a member of Applicant and attorney on this matter. Docs. ##80-81.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 U.S. Trustee ("UST"), 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Debtor seeks to employ Applicant pursuant to 11 U.S.C. §§ 327(a), (c), and (e), 328, 330, Fed. R. Bankr. P. 2013-14, 2016, 5002, 5004, and 9001, and LBR 2014-1. Doc. #78.

Debtor argues it is necessary and essential to employ Applicant because of the non-bankruptcy transaction services required throughout

this ongoing chapter 11 proceeding. *Id.* The services performed by Applicant will include, but are not limited to, matters relating to handling of healthcare, employment, and business transactions law. *Id.* Debtor selected Applicant because of the experience and knowledge of Applicant in the field of healthcare, employment, and business transactions law. *Id.* Debtor believes Applicant and its attorneys are well qualified to provide representation in this case. *Id.*

Debtor proposes paying Applicant from the assets of the estate on an hourly basis at the hourly rates of Applicant's billable professionals, subject to court approval. Debtor also requests that monthly application for interim compensation pursuant to 11 U.S.C. § 331 be entered if the combined fees and expenses sought exceed \$5,000.00.

Included with this application is a verified statement of connections to Debtor pursuant to LBR 2014-1(a), which contains the following disclosures:

- (1) Applicant and its attorneys have represented Debtor since January 26, 1998, as general counsel from time to time on matters referred to it by Debtor.
- (2) Applicant reviewed the list of creditors supplied by Debtor and does not have any connections with any of the creditors. Applicant's position is that closed matters are not related to this bankruptcy case. Further, Applicant has not obtained through any previous representation the confidential information of a creditor in this case that could be used in a way that is adverse to that creditor in this case.
- (3) Applicant has no known connection with any other parties in interest or their respective attorneys and accountants.
- (4) Applicant has worked with and against Wanger Jones Helsley, who is the proposed bankruptcy counsel in matter #1 above. WJH-11.
- (5) Applicant has no known connection with the accountants for any other party in interest.
- (6) Applicant has no known connections with the UST, or any person employed by the UST's office.
- (7) Applicant was not owed any fees on the petition date.
- (8) Applicant has no connections with the bankruptcy judge presiding over this case except as noted above.
- (9) If additional connections are discovered, Applicant will disclose such connections.

Ex. A, Doc. #80. The verified statement of connections is incorporated by reference in the declaration of Robert E. Ward. Doc. #81.

DISCUSSION

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the

functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

Under 11 U.S.C. § 327(a), a professional person, such as an attorney, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

Pursuant to § 327(e), the trustee [debtor in possession], with the court's approval, may employ for an attorney that has represented the debtor for a specified special purpose if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Here, Applicant's verified statement of connections indicates that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

No party in interest timely filed written opposition. Therefore, the court finds that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person." Accordingly, this motion will be GRANTED.

The request for setting the terms and conditions of employment under § 328 is unclear because no hourly rates, commissions, or other terms or conditions are referenced in the pleadings. Approval of any hourly rate, commission, or other terms or conditions will be subject to court review and the provisions of 11 U.S.C. §§ 328 and 330. So, the court's approval of the retention of Applicant is under § 327 of the Bankruptcy Code and not § 328. The order submitted shall so provide.

Interim requests for compensation under 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00, but such compensation will be subject to final review pursuant to § 330.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-15](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-4-2023 [\[173\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will be called 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 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject (1) a non-residential, real property *Lease and Operating Agreement* dated May 15, 2007, as amended July 1, 2013, September 6, 2017, and July 1, 2022 ("Lease Agreement"), between Debtor and Chowchilla Memorial Hospital District ("CMHD"); (2) a related *Rural Health Care Management Agreement* dated May 15, 2007 ("Management Agreement") between Debtor and CMHD; and (3) a related *Sublease Agreement* commencing July 1, 2013 ("Sublease Agreement" or collectively, the "Agreements") between Debtor and Brenda Neer Physical Therapy, Inc., a California corporation dba Chowchilla Physical Therapy ("CPT"). Doc. #173. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹ The motion is supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##175-77.

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) 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor operated a rural health clinic located at 285 Hospital Drive in Chowchilla (the "Clinic"), which is leased to Debtor by CMHD under the Lease Agreement. Doc. #175. The management of

the Clinic is governed by the Management Agreement between Debtor and CMHD. *Id.* A portion of the Clinic was subleased by Debtor to CPT under the Sublease Agreement, which is subordinate to the Lease Agreement. *Id.*; see also, *Exs. A-B*, Doc. #176.

