

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 21, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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.

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 POSSIBLE UPDATES.

9:30 AM

1. [22-10061](#)-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
1-17-2022 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

2. [22-10274](#)-B-12 **IN RE: BRYAN SCHOONOVER**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
2-25-2022 [[1](#)]

ANDY WARSHAW/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [21-11405](#)-B-7 **IN RE: NORTHWEST PETROLEUM, INC.**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH US SMALL BUSINESS ADMINISTRATION
3-22-2022 [[36](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/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 with the stipulation attached as an exhibit. A copy of the original stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order approving a settlement agreement between the estate and the United States Small Business Administration ("SBA") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #36.

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 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.

Northwest Petroleum, Inc. ("Debtor") filed voluntary chapter 7 bankruptcy on May 28, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on July 23, 2021. Doc. #3.

The SBA filed Proof of Claim No. 4-1 in the secured amount of \$155,717.47 on August 30, 2021. See Claim 4. The SBA loan is secured. A UCC-1 financing statement, initially filed May 28, 2020, describes the following collateral:

All tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest Borrower grants includes all accessions, attachments, accessories, parts, supplies, and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto.

Attach. 1 to Claim 4, at 23 (emphasis added).

In the schedules, Debtor listed an interest in the following bank accounts ("Estate Accounts"):

Asset	Value
Wells Fargo Business Checking 4426	\$6,230.72
Wells Fargo Business Checking 4459	\$54,733.12
LeBeau Thelen Trust Account	\$7,760.00
Oil & Gas Bond	\$25,000.00
Total Value	\$93,723.84

Doc. #1, Sched. A/B, ¶¶ 3, 73. Trustee has acquired and taken control of the Estate Accounts. Doc. #38.

However, Trustee has determined that SBA's UCC-1 statement extends to these Estate Accounts. *Id.* As result, Trustee entered into an agreement to compromise the SBA's claim whereby SBA will accept \$60,000.00 by filing an amended proof of claim in this amount. The balance of the claim will be unsecured. The remaining balance of the Estate Accounts will be used to pay administrative and unsecured claims in this case.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a

compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

(1) Probability of success in litigation: Trustee concludes that the secured claim is valid but wishes to retain some assets on behalf of the estate. Trustee believes he can prevail with respect to the oil and gas bond and trust account with respect for the estate, but the business checking accounts totaling \$60,963.84 are not likely to be recoverable.

(2) Difficulties in collection: Since Trustee already has control of the Estate Accounts, collection would not be difficult if he were to prevail. This factor weighs in favor of approving the settlement or is neutral.

(3) Complexity of litigation: "The Trustee views the litigation bot [sic] to be difficult as to the SBA's right to claim a security interest in the bank accounts. The other litigation would not be difficult, but would drain funds otherwise available to creditors." Doc. #36, ¶¶ 3-6. It is unclear whether Trustee intended to say that litigation would "not" be difficult with respect to SBA's right to claim a security interest, or something else. Regardless, further litigation requires increasing expenses and reducing the dividend to allowed unsecured claims. This factor supports approving the settlement.

(4) Interest of the creditors: Trustee believes that compromise serves the interests of creditors because it guarantees a distribution to creditors without the expenditure of attorneys' fees that would be paid out as administrative expenses. Doc. #39. Trustee believes the compromise is fair and equitable and recommends that it be accepted.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED. The settlement is approved, and Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement.

Upon executing the settlement agreement, Trustee shall separately file a copy of the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

2. [21-12007](#)-B-7 **IN RE: ARNULFO SANCHEZ AND VERONICA LEMUS SANCHEZ**
[DRJ-2](#)

MOTION TO COMPEL ABANDONMENT
3-22-2022 [\[28\]](#)

ARNULFO SANCHEZ/MV
DAVID JENKINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Arnulfo Sanchez, Jr., and Veronica Lemus Sanchez ("Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in residential real property located at 685 Chinaberry Ct., Los Banos, CA 93635 ("Property"). Doc. #28.

