UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

Hearing Date: Tuesday, May 9, 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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To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 21-11001-B-11 **IN RE: NAVDIP BADHESHA**
RMB-16

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

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

NO RULING.

The court is in receipt of the parties' joint status report. Doc. #325. This scheduling conference will be called and proceed as scheduled. The parties shall be prepared for the court to set an evidentiary hearing.

2. 23-10219-B-11 **IN RE: WPI WATER RESOURCES, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
2-6-2023 [1]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 13, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

The court is in receipt of the Debtor's status conference statement. Doc. #80. This status conference will be CONTINUED to June 13, 2023 at 9:30 a.m. to be heard in connection with the plan confirmation hearing.

3. 23-10219-B-11 **IN RE: WPI WATER RESOURCES, INC.**
LKW-4

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
4-13-2023 [64]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The Law Offices of Leonard K. Welsh ("Applicant"), general bankruptcy counsel to chapter 11, subchapter V debtor in possession WPI Water Resources, Inc. ("Debtor"), request interim compensation under 11 U.S.C. § 331 in the sum of $9,978.93, subject to final review pursuant to 11 U.S.C. § 330. Doc. #64. This amount consists of $9,850.00 in fees as reasonable compensation for services rendered and reimbursement of $128.93 in actual, necessary expenses from February 7, 2023 through March 31, 2023. *Id.*

Debtor's Chief Executive Officer and authorized representative, Amanda Jensen, declares she read and reviewed the fee application and determined the compensation requested reflects the services rendered by Applicant. Doc. #67. Debtor has no objection to this court authorizing payment of $9,978.93 to Applicant. Ms. Jensen understands that the compensation will be paid from money on deposit in Applicant's Attorney Trust Account and from the retainer paid prior to the filing of this case. *Id.*

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 Fed. R. Bankr. P. 2002(a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11, subchapter V bankruptcy on February 6, 2023. Doc. #1. The court approved Applicant's employment as general bankruptcy counsel on March 10, 2023 pursuant to 11 U.S.C. §§ 327 and 329-31, effective as of the February 6, 2023 petition date. Docs. #34; #37. Applicant's services here were within the time period prescribed

by the employment order. Further, the employment order provided that no compensation would be permitted except upon court order following application under § 330(a), and compensation shall be determined at the "lodestar rate" applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation under § 331 would be entertained. *Id.*

Prior to filing bankruptcy, Applicant was paid a $20,000.00 retainer from Debtor, of which $8,968.00 was paid to Applicant for pre-petition services and expenses. *Id.*; Docs. #64; #68; *Ex. C*, Doc. #66. The remaining balance of $11,032.00 is being held in trust for payment of compensation. Applicant intends to draw down this retainer to fund this application.

This is Applicant's first interim fee application. Doc. #64. Applicant's firm provided 34.00 billable hours of legal services at the following rates, totaling **$9,850.00** in fees:

Professional	**Rate**	**Billed**	**Total**
Leonard K. Welsh	$400	19.00	$7,600.00
Trinette M. Lidgett	$150	15.00	$2,250.00
Total Hours & Fees		**34.00**	**$9,850.00**

Id.; Doc. #68; *Ex. B*, Doc. #66. Applicant also incurred **$128.93** in expenses:

Filing fees	$32.00
Postage	$79.03
WebPACER Charges	$17.90
Total Costs	**$128.93**

Id. These combined fees and expenses total **$9,978.93**. This amount will be paid from the $11,032.00 retainer held in trust, which will leave $1,053.07 for future fee applications.

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

Applicant's services included, without limitation: (1) advising Debtor about the administration of a chapter 11 case and its duties as a debtor in possession; (2) preparing schedules and other required documents for the Debtor, as well as amendments; (3) preparing for and attending the Initial Debtor Interview; (4) providing required

documents to the U.S. Trustee and communicating with the U.S. Trustee regarding insurance; (5) opening debtor in possession bank accounts; (6) reviewing an appraisal report; (7) advising Debtor about the 341 meeting of creditors, and preparing and attending the same; (8) preparing and filing the motion to approve employment (LKW-1); (9) preparing and filing a motion for authorization to use cash collateral and provide adequate protection (LKW-2); (10) communicating with Debtor about correspondence from the Internal Revenue Service and tax issues, as well as proofs of claim filed in this case; and (11) preparing and sending notices of stay of proceedings for various lawsuits. Doc. #64; *Ex. B*, Doc. #66. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses from the pre-petition retainer. Doc. #67.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. Applicant will be awarded $9,850.00 in fees as reasonable compensation and $128.93 in actual, necessary expenses on an interim basis under § 331, subject to final review pursuant to § 330. Applicant will be authorized to draw $9,978.93 from the pre-petition retainer on the terms outlined above for services rendered and costs incurred from February 7, 2023 through March 31, 2023.

4. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
9-1-2022 [1]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

This status conference will be CONTINUED to June 27, 2023 at 9:30 a.m. to be heard in connection with the plan confirmation hearing.

5. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-15

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR ESTIMATION OF DISPUTED CLAIM
12-16-2022 [174]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/27/23 PER ECF ORDER #430

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order continuing this scheduling conference to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #430.

6. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-16

CONTINUED SCHEDULING CONFERENCE RE: MOTION FOR ESTIMATION OF DISPUTED CLAIM (PROOF OF CLAIM 10 FILED BY RODNEY HEINTZ)
12-21-2022 [191]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/27/23 PER ECF ORDER #431

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order continuing this scheduling conference to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #431.

7. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-22

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES HELSLEY PC FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
4-6-2023 [408]

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified.