Debtor ceased providing all lines of service pre-petition, which includes the operation of its rural healthcare clinics. Doc. #175. As a result, Debtor, in its business judgment, has determined the Agreements are no longer needed or of any benefit to Debtor, and therefore should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

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

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

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).

Here, Debtor's rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased providing services at the Clinic, so the Agreements are no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. The court will inquire about the fixing of a bar date by which claims based on this motion must be filed.

The court is inclined to set that bar date for July 17, 2023, to coincide with the bar date for non-governmental proofs of claim. But

Debtor shall file a certificate of service of notice to the other contracting parties that conspicuously sets forth the bar date within 7 days of entry of the order granting this motion.

¹ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving officers of CMHD and CPT via first class mail on April 4, 2023. Doc. #178.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-16](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-4-2023 [[179](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will be called 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 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject a non-residential, real property *Office Lease Agreement* dated July 25, 2019 ("Lease Agreement"), between Debtor and Alliance for Medical Outreach and Relief² ("Alliance"), as subsequently assigned by Alliance to, and assumed by, AMOR Wellness Center, Inc. ("AMOR"). Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Lease Agreement pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.³ The motion is supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and a copy of the Lease Agreement. Docs. ##181-83.

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) 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor operated a rural health clinic located at 121 Belmont Avenue in Mendota (the "Clinic"). Doc. #181. Debtor leased the Clinic from Alliance pursuant to the Lease Agreement on July 25, 2019. Ex. A, Doc. #183. The Lease Agreement was subsequently amended, assigned, and transferred to AMOR, and AMOR assumed all rights, title, interest, duties, and obligations under the Lease Agreement. *Id.*; Doc. #181.

Debtor ceased providing services pre-petition and shut down the operation of its rural healthcare clinics, including Clinic. Doc. #181. As a result, Debtor, in its business judgment, has determined the Lease Agreement is no longer needed and does not provide any benefit to Debtor, and therefore it should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

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

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

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).

Here, Debtor's rejection of the Lease Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased providing services at the Clinic, so the Lease Agreement is no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. The

court will inquire about the fixing of a bar date by which claims based on this motion must be filed.

The court is inclined to set that bar date for July 17, 2023, to coincide with the bar date for non-governmental proofs of claim. But Debtor shall file a certificate of service of notice to the other contracting parties that conspicuously sets forth the bar date within 7 days of entry of the order granting this motion.

² The motion says that the Lease Agreement was executed by and between Debtor and AMOR before it was assigned to AMOR. This appears to be a clerical error in that the Lease Agreement was initially executed by and between Debtor and Alliance, and then Alliance assigned it to AMOR. Doc. #179; *cf. Ex. A*, Doc. #183.

³ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving officers of and registered agents for service of process for AMOR via first class mail on April 4, 2023. Doc. #189.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-17](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-4-2023 [\[184\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will be called 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 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject a non-residential, real property Lease dated October 1, 2016, as amended December 7, 2021 ("Lease Agreement"), between Debtor and McCain Varney & Kent, LLC ("MVK"). Doc. #184. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Lease Agreement pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.⁴ The motion is supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and a copy of the Lease Agreement. Docs. ##186-88.

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) 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor leased office space located at 1050 E. Almond Avenue in Mendota, California ("Premises"), which is leased to Debtor from MVK pursuant to the Lease Agreement. *Ex. A*, Doc. #187; Doc. #186. The Premises was used to house Debtor's information technology ("IT") equipment and staff. *Id.*

Debtor ceased all patient care and shut down the operations of its healthcare clinics. *Id.* Thus, Debtor no longer has a need to house its IT equipment and staff in a separate, leased facility. As a result, Debtor, in its business judgment, has determined the Lease Agreement is no longer needed and does not provide any benefit to Debtor, and therefore it should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

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

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

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).

Here, Debtor's rejection of the Lease Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing the office space for its IT equipment and staff, so the Lease Agreement is no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. The court will inquire about the fixing of a bar date by which claims based on this motion must be filed.

The court is inclined to set that bar date for July 17, 2023, to coincide with the bar date for non-governmental proofs of claim. But Debtor shall file a certificate of service of notice to the other contracting parties that conspicuously sets forth the bar date within 7 days of entry of the order granting this motion.

⁴ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a MVK's managing member via first class mail on April 4, 2023. Doc. #190.