Trustee signed a statement of non-opposition to the motion on March 21, 2022. Doc. #31. Trustee has determined that Property is of inconsequential value and benefit of the estate because there is no realizable non-exempt equity that could be liquidated for the benefit of unsecured claims.

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, 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. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors seek to compel Trustee to abandon the estate's interest in Property. Property is listed in the schedules with a petition-date value of \$483,500.00. Doc. #1, *Sched. A/B*. Property is encumbered by a \$234,443.00 deed of trust in favor of Wells Fargo Home Mortgage. *Id.*, *Sched. D*. Debtors exempted Property in the amount of \$320,000.00 under Cal. Code Civ. Proc. § 704.730. *Id.*, *Sched. C*. Joint debtor Arnulfo Sanchez, Jr., declares and reaffirms that Property was valued at \$483,500.00 on the petition date. Doc. #30. Sanchez says that there would be no proceeds available for Trustee to distribute to unsecured creditors if Property were sold after payment of the secured lien and Debtors' exemption as follows:

Fair market value of Property	\$483,500.00
Wells Fargo deed of trust	- \$234,443.00
Debtors' homestead exemption	- \$320,000.00
Net to the estate	= \$0.00

Id. The court finds that Property is of inconsequential value and benefit to the estate. Property was accurately scheduled and exempted in its entirety and Trustee consents to its abandonment. Therefore, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

3. [22-10443](#)-B-7 **IN RE: MOISES/LETICIA MEDINA**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
3-22-2022 [\[8\]](#)

LETICIA MEDINA/MV
GRISELDA TORRES/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.

Moises Casa Medina and Leticia Marie Medina ("Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in Debtors' sole proprietorship business, "Moises Medina Catering." Doc. #8. The assets (collectively "Business Assets") are related to the operation of the business, including equipment, furniture, inventory, and other assets.

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, 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.

As a preliminary matter, the court notes that the notice of hearing filed with this motion does not procedurally comply with the local rules. Doc. #9. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules on the court's website to ensure procedural compliance in subsequent motions.¹ Future violations of the local rules may result in the matter being denied without prejudice.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors seek to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
Goodwill	\$0.00	\$0.00	\$0.00	\$0.00
Flat top grill	\$300.00	\$300.00	\$0.00	\$0.00
BBQ smoker	\$500.00	\$500.00	\$0.00	\$0.00
Two ice chests	\$400.00	\$400.00	\$0.00	\$0.00
Food containers	\$80.00	\$80.00	\$0.00	\$0.00
Tin foil food warmers	\$80.00	\$80.00	\$0.00	\$0.00
Tables	\$90.00	\$90.00	\$0.00	\$0.00
Food handling utensils	\$65.00	\$65.00	\$0.00	\$0.00
Storage bins	\$40.00	\$40.00	\$0.00	\$0.00
Oil containers	\$5.00	\$5.00	\$0.00	\$0.00
Kitchen towels	\$15.00	\$15.00	\$0.00	\$0.00
Disposable plates/utensils	\$100.00	\$100.00	\$0.00	\$0.00
Totals	\$1,675.00	\$1,675.00	\$0.00	\$0.00

Doc. #1, *Sched. A/B*, ¶ 40; *Scheds. C, D*. None of the Business Assets are encumbered by any secured creditors and all have been exempted for their full value under Cal. Code Civ. Proc. § 703.140(b)(6).

Joint debtor Moises Casa Medina declares that his sole proprietorship is a catering business. Doc. #10. Medina does not believe that there is any goodwill value in the business because all of the income from the business is the result of his labor. The only goodwill in the business is the personal relationships he has developed with clients

over the course of doing business. There is no goodwill that could be sold by the Trustee. Based on the lack of unexempt equity in the business and inventory, there is no benefit to the estate in either operating the business or shutting it down.

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. No party in interest timely filed written opposition. Therefore, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

¹ See LBR (eff. Apr. 12, 2021), <http://www.caeb.uscourts.gov/LocalRules.aspx>.