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

Wanger Jones Helsley PC ("Applicant"), general bankruptcy counsel for debtor in possession Valley Transportation, Inc. ("Debtor"), seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of $82,219.50. Doc. #408. This amount consists of $77,876.00 in fees as reasonable compensation for services rendered and $4,343.15 in reimbursement for actual, necessary expenses from November 16, 2023 through March 15, 2023. *Id.*

Deborah Simpson, Debtor's CEO and representative, has received and reviewed the fee application and has no objection to the proposed payment. Doc. #412.

No party in interest timely filed written opposition. However, this matter will be called and proceed as scheduled. The court intends to GRANT THIS MOTION AS MODIFIED below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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). 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). 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.

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-331 on September 22, 2022, effective on the petition date. Doc. #53. This is Applicant's second interim fee application. Doc. #408. Applicant was previously awarded the following fees:

Retainer	$125,000.00
Pre-petition compensation	- $6,730.00
Retainer on petition date	= $118,270.00
1st Fee Application (11/01/22-11/16/22)	- $102,128.98
Retainer for future compensation	= $16,141.02

See Docs. #168; #170. After drawing down the $118,270.00 retainer, Applicant should still have $16,141.02 to apply to this fee application. However, the motion and exhibits indicate that the remaining retainer is $16,071.02, which appears to be derived from an owed prior statement balance of $70.00. *Ex. C* at 23, Doc. #411. It is unclear from where this prior statement balance derives. The court will inquire at the hearing.

Applicant's firm provided 203.20 billable hours of legal services at the following rates, totaling **$77,876.00** in fees:

Professional	**Rate**	**Hours**	**Fees**
Danielle J. Bethel	$325	18.40	$5,980.00
Riley C. Walter	$0	1.50	$0.00
Riley C. Walter	$550	78.20	$43,010.00
Steven K. Vote	$315	38.90	$12,253.50
Steven K. Vote	$375	26.90	$10,087.50
Nicole Medina	$0	0.80	$0.00
Nicole Medina	$170	38.50	$6,545.00
Total Hours & Fees		**203.20**	**$77,876.00**

Ex. B, *id.*; Docs. #408; #410. Applicant also incurred **$4,343.15** in expenses:

Parking	$6.88
Transcript	$324.00
Filing fees	$32.00
PACER	$85.00
CourtCall	$55.50
Client lunch	$36.73
Copying (16,579 @ $0.15)	$2,486.85
Postage	$1,316.19
Total Costs	**$4,343.15**

Ex. C, Doc. #411. The lunch expense pertains to the Rule 2004 examination of Deborah Simpson, Debtor's Chief Executive Officer, on January 5, 2023. However, the order granting the application for the Rule 2004 examination provided that the examination shall take place by video. Doc. #166.

Additionally, meals do not appear to be compensable as "actual" or "necessary" expenses. *See*, *e.g.*, *In re Maruko Inc.*, 160 B.R. 633, 644 (Bankr. S.D. Cal. 1993) (disallowing insufficiently documented meal expenses); *In re Jefsaba, Inc.*, 172 B.R. 786, 802 (Bankr. E.D. Pa. 1994) ("Since Code § 330 requires that the expenses be 'actual, necessary' expenses, if the expenses are ones which the applicants would have incurred in any event, such as lunch, . . . they are not 'necessary' and compensation will be denied."); *In re Holiday Mart*, 9 B.R. 99, 109 (Bankr. D. Haw. 1981) ("Lunch for attorneys is not a reasonably necessary expense."); *MKB Constructors v. Am. Zurich Ins. Co.*, 83 F. Supp. 3d 1078, 1095-96 (W.D. Wash. 2015) ("The cost of meals, working or otherwise, for attorneys or others located in Seattle is an expense that would have been borne irrespective of the litigation or trial. The costs of these meals are not expenses of litigation."), citing *Castellano v. Charter Communs., LLC*, No. C12-5845 RJB, 2014 U.S. Dist. LEXIS 54253, 2014 WL 1569242, at *5 (W.D. Wash. Apr. 17, 2014) (declining to award reimbursement of meal expenses), *Conti v. Corp. Servs. Grp., Inc.*, 30 F. Supp. 3d 1051 (W.D. Wash. July 10, 2014) ("The court will not compensate counsel for any 'working lunch' or 'working dinner' . . ."); *In re Bank of New England Corp.*, 134 B.R. 450, 457-58 (Bankr. D. Mass. 1991) (collecting cases and disallowing meal expenses). The court will inquire about this expense at the hearing.

If that expense is disallowed, the remaining costs would total **$4,306.42**. These combined fees and allowed expenses would total **$82,182.42**. If the retainer of $16,141.02 (or $16,071.02) were applied to this amount, then $66,041.40 (or $66,111.40) would remain outstanding to be paid by Debtor.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). Applications for interim compensation under 11 U.S.C. § 331 are subject to review under § 330.

Applicant's services included, without limitation: (1) engaging in mediation and discovery in the disputed matter with creditor Mendoza (Adv. Proc. No. 22-01025; WJH-16); (2) preparing for and attending the 2004 examination and depositions of Mendoza; (3) preparing and filing the subchapter V plan and related documents, including ballot tabulation (WJH-8); (4) preparing and filing motion to set an administrative claims bar date (WJH-19) and the assumption of the BBSI contract and related leases (WJH-10-12; and (5) preparing and filing the first interim fee application (WJH-13) and monthly operating reports. *Ex. A*, Doc. #411. Debtor has consented to payment of the proposed fees and expenses. Doc. #412.

Other than the potentially disallowed expense outlined above, the court finds the services and remaining expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses from the pre-petition retainer and from funds on hand. Doc. #412.