1:30 PM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[GRI-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-2022 [[405](#)]

FRUITVALE FINANCIAL, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
LAUREN RODE/ATTY. FOR MV.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Fruitvale Financial, LLC withdrew this motion on April 11, 2023.
Doc. #1033. Accordingly, this motion will be dropped and taken off
calendar pursuant to the withdrawal.

2. [19-10016](#)-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
[LNH-8](#)

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES
ATTORNEY(S)
3-20-2023 [[144](#)]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Lisa Noxon Holder, PC ("Applicant"), general counsel for chapter 7
trustee James E. Salven ("Trustee"), requests final compensation in
the sum of \$16,680.00 pursuant to 11 U.S.C. §§ 327, 330. Doc. #144.
This amount consists of \$16,500.00 in fees as reasonable compensation
for services rendered and \$180.00 in reimbursement for actual,
necessary expenses from March 18, 2019 through March 15, 2023. *Id.*

Trustee reviewed the application, believes it accurately reflects the
necessary and beneficial services undertaken by Applicant, has no
objection to the proposed payment, and indicates the estate has over
\$400,000.00 in funds on hand to pay the proposed compensation.

Doc. #147. Trustee filed the *Final Report* on March 21, 2023, which is set for hearing on May 9, 2023. JES-3; MJB-1.

No party in interest timely filed written opposition. This motion will be GRANTED.

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. 2002(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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

Quality Fresh Farms, Inc. ("Debtor") filed chapter 7 bankruptcy on January 4, 2019. Doc. #1. Trustee was appointed as interim trustee on January 8, 2019 and became permanent trustee at the first meeting of creditors on or about February 13 or 14, 2019. Docs. #5; #9; docket generally. Applicant moved to employ Applicant as the estate's general bankruptcy counsel under 11 U.S.C. §§ 327, 329-31 on March 25, 2019. Doc. #45. The court approved employment on April 2, 2019, effective February 25, 2019. Doc. #53. Compensation was permitted only upon court order following application under §§ 330(a) and/or 331. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #144. Applicant's firm provided 56.10 billable hours of legal services at a rate of \$295.00 per hour, totaling \$16,549.50; however, Applicant has limited her request for fees to **\$16,500.00**. *Id.*; Doc. #146; *Ex. A*, Doc. #148. Applicant also incurred \$184.38 in expenses as follows, but has limited her requested fees to **\$180.00**:

Copies	\$107.7
Postage	+ \$76.68
Total Expenses	= \$184.38

Id. The combined requested fees and expenses total **\$16,680.00**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a]

professional person, or attorney" employed under § 327 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 here included, without limitation: (1) securing authorization for employment (LNH-1); (2) preparing a motion for authority to sell real property, which was subject to relief from stay and foreclosure proceedings; however, the buyer backed out of the transaction and the secured creditor completed foreclosure; (3) securing the estate's retention of special counsel to prosecute state court tort claims for damage to Debtor's watermelon crop on a contingency-fee basis (LNH-2); (4) obtaining court approval of the tort claim settlement and authorization to compensate the special counsel (LNH-6); (5) preparing and filing a motion for authority to pay administrative claims (LNH-7); (6) preparing two objections to improperly filed proofs of claim, but such objections were resolved prior to filing; and (7) preparing and filing this fee application (LNH-8). Doc. #146; *Ex. A*, Doc. #148. As noted above, Trustee has reviewed the application, consents to payment of the requested fees and expenses, and indicates that the estate has over \$400,000 on hand to fund the application. Doc. #147. The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$16,500.00 in reasonable fees and \$180.00 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$16,680.00 in compensation on the terms outlined above for services rendered and costs incurred from March 18, 2019 through March 15, 2023.

3. [23-10368](#)-B-7 **IN RE: RAFAEL MENDOZA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-2023 [[13](#)]

TD BANK, N.A./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

TD Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Kia Sorento ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Doc. #13

Rafael Mendoza ("Debtor") surrendered the Vehicle to Movant pre-petition on February 13, 2023, and therefore, Vehicle is in Movant's possession. No other party in interest timely filed written opposition. This motion will be GRANTED.

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 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

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.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make approximately 3 complete pre-petition payments. Movant has produced evidence that Debtor is delinquent at least \$1,997.36 plus late fees of \$141.04 and recovery fees of \$725.00, totaling \$2,863.40. Docs. ##17-18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. *Id.* The Vehicle is valued at \$32,175.00 and debtor owes \$42,412.34. Doc. #18.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral

pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make pre-petition payments, Debtor surrendered Vehicle pre-petition, and the Vehicle is a depreciating asset.