4. [19-11272](#)-B-7 **IN RE: VICTOR VAQUERANO AND ARACELI AGUIRRE**
[PK-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
3-31-2022 [\[22\]](#)

ARACELI AGUIRRE/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Victor Manuel Vaquerano and Araceli Aguirre ("Debtors") seek to avoid a judicial lien in favor of Capital One Bank (USA) N.A. ("Creditor") in the sum of \$7,617.24 and encumbering residential real property located at 1201 Evadonna Road, Bakersfield, CA 93307 ("Property").

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Federal Rule of Bankruptcy Procedure ("Rule") 7004(h).

Rule 4003(d) requires proceedings to avoid a lien under 11 U.S.C. § 522(f) "shall be commenced by motion in the manner provided in 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.

Creditor is a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).²

Service on insured depository institutions is governed by Rule 7004(h), which requires service to be made by certified mail and

addressed to a named officer, unless one of three exceptions specified in subsections (h) (1) to (3) have been met. There is no indication that any of these exceptions apply.

The Ninth Circuit interprets Rule 7004 to require service upon a named officer, rather than to just the title of the office. *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); see also *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (strictly construing the named officer requirement with respect to Rule 7004(b) (3)), citing *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995).

Here, Debtors attempted to serve Creditor at the following addresses:

- [certified mail]

1. Lien Holder: Address per FDIC
President, CEO or Person Authorized to Accept Service
CAPITAL ONE BANK (USA) NA
4851 Cox Road
Glenn Allen, VA 23060
- [certified mail]

2. Lien Holder Address in Petition
President, CEO or Person Authorized to Accept Service
CAPITAL ONE BANK (USA) NA
P.O. Box 30285
Salt Lake City, UT 84130
- [U.S. Mail, first class postage prepaid]

3. State Court Attorneys for Capital One
Elizabeth A. Bleir [sic]
Patenaude & Felix
Attorney for Capital One Bank (USA) NA
16130 Ventura Blvd. Ste 620
Encino, CA 91436
- [U.S. Mail, first class postage prepaid]

4. Elmira Danielyan
Attorney for Capital One Bank (USA) NA
Bassi Edlin Huie & Blum
515 S. Flower St., Ste 1020
Los Angeles, CA 90071-2212
- [U.S. Mail, first class postage prepaid]

5. Patenaude & Felix
Attorney for Capital One Bank (USA), NA
9619 CHESAPEAKE DRIVE SUITE 300
SAN DIEGO CA 92123

Doc. #28.

The first service attempt uses the correct address per the FDIC, but no named officer was listed. The second attempt uses the "Mail General Correspondence" post office box listed on Creditor's website.³ No named officer was listed.

The third, fourth, and fifth attempts are to state court attorneys for Creditor. The abstract of judgment lists two attorneys: Elizabeth A. Bleier and Elmira Danielyan of Patenaude & Felix, A.P.C. Doc. #27, *Ex. D*. Elizabeth A. Bleier is inactive per the State Bar website, but she was served at the last Patenaude & Felix address listed. Docs. #25; #27, *Ex. F*; #28. Elmira Danielyan is still active but appears to no longer be with Patenaude & Felix. Doc. #27, *Ex. G*. She was served at the new Bassi Edlin Huie & Blum address, as well as the prior Patenaude & Felix address out of an abundance of caution. Docs. #25; #28.

However, neither Elizabeth A. Bleier, nor Elmira Danielyan, nor Patenaude & Felix can be presumed to be authorized to accept Rule 7004 service on behalf of Creditor without evidence of an express or implied agency. "An implied agency to receive service is not established by representing a client in an earlier action." *Villar*, 317 B.R. at 93; *Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (finding that former attorney must have express or implied authority from client to accept service under Rule 7004(b)).

As result, none of the five service attempts on Creditor were sufficient under Rule 7004(h). The court notes that little information about Creditor's leadership is available. Creditor is not listed on the California Secretary of State's "Business Search" tool.⁴ And though located in Virginia, Creditor is not listed in the Virginia State Corporation Commission's Clerk Information System ("CIS").⁵ There is an entry for "Capital One Bank" located at 4581 Cox Road, Glen Allen, VA 23060, but it became inactive on March 1, 2008 due to Creditor's conversion to a national bank.