This matter will be called as scheduled to inquire about the $70.00 retainer discrepancy and the client lunch expense. The court is inclined to GRANT THIS MOTION AS MODIFIED above. Applicant will be awarded $77,876.00 in fees as reasonable compensation and $4,306.42 in actual, necessary expenses on an interim basis under § 331, subject to final review pursuant to § 330. Applicant will be authorized to draw down the pre-petition retainer, and Debtor authorized to pay the remaining balance of fees owed on the terms outlined above for services rendered and costs incurred from November 16, 2023 through March 15, 2023.

8. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-7

CONTINUED STATUS CONFERENCE RE: MOTION FOR ESTIMATION OF DISPUTED CLAIM
11-29-2022 [150]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/27/23 PER ECF ORDER #428

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order continuing this status conference to June 27, 2023 at 9:30 a.m. as a status conference. Doc. #428.

9. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-8

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
11-29-2022 [149]

RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/27/23 PER ECF ORDER #432

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order continuing this confirmation hearing to June 27, 2023 at 9:30 a.m. Doc. #432. Not later than June 20, 2023, the Debtor shall inform the court of the status of this matter and whether the hearing will go forward. *Id.*

10. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-9

CONTINUED FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF ANDREW MENDOZA, CLAIM NUMBER 8
11-9-2022 [116]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/27/23 PER ECF ORDER #429

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

DISPOSITION: Continued to June 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order continuing this scheduling conference to June 27, 2023 at 9:30 a.m. Doc. #429.

11. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
CAE-1

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-10-2023 [1]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

12. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-12

MOTION TO EMPLOY CHW LLP AS ACCOUNTANT(S)
3-30-2023 [158]

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") asks the court to approve Debtor's retention of CHW LLP ("Applicant') as accountant(s) for the estate. Doc. #158. The application is supported by a verified statement of connections, resume, and the declaration of Robert Church, a managing partner of Applicant. Docs. ##160-61.

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 subchapter V trustee, 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), 328, 330, Fed. R. Bankr. P. ("Rule") 2013-14, 2016, 5002, 5004, and 9001, and LBR 2014-1. Doc. #158.

Debtor argues it is necessary and essential for Debtor to employ Applicant because of the extensive accounting services required, including, but not limited to (1) preparation of adjusting entries, working papers, and depreciation calculations in connection with preparing, reporting on, or estimating financial statements, financial reports, federal income and state tax returns and/or liabilities, and federal income and tax deposits, including monthly operating reports; (2) review of correspondence received, preparation of correspondence in response to and representation services as needed in connection with federal, state, and county taxing authorities; and (3) consulting, tax advice, and litigation services as required. *Id.* Debtor selected Applicant because it needs accounting services.

Debtor proposes paying Applicant from the assets of the estate on an hourly basis at the respective hourly rates of Applicant's billable professionals, subject to court approval. *Id.* Applicant's rates range from $300.00-$400.00 per hour for partners down to as low as $175.00 per hour for non-owners. Doc. #160. Debtor also requests that monthly applications for interim compensation pursuant to 11 U.S.C. § 331 be entertained if the combined fees and expenses sought exceed $5,000.00. Doc. #158.

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 for thirteen years.
(2) Applicant does not currently represent any creditors on totally unrelated matters, and it is Applicant's position that closed matters are not related to this bankruptcy case. Applicant has not obtained through any previous representation the confidential information of any creditor in this case that could be used in a way that is adverse to that creditor.
(3) Applicant has no known connection with any other parties in interest or their respective attorneys and accountants.
(4) Applicant has no connections with any attorneys in this case.
(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 has no connections with the bankruptcy judge presiding over this case except as noted above.

(8) If additional connections are discovered, Applicant will disclose such connections.

Ex. A, Doc. #161. The verified statement of connections is incorporated by reference in the declaration of Robert Church, a managing partner of Applicant. Doc. #160. Mr. Church's declaration also says that Applicant was not owed any fees on the petition date, Applicant did not provide any services to Debtor prior to the condition of this application, and Applicant has not received a retainer for services and understands fees are subject to court approval. *Id.*

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 accountant, 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).

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.

13. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-13

CONTINUED MOTION TO EMPLOY MCCORMICK BARSTOW AS SPECIAL COUNSEL
3-15-2023 [74]

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.

This motion was originally heard on April 18, 2023. Doc. #249.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved 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 was 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

This motion was continued to May 9, 2023 so Applicant could obtain 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. Docs. #249; #261.

On May 1, 2023, Debtor filed a supplemental declaration from Daniel L. Wainwright, an amended verified statement of connections, and an agreement and waiver of conflict of interest. Docs. ##322-23.

Mr. Wainwright's supplemental declaration addresses the court's concerns regarding potential conflicts of interest. Doc. #322.

Applicant is concurrently representing (a) Debtor as special counsel in several medical malpractice lawsuits, (b) Affiliated Physician Practice, Inc. ("APP") in a related chapter 7 proceeding, and (c) Madera Community Hospital Medical Staff ("MCHMS"), an unincorporated association that is also a party in interest in this case. Doc. #322. Given that a potential conflict of interest could arise from the concurrent representation, Applicant secured the informed written consent of Debtor, APP, and MCHMS as required by Cal. R. Prof'l Conduct 1.7. *Ex. B*, Doc. #323.

Applicant also filed an amended verified statement of connections to clarify that Applicant does not represent APP's CEO, Dr. Aftab Naz, M.D., in any individual capacity. *Ex. A*, *id.*; Doc. #322.

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).

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.

14. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-15

CONTINUED 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.