4. [22-10870](#)-B-7 **IN RE: BETTY EDELBROCK**
[FW-4](#)

MOTION TO SELL AND/OR MOTION TO PAY
3-17-2023 [\[48\]](#)

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 Dan Evans and Connie Evans (collectively "Proposed Buyers") for \$65,000.00, pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #48. 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. *Id.* Trustee further requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h). *Id.*

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.

BACKGROUND

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, Trustee obtained approval 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, Docs. #33; #35; FW-2. Unfortunately, the sale fell through, so Trustee had Broker re-list Property. Doc. #38.

Thereafter, Trustee sought and obtained approval to sell Property to Penny A. Roberts for \$75,000.00, from which there would be an estimated \$30,742.65 in net proceeds for the estate. See Docs. #45; #47. That sale fell through too. Doc. #50. Broker again re-listed Property.

Trustee has secured an offer from and executed a Purchase Agreement with Proposed Buyers to sell Property to Proposed Buyers for \$65,000.00, and now requests approval under 11 U.S.C. § 363(b) to complete the sale. Docs. #48; #50.

DISCUSSION

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 *N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 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). There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor. Proposed Buyers 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 exempt Property in *Schedule C*. *Id.*

Trustee entered into a contract ("Purchase Agreement") with Proposed Buyers to sell Property for \$65,000.00, subject to a number of relevant terms and conditions: (1) the sale of Property is as-is, where-is, with no warranties and (2) the debris on the Property will not be removed. Doc. #50; *Ex. A*, Doc. #51.

Trustee included a copy of the preliminary title report as an exhibit, which is incorporated by reference in his declaration. *Ex. B*, *id.* Property is subject to a deed of trust in the original amount of \$37,000.00—estimated now at \$39,434.70 with costs—in favor of Greg Forsht, Trustee of the Greg Forsht Trust dated June 13, 2002. *Ex. B* ¶ 6 at 45, *id.*; Doc. #48. Additionally, taxes are currently owed or in default, which Trustee estimates total \$2,027.04. *Id.*; *Ex. B* ¶¶ 2-3 at 44-45. Both the deed of trust and the taxes have increased since the previous sale was approved. Both will be paid through escrow.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$65,000.00
Greg Forsht deed of trust & costs	- \$39,434.70
Estimated taxes	- \$2,027.04
Estimated costs of sale	- \$398.76
Estimated broker fee (5%)	- \$3,250.00
Estimated recording & transfer costs	- \$134.00
Estimated net proceeds to estate	= \$19,755.50

Doc. #50.

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. #48. Proposed Buyers' broker is Bayside Realty. Broker and Bayside Realty would each receive 2.5% commission, or \$1,625.00 each, if there are no overbidders and Property is sold at the proposed sale price. 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 \$3,000.00 prior to the time of the sale motion 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 \$3,000.00 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 \$3,000.00 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 \$66,000.00.
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 Debtor, or their representatives. The debris on the Property will not be removed.

Waiver of 14-day Stay

Trustee requests waiver of the 14-day stay of Rule 6004(h) because the stay may jeopardize the closing of the sale and Trustee does not anticipate that anyone will appeal this motion, and thus, there is no reason for the 14-day stay. Doc. #48. The court will not grant waiver because it is unlikely anyone will appeal. However, as noted above, the court has twice previously approved the sale of Property. The first sale was for \$81,000.00 with \$40,197.07 in net proceeds for the estate, and the second was for \$75,000.00 with \$30,742.65 in net proceeds. Docs. #33; #45. Those sales fell through. Now, Property is being sold for \$16,000 less than the first sale and \$10,000 less than the second sale. Payoff amounts for liens and taxes have increased slightly, causing the estimated net proceeds to the estate to decrease by a total of \$20,441.57. Therefore, the 14-day stay of Rule 6004(h) will be ordered waived because the previous two sales failed, the stay jeopardizes the closing of this sale, and further failure to complete the sale of Property will cause the estate to continue diminishing in value. *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: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) 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, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will be ORDERED WAIVED.

5. [23-10453](#)-B-7 **IN RE: SHARON DRAGNER**
[BDB-1](#)

CONTINUED MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT
COURSE
3-10-2023 [[8](#)]

SHARON DRAGNER/MV
BENNY BARCO/ATTY. FOR DBT.

NO RULING.