Creditor and Capital One, National Association are subsidiaries of Capital One Financial Corporation. The Virginia CIS does contain listings for these entities: Capital One Financial Corporation's President, CEO, and Chairman is Richard D. Fairbank.⁶ His mailing address is 1680 Capital One Drive, McLean, VA 22102. Fairbank is also the CEO of Capital One, National Association at the same address.⁷

Public filings for Creditor also yield limited results. Creditor's primary regulator, the Office of the Comptroller of Currency ("OCC"), provides information about recent enforcement actions.⁸ The two most recent enforcement actions were concluded by *Consent Order* filed August 5, 2020, in which Fairbank and other individuals on the Board of Directors signed on behalf of Creditor.⁹

Creditor's secondary federal regulator, the Consumer Financial Protection Bureau ("CFPB"), also does not provide many details about Creditor's leadership.¹⁰ There is a *Stipulation and Consent Order* filed on July 18, 2012 as the result of an administrative proceeding in which Fairbank signed on behalf of Creditor as its Chairman.¹¹ In addition, Ryan M. Schneider signed as the President of Creditor. But this document was filed in 2012 and Schneider appears to have left Capital One sometime in 2016.¹²

The Federal Financial Institutions Examination Council ("FFIEC") has large swaths of bank data and other financial information available, but none of it is helpful for locating Creditor's officers.¹³ The quarterly-filed *Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework* (FFIEC 101) form entirely omits the names of any senior officers and provides that "Contact Information for the Reports of Condition and Income is for the confidential use of the Agencies and will not be released to the public[.]"

The Federal Reserve Bank ("FRB") has some information about Creditor, but none of it is helpful for Rule 7004(h) service. For example, there is an enforcement action from August 4, 2020, but it relates specifically to Capital One Financial Corporation, and Creditor is only briefly mentioned.¹⁴ Richard D. Fairbank again signs on behalf of Creditor and its affiliated entities.

Other debtors have faced similar issues locating information about this Creditor specifically. See *In re Eimers*, No. A12-00692-GS, 2013 Bankr. LEXIS 1707 (Bankr. D. Alaska Apr. 23, 2013). In *Eimers*, the Alaska Bankruptcy Court denied a motion to avoid lien without prejudice because the debtors addressed the service to a "Bank Officer" even though they certified to "a multi-hour internet search . . . [that] failed to produce the name of any bank officer of Capital One (USA), N.A." *Id.*, **2-7. No officer was named, and no specific office was identified. Thus, "there is no confidence that service will reach the appropriate office of someone charged with sufficient responsibility to ensure action will be taken. It is simply too generic to constitute acceptable service under Rule 7004(h)." *Id.*, at *7. The *Eimers* court further reasoned:

The debtors have detailed considerable effort to identify the appropriate person to accept service for Capital One Bank (USA), N.A. The court appreciates their frustration; identifying the current officers of a federally insured national bank for service should not be a difficult task. Even courts that have strictly interpreted Rule 7004(b)(3) and (h) have recognized that service upon an appropriate office may suffice where the party attempting service has been unable to identify an appropriate officer, by name, despite searching with reasonable and appropriate diligence. In this instance, however, service to "Bank Officer" is deficient under either view of Rule 7004(h)'s requirements.

Therefore, the court need not determine whether service upon an insured depository institution requires identification of a named individual.