This motion was originally heard on April 18, 2023. Doc. #251.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject the following leases or executory contracts (collectively, the "Agreements"): (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" between Debtor and Brenda Neer Physical Therapy, Inc., a California corporation dba Chowchilla Physical Therapy ("CPT"). Doc. #173. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

The motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[1] The motion was 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.

At the parties' request at the hearing, the court continued this motion. Docs. #251; #263. The continued hearing will proceed under Local Rule of Practice ("LBR") 9014-1(f)(2). 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 July 17, 2023 as the bar date to coincide with the bar date for non-governmental proofs of claim. Debtor shall file a certificate of service of notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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[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. Debtor served notice of the continued hearing on April 20, 2023. Doc. #271.

15. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-16

CONTINUED 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.

This motion was originally heard on April 18, 2023. Doc. #252.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved 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 Relief[2] ("Alliance"), as subsequently assigned by Alliance to, and assumed by, AMOR Wellness Center, Inc. ("AMOR"). Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

The motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[3] The motion was 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.

At the parties' request at the hearing, the court continued this motion. Docs. #252; #264. The continued hearing will proceed under Local Rule of Practice ("LBR") 9014-1(f)(2). 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 July 17, 2023 as the bar date to coincide with the bar date for non-governmental proofs of claim. 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.

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[2] The motion says that the Lease Agreement was executed by and between Debtor and AMOR before it was assigned to AMOR; however, 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. Debtor served notice of the continued hearing on April 20, 2023. Doc. #273.

16. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-17

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-4-2023 [184]

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

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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.

This motion was originally heard on April 18, 2023. Doc. #253.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved 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 requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[4] The motion was 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.

At the parties' request at the hearing, the court continued this motion. Docs. #253; #265. The continued hearing will proceed under Local Rule of Practice ("LBR") 9014-1(f)(2). 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, Debtor leased office space located at 1050 E. Almond Avenue in Madera, 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 July 17, 2023 as the bar date to coincide with the bar date for non-governmental proofs of claim. Debtor shall file a certificate of service of notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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[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. Debtor served notice of the continued hearing on April 20, 2023. Doc. #275.

17. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-18

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [198]

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 authorizing Debtor to reject (1) a *Lease Agreement* dated July 28, 2021 between Debtor and Cisco Systems Capital Corporation ("Cisco"), and (2) an *Installment Payment Agreement (Support Only)* allegedly signed[5] and dated on or about June 22, 2021

(collectively, "Agreements") between Debtor and Cisco. Doc. #198. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed.

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[6] 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. ##200-02.

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 subchapter V trustee, 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. Prior to filing bankruptcy, Debtor executed the Agreements to lease phone server equipment from Cisco and receive related software and technical support. Doc. #201; *Exs. A-B*, Doc. #202. Debtor acknowledges that the Agreements may not constitute an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. *Id.* at 2 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the phone server equipment and related support for which it contracted under the Agreements. *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, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing phone server equipment and related support, so the Agreements are no longer beneficial to Debtor or the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will set July 17, 2023 as the claims bar date for claims based on this motion because that date coincides with the non-governmental proofs of claim bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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[5] The Support Agreement is neither signed nor dated. *Ex. B*, Doc. #202.
[6] Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Cisco's CEO on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #203; #237.

18. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-19

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [204]

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 authorizing Debtor to reject a *Lease Agreement* dated June 7, 2022 between Debtor and Americorp Financial, LLC ("Americorp"), which was subsequently assigned to LEAF Capital Funding, LLC ("LEAF") pursuant to a *Service Agreement* dated June 9, 2022 and an *Assignment of Equipment Lease Without Recourse* dated June 9, 2022 (collectively, "Agreements"). Doc. #204. Debtor also requests the court to fix a bar date by which any claim(s) based on this motion must be filed.

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[7] 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. ##206-08.

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 subchapter V trustee, 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. Prior to filing bankruptcy, Debtor executed the Agreements to lease two Integrity 207 Sterlizers from LEAF. Doc. #206; *Exs. A-C*, Doc. #208. Since Debtor ceased all patient care and shut down operations of its healthcare clinics, Debtor has determined that it no longer needs the equipment.

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, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing the sterilizers after it ceased providing healthcare services, and therefore, the Agreements are no longer beneficial to Debtor or the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will set July 17, 2023 as the claims bar date for claims based on this motion because that date coincides with the non-governmental proofs of claim bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

[7] Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving the registered agent of Americorp and the managing member and CEO of LEAF on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #209; #238.

19. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-20

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [212]

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 authorizing Debtor to reject a *Lease Agreement Number MA022812* dated February 28, 2012 between Debtor and Winthrop Resources Corporation ("Winthrop"), as subsequently assigned to Huntington Technology Finance, Inc. ("Huntington"); and a related *Lease Schedule No. 003*, as amended by *Lease Schedule No. 003R* dated November 17, 2020 (collectively, "Agreements") between Debtor, Winthrop, and TCF National Bank ("TCF"). Doc. #212. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed.

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[8] 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. ##214-16.

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 subchapter V trustee, 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. Prior to filing bankruptcy, Debtor executed the Agreements to lease a Voalte Secure Text Messaging System from Huntington. *Ex. A*, Doc. #215; Doc. #214. Debtor acknowledges that the Agreements may not constitute an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. *Id.* at 2 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the mobile text messaging system contracted for under the Agreements. *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, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing a mobile text messaging system, and therefore the Agreements are no longer beneficial to Debtor or the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will set July 17, 2023 as the claims bar date for claims based on this motion because that date coincides with the non-governmental proofs of claim bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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[8] Debtor complied with Rules 6006(a), 7004(b)(3), (h), and 9014(b) by serving Huntington's CEO & President, Winthrop's CEO, and TCF's CEO & President via certified mail on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #217; #239.

20. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-21

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [218]

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 authorizing Debtor to reject the following agreements (collectively "Agreements") between Debtor and Siemens Financial Services, Inc. ("Siemens"):

(1) *Master Lease Agreement* dated October 23, 2020 and its related (a) *Leasing Schedule -5452* dated October 30, 2020, (b) *Leasing Schedule -5343* dated October 30, 2020, (c) *Leasing Schedule -5455* dated October 30, 2020, (d) *Leasing Schedule -9200* dated April 28, 2022, (e) *Leasing Schedule -9197* dated April 29, 2022, and (f) *Leasing Schedule -9198* dated April 27, 2022;
(2) *Equipment Lease Agreement -4306* dated April 13, 2020;
(3) *Equipment Lease Agreement -4307* dated April 13, 2020; and
(4) *Equipment Lease Agreement -4308* dated April 13, 2020.

Doc. #218. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed.

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[9] 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. ##220-22.

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 subchapter V trustee, 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. Prior to filing bankruptcy, Debtor leased the following imaging equipment (collectively "Imaging Equipment") from Siemens under the Agreements:

a. one (1) x ACUSON Sequoia and related equipment;
b. one (1) x CIOS Alpha VA 30 and related equipment;
c. two (2) x MOBILETT Elara Max and related equipment;
d. one (1) x Multix Fusion Max and related equipment;
e. one (1) x Luminos Agile Max and related equipment;
f. one (1) x SOMATOM Definition AS eco and related equipment;
g. two (2) x ACUSION Redwood ultrasound system

Exs. A-J, Doc. #222; Doc. #221. Debtor acknowledges that the Agreements may not constitute an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. *Id.* at 2 n.1.

Since Debtor ceased all patient care and shut down operations of its healthcare clinics, Debtor no longer needs the Imaging Equipment for which it contracted under the Agreements.

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, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing the Imaging Equipment, and therefore, the Agreements are no longer beneficial to Debtor or the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will set July 17, 2023 as the claims bar date for claims based on this motion because that date coincides with the non-governmental proofs of claim bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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[9] Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Siemens' CEO via regular mail on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #223; #240.

21. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-22

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [230]

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 authorizing Debtor to reject a *Master Lease Agreement Number 2017676* dated December 29, 2017 and related *Equipment Schedule No. 1* dated December 29, 2017, as amended by *Amended and Restated Equipment Schedule No. 1* dated September 13, 2018 (collectively the "Agreements") between Debtor and First American Commercial Bancorp, Inc. ("First American"). Doc. #230. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed.

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.[10] 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. ##232-34.

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 subchapter V trustee, 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. Prior to filing bankruptcy, Debtor leased bedside monitoring equipment from First American under the Agreements. *Ex. A*, Doc. #233; #232. Since Debtor ceased all patient care and shut down operations of its healthcare clinics, Debtor no longer needs the bedside monitoring equipment for which it contracted under the Agreements.

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, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing the monitoring equipment, and therefore, the Agreements are no longer beneficial to Debtor or the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will set July 17, 2023 as the claims bar date for claims based on this motion because that date coincides with the non-governmental proofs of claim bar date. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

[10] Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving First American' CEO via certified mail on April 7, 2023, and the creditors committee. Doc. #235.

22. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-3

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL, AND/OR MOTION FOR ADEQUATE PROTECTION
3-13-2023 [18]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING
CONT'D TO 5/16/23 PER ECF ORDER #353

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

DISPOSITION: Continued to May 16, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

At the parties' request, the court issued an order CONTINUING the hearing on this motion to May 16, 2023 9:30 a.m., and authorizing Debtor to use cash collateral from May 13, 2023 to May 20, 2023 in accordance with the budget attached as Exhibit A. Doc. #353. If the parties have not reached a consensual agreement for further uses by May 11, 2023, then the court will be notified on May 11, 2023, Debtor will file its budget for future uses not later than May 12, 2023, and parties can raise objections, if any, at the hearing on May 16, 2023. *Id.*

23. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
WJH-23

MOTION TO BORROW AND/OR MOTION FOR ADEQUATE PROTECTION
5-2-2023 [456]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
OST 5/2/23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Chapter 11, subchapter V debtor in possession Valley Transportation, Inc. ("Debtor"), moves for authority to borrow, give security, and provide adequate protection pursuant to 11 U.S.C. §§ 362 & 364, Fed. R. Bankr. P. ("Rule") 4001(c), (d), and 6006. Doc. #456. Debtor seeks authorization to enter into a *Premium Finance Security Agreement* ("Agreement") with Allegiance Premium Finance Company & Zions Bank ("Lenders") to borrow funds to be used to finance its insurance premium payments, and, in exchange, to give security and provide adequate protection to Lenders. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to DENY WITHOUT PREJUDICE this motion for the reasons outlined below.

This motion was filed and served with an order shortening time ("OST") pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Doc. #455. Consequently, no party in interest was required to file written opposition to the motion. If any respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The OST reduced the period of notice required for this motion provided that Debtor gives notice, not later than May 2, 2023, to all secured creditors and counsel, if known; the twenty largest unsecured creditors; persons who have requested special notice; the Debtor; the subchapter V trustee; and the U.S. Trustee's office by mail or email, if known. *Id.* Debtor appears to have served all required parties via mail and email, if known, on May 2, 2023. Doc. #460.