Id., at *7 (footnote omitted), citing *Carlo v. Orion Omniservices Co. (In re Carlo)*, 392 B.R. 920, 921-22 (Bankr. S.D. Fla. 2008); see also *In re Cornejo*, No. A10-00351-DMD, 2010 Bankr. LEXIS 6423 (Bankr. D. Alaska Aug. 2, 2010). By footnote, the *Eimers* court suggested searching the FDIC website, the creditor's website, or the Security and Exchange Commission's EDGAR search tool, including publicly filed documents such as annual reports and proxy statements.¹⁵ *Id.*, at *9, n.19. Lastly, *Eimers* notes that although national banks are not incorporated in a state, "it may be prudent to search the corporate database of the state where the creditor is headquartered." *Ibid.*

Though EDGAR yielded no answers, the court did discover potential officers on Creditor's corporate governance website.¹⁶ In Capital One Financial Corporation's 2022 *Proxy Statement*, Richard D. Fairbank is listed as Creditor's "Chair."¹⁷ Though it is unclear whether this is a current or former designation, in light of Fairbank's participation in other regulatory actions involving Creditor, the court is persuaded that Fairbank is likely authorized to receive Rule 7004(h) service on behalf of Creditor. Further, Fairbank is still the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE for failure to serve a named officer as required by Rule 7004(h). Debtors are advised to serve Richard D. Fairbank at 1680 Capital One Drive, McLean, VA 22102, or any other named officer of Creditor, if known. In future matters, if it is unclear whether the correct officer or party has been served, the movant should describe the reasonable efforts and diligence undertaken to identify, locate, and serve the party to whom Rule 7004(h) service is required.

² See FDIC Cert. #33954. BankFind Suite, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (visited Apr. 11, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

³ See <https://www.capitalone.com/support-center/credit-cards/mail-capital-one> (visited Apr. 11, 2022).

⁴ CA SOS Business Search, <https://businesssearch.sos.ca.gov/> (visited Apr. 11, 2022); see also <https://bizfileonline.sos.ca.gov/search/business> (visited Apr. 18, 2022).

⁵ VA SCC Clerk's Information System, <https://cis.scc.virginia.gov/> (visited Apr. 11, 2022).

⁶ *Id.*, Capital One Financial Corporation, Filing No. 2110273805242 (Oct. 27, 2021) (visited Apr. 11, 2022).

⁷ *Id.*, Capital One, National Association, Filing No. 2105273298087 (May 27, 2021) (visited Apr. 11, 2022).

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- ⁸ OCC Financial Institutions Search, <https://occ.gov/publications-and-resources/tools/occ-financial-institution-search/index-occ-financial-institution-search.html> (visited Apr. 11, 2022).
- ⁹ Consent Order #2020-037, AA-EC-20-49, (Aug., 5, 2020) <https://www.occ.gov/static/enforcement-actions/ea2020-037.pdf> (visited Apr. 11, 2022).
- ¹⁰ See <https://www.consumerfinance.gov> (visited Apr. 11, 2022).
- ¹¹ *In re Capital One Bank, (USA) N.A.*, File No. 12-CFPB-0001 (July 18, 2012), https://files.consumerfinance.gov/f/201207_cfpb_consent_order_0001.pdf (visited Apr. 11, 2022).
- ¹² <https://www.realogy.com/about/leadership-team/executive-officers/ryan-schneider-exec/> (visited Apr. 11, 2022).
- ¹³ Capital One Bank (USA), National Association FFIEC entry, <https://www.ffiec.gov/npw/Institution/Profile/2253891?dt=20151231>.
- ¹⁴ *In re Capital One Financial Corporation*, Docket No. 20-014-B-HC (Aug. 4, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/enf20200806a1.pdf>.
- ¹⁵ EDGAR Lookup, <https://www.sec.gov/edgar/searchedgar/companysearch.html>.
- ¹⁶ Capital One Corporate Governance, <http://ir-capitalone.gcs-web.com/corporate-governance/governance-overview> (visited Apr. 11, 2022).
- ¹⁷ See 2022 Proxy Statement, Section II, at 20, <http://ir-capitalone.gcs-web.com/static-files/81357088-38a4-4ea5-9a89-a5544fcb3c59> (visited Apr. 11, 2022).

5. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[JHK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2022 [[71](#)]

FORD MOTOR CREDIT COMPANY
LLC/MV
RILEY WALTER/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

Ford Motor Credit Company, LLC withdrew this motion on April 18, 2022. Doc. #135. Accordingly, the motion is dismissed, and the hearing will be DROPPED FROM CALENDAR.