Debtor is a corporation that owns and operates numerous power vehicles and trailers used to provide pickup and delivery services throughout Central California. Doc. #458. As a result, Debtor is required to maintain adequate insurance coverage, and would have to cease operations without such coverage. Annual premiums for May 1, 2023 through April 30, 2024 total $143,676.60. *Id.* Of this amount, Debtor is prepared to pay a down payment of $32,519.02 from its unencumbered cash on hand, leaving $111,157.58 in premiums that must be paid under the policies. *Id.* Debtor seeks to enter into and execute the Agreement with Lenders to finance the remaining premium balance required under the insurance policies for property and liability coverages.

The terms of the Agreement are as follows:

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Total Premiums, Taxes, and Fees	$143,676.60
Down Payment	$32,519.02
Loan amount	$111,157.58
Interest Annual Percentage Rate	9.34%
Interest Finance Charges	$4,813.82
Term of loan	12 months
Installment Payment	$11,597.14

Id. In exchange, the Lenders will be given a first priority security interest in the insurance policies and any additional premiums required under the policies, including all return premiums, dividend payments, and loss payments which reduced unearned premiums. *Id.* Lenders are appointed as attorney-in-fact with irrevocable power to cancel the policies in the event of default under the Agreement.

Debtor and Lenders have agreed that Debtor will provide Lenders with adequate protection. Debtor will make timely payments due under the Agreement and Lenders are authorized to receive and apply such payment to the amounts owed by Debtor to Lenders. If Debtor fails to make any of the payments due under the Agreement as they become due, the automatic stay shall be automatically lifted to enable Lenders and/or third parties, including insurance companies providing the coverage under the policies, to take all necessary and appropriate actions to cancel the policies, collect the collateral, and apply such collateral to the indebtedness owed to Lenders by Debtor under the Agreement. *Id.*

However, it appears that Debtor may already be in default under the Agreement. Under the terms of the Agreement,

> Default includes any one of the following:
> (1) failing to pay any installment to Intermediary [Allegiance Premium Finance Company, LLC], for and behalf of Lender [Zions Bancorporation, N.A. dba Zions First National Bank], at its mailing address by the date it is due;
> (2) misrepresenting any information contained herein, where provided by the Borrower or its agent or broker, including, but not limited to, the pre-condition that the stated down payment ("Down Payment") has been made to the listed insurers or Intermediary; and
> (3) failing to abide by any other terms and conditions of this Agreement.

Agreement at 2, *Ex. A*, Doc. #459. On the first page of the Agreement, Debtor represents and warrants to Lenders that, among other things:

> (3) Borrower [Debtor] is not insolvent or in bankruptcy, and, if a corporation, limited liability company or partnership, is a going concern;

> . . .
> BORROWER AGREES THAT THE PROVISIONS ON ALL PAGES OF THIS FORM, INCLUDING ANY ADDITIONAL PAGES LISTING SCHEDULED POLICIES, CONSTITUTE A PART OF THIS AGREEMENT, AND THAT ALL OF THE INFORMATION IS TRUTHFUL, ACCURATE AND COMPLETE.

Agreement at 1, *Ex. A*, *id.* Since Debtor is in bankruptcy, it appears that the Agreement is in default by misrepresenting information contained in the Agreement and failing to abide by its terms. If this motion is granted, would Lenders not automatically have relief from the automatic stay to enforce their rights and remedies under the Agreement, as well as the ability to unilaterally cancel the policies?

Immediate relief from stay is also not an appropriate provision without substantial justification which is absent in the motion. LBR 4001-1(c)(3). The proposed agreement contains no grace period. Doc. #459

This matter will be called and proceed as scheduled. Opposition may be presented at the hearing.

11:00 AM

1. 23-10327-B-7 **IN RE: FREDDY/RENA SAUCEDA**

REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
3-21-2023 [15]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between Freddy Danny Sauceda and Rene Marie Sauceda ("Debtors") and First Tech Federal Credit Union for a 2020 Dodge Challenger Coupe R/T was filed on March 21, 2023. Doc. #15.

The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney without the appropriate attestations. *Id.* Additionally, the reaffirmation agreement is between a represented debtor and a credit union. 11 U.S.C. § 524(m)(2); *Bay Fed. Credit Union v. Ong (In re Ong)*, 461 B.R. 559, 563 (B.A.P. 9th Cir. 2011) (reversing disapproval of reaffirmation agreement between represented debtor and credit union), citing *In re Morton*, 410 B.R. 556, 562 (B.A.P. 9th Cir. 2009) (reaffirmation agreement between represented debtor and credit union is "not subject to judicial oversight"). Pursuant to § 524(d), the court need not approve the agreement.

1:30 PM

1. 23-10504-B-7 **IN RE: REBECCA MORRISON**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-4-2023 [24]

U.S. BANK NATIONAL ASSOCIATION/MV
JENNIFER WONG/ATTY. FOR MV.
DISMISSED 4/14/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court issued an order dismissing this case on April 14, 2023. Doc. #31. Accordingly, this motion for relief from the automatic stay will be DENIED AS MOOT.

2. 22-10005-B-7 **IN RE: PATRICIA TESSENDORE**
ADJ-4

ORDER TO SHOW CAUSE
3-1-2023 [112]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

3. 23-10405-B-7 **IN RE: MAYRA PEREZ/NUNEZ**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-29-2023 [14]

TD BANK, N.A./MV
LAYNE HAYDEN/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 2020 Toyota Rav4 ("Vehicle"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Mayra Perez/Nunez ("Debtor") did not oppose.

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.

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 at least two complete pre-petition payments. The movant has produced evidence that debtor is delinquent at least $1,148.18. Docs. #17, #20.

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 Debtor is in chapter 7. The Vehicle is valued at $28,425.00 and Debtor owes $32,253.89. Doc. #17.

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 at least two pre-petition payments to Movant and the Vehicle is a depreciating asset.

4. 23-10406-B-7 **IN RE: AMANDA VASQUEZ**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2023 [12]

AMERICREDIT FINANCIAL SERVICES, INC./MV
LAYNE HAYDEN/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.

Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2016 Honda Pilot ("Vehicle"). Doc. #12. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Amanda Vasquez ("Debtor") did not oppose.

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 Systems, 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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor became delinquent under financing agreement pre-petition in the amount of $2,338.70, and as a result, the account was charged-off on February 27, 2023. Doc. #17; *Exs. C-D*, Doc. #14. Under the agreement's acceleration clause, Debtor is in default for the entire balance of $15,462.23. *Ex. A*, *id.*; Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the 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- and post-petition payments to Movant and the Vehicle is a depreciating asset.

5. 22-11907-B-7 **IN RE: FREON LOGISTICS**
MAH-3

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
4-11-2023 [1027]

WELLS FARGO EQUIPMENT FINANCE, INC./MV
LEONARD WELSH/ATTY. FOR DBT.
MARSHA HOUSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit in conformance with the ruling below.

Wells Fargo Equipment Finance, Inc. ("Movant") requests an order approving a joint stipulation ("Stipulation") with chapter 7 trustee Jeffrey M. Vetter ("Trustee") under Fed. R. Bankr. P. ("Rule") 4001(d). Doc. #1027. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). Doc. #1030.

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.

Movant is a secured creditor of Debtor with a perfected security interest in eight 2021 Utility VS2RA Reefer Trailers with 2020 Carrier X4 7500 Reefer Units and 16 2023 Kenworth T680 Tractors (collectively the "Vehicles"). Doc. #1031.

Movant and Trustee agreed by the Stipulation to grant Movant relief from the automatic stay to permit it to exercise its remedies under California law and the respective loan and security agreements, including repossession and sale of the Vehicles. Doc. #1030. Additionally, Trustee will provide to Movant the known location of the Vehicles and will cooperate in all respects in its surrender to Movant. *Id.*

Movant separately filed the Stipulation and docketed it as a stipulation. *Id.* Movant now requests approval of the Stipulation. Doc. #1027.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

This motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief.

Any proposed order shall attach the Stipulation as an exhibit.

6. 23-10210-B-7 **IN RE: KEVIN/DANIELLE FOUSE**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-28-2023 [19]

STELLANTIS FINANCIAL SERVICES, INC./MV
JOEL WINTER/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.

Stellantis Financial Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Jeep Wagoneer ("Vehicle"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Id. Kevin Fouse and Danielle N. Fouse (collectively "Debtors") did not oppose.

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 debtors, 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 debtors do 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 Debtors have failed to make at least two complete payments. Movant has produced evidence that Debtors are delinquent at least $2,687.72 Doc. #22. According to the Debtors' Statement of Intention, the Vehicle will be surrendered.

The court also finds that Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. The Vehicle is valued at $56,875.00 and Debtors owe $89,343.25. Doc. #23.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the 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 debtors have failed to make post-petition payments to Movant and the Vehicle is a depreciating asset.

7. 23-10210-B-7 **IN RE: KEVIN/DANIELLE FOUSE**
SKI-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-28-2023 [28]

STELLANTIS FINANCIAL SERVICES, INC./MV
JOEL WINTER/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.

Stellantis Financial Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Dodge Ram ("Vehicle"). Doc. #28. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Id. Kevin Fouse and Danielle N. Fouse (collectively "Debtors") did not oppose.

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 debtors, 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 debtors do 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, although Debtors are current, they contacted Movant on February 13, 2023 and advised Movant of their intent to surrender the Vehicle. Doc. #31. Debtors' Statement of Intention reflects the same: Debtors intend to surrender the Vehicle.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. The Vehicle is valued at $52,950.00 and Debtors owe $61,893.72. Doc. #34.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the 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 Debtors intend to surrender Vehicle to Movant and Vehicle is a depreciating asset.

8. 20-13712-B-7 **IN RE: KAWALJEET KAUR**
ADJ-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES, MACKO, JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY
3-17-2023 [37]

MICHAEL REID/ATTY. FOR DBT.
ANTHONY JOHNSTON/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.

Anthony D. Johnston and Fores▪Macko▪Johnston, Inc. ("Applicant"), counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the amount of $6,189.73. Doc. #37. This amount consists of $6,077.50 in fees as reasonable compensation for legal services rendered and $112.23 in reimbursement for actual, necessary expenses from March 11, 2021 through March 15, 2023. *Id.*

Trustee has reviewed the application and approves of the same. Doc. #39. The estate has funds on deposit in the amount of $8,907.00, which is sufficient to fund the proposed payment.

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. ("Rule") 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.

Kawaljeet Kaur ("Debtor") filed chapter 7 bankruptcy on November 24, 2020. Doc. #1. Trustee was appointed as the interim trustee that same

day and became permanent trustee at the first 341 meeting of creditors on January 15, 2021. Doc. #2; docket generally. Trustee moved to employ Applicant on March 12, 2021, which was granted on March 22, 2021, effective March 11, 2021. Doc. #26. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Applicant's firm provided 18.70 at an hourly rate of $325.00 per hour, totaling **$6,077.50** in fees. Docs. #37; #40; *Exs. A-B*, Doc. #41. Applicant also incurred **$112.23** in expenses as follows:

Copies (446 @ $0.10/page)	$44.60
Postage	$45.13
CourtCall	$22.50
Total Costs	**$112.23**

Ex. C, *id.* These combined fees and expenses total **$6,189.73**.

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" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) securing authorization for employment (ADJ-1); (2) analyzing a potential claim against Debtor's brother for a transfer of a 50% interest in real property; (3) initiating an adversary proceeding against Debtor's brother (Adv. Proc. No. 21-01022); (4) negotiating a settlement of the adversary proceeding; (5) preparing, filing, and prosecuting a motion to compromise controversy/approve settlement agreement (ADJ-2); and (6) preparing and filing this fee application. Docs. #40; *Exs. A-B*, Doc. #41. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses from the estate's funds on hand in the amount of $8,907.00. Doc. #39.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded $6,077.50 in fees as reasonable compensation for services rendered and $112.23 in reimbursement for actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant $6,189.73 on the terms outlined above for

services rendered and costs incurred from March 11, 2021 through March 15, 2023.

9. 19-10016-B-7 **IN RE: QUALITY FRESH FARMS, INC.**

TRUSTEE'S FINAL REPORT
3-21-2023 [150]

RILEY WALTER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Prime Alliance Bank, Inc. ("Prime") filed a limited objection to the *Trustee's Final Report* ("Final Report") filed by chapter 7 trustee James E. Salven's ("Trustee"). Doc. #163.

Trustee filed a response. Doc. #170.

This matter will be called and proceed as scheduled. The court is inclined to OVERRULE this objection.

This objection was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and Trustee's *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object* ("NFR"). Doc. #151. The NFR established a 21-day deadline for objections to the Final Report and Prime's objection was timely filed. *Id.* The failure of the creditors, the debtor, the U.S. Trustee ("UST"), or any other party in interest except Prime 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 approval of the Final Report. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Prime 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).

As a preliminary matter, the objection does not comply with the local rules. LBR 7005-1 requires attorneys to prove service using the *Official Certificate of Service Form*, EDC 007-005. Here, no EDC 007-005 was used. Doc. #166. Although this deficiency warrants overruling the objection on procedural grounds, the court will consider the

merits of the objection to avoid unduly delaying the administration of this bankruptcy case.

BACKGROUND

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 341 meeting of creditors on February 14, 2019. Doc. #5; docket generally. Trustee filed a *Notice to File Proof of Claim Due to Possible Recovery of Assets* on or about February 19, 2019. Doc. #20. Therefore, the deadline to file a proof of claim was May 20, 2019.

On May 20, 2019, Prime timely filed Proof of Claim No. 67-1 in the total amount of $965,717.64. Claim 67 arises under *Lease No. HGF034818* ("Lease") with Debtor to provide it with certain watermelon packing line equipment. *See* Claim 67; *Ex. 1*, Doc. #165. The original lessor, Leasing Innovations, Inc., secured the assets subject to the Lease by filing an original and amended UCC-1 Financing Statement. The Lease was subsequently assigned to Prime. Prime timely filed Claim 67 as a secured claim. The claim was filed as fully secured.

Trustee administered the estate and submitted the Final Report to the UST on or about January 17, 2023. Doc. #156. The Final Report was approved by the UST on or about March 7, 2023 and was filed with the court on March 21, 2023. Doc. #150.

Under the Final Report, Trustee proposes to pay a 3.4% dividend to holders of timely filed allowed, general unsecured claims. Doc. #150. Shortly thereafter, Prime notified Trustee of its intent to amend Claim 67 for any unsecured deficiency remaining after the sale of the leased equipment. Since the Final Report omits any proposed distribution to Prime on account of its unsecured deficiency claim, Prime filed this limited objection to share in the pro rate distribution to allowed, general unsecured claims.

Prime never filed an amended claim nor established by any evidentiary record they intended to do so until the Trustee had filed the Final Report. As stated, the deadline to file proofs of claim in this case was nearly four years ago.

DISCUSSION

Prime argues that the Ninth Circuit's "liberal policy" towards amendments of proofs of claim should permit it to file an amended proof of claim. Doc. #163, citing *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 816-17 (9th Cir. 1985) (finding abuse of discretion in disallowing amendment to an informal proof of claim where claimant was not seeking to introduce a new claim in disguise, and no actual prejudice would result from allowing the amendment); *In re Franciscan Vineyards, Inc.*, 597 F.2d 181, 182 (9th Cir. 1979) (per curiam), *cert den.*, 445 U.S. 915 (1980); *Sun Basin Lumber v. United States*, 432 F.2d

48 (9th Cir. 1970) (allowing late-filed claim as an amendment to timely filed claim under former Bankruptcy Act).

The crucial inquiry is whether the opposing party would be unduly prejudiced by the amendment. *In re Roberts Farms Inc.*, 980 F.2d 1248, 1251-52 (9th Cir. 1992). "In determining prejudicial effect, [courts should] look to such elements as bad faith or unreasonable delay in filing the amendment, impact on other claimants, reliance by the debtor or other creditors, and change of the debtor's position." *Venhaus v. Wilson (In re Wilson)*, 96 B.R. 257, 262 (B.A.P. 9th Cir. 1988).

In response, Trustee acknowledges that Prime timely filed Claim 67 as a secured claim. Doc. #170. However, Trustee contends a proof of claim amendment filed after the deadline to file claims and modifying a timely filed claim must "relate back" to the timely filed claim. Since Prime intends to change Claim 67 from a secured to unsecured claim after the claims bar date to participate in the unsecured distribution, Trustee says Prime's amendment is a new claim in disguise, and thus should be treated as a late-filed claim. Since the distribution to allowed, unsecured claims is less than 4% per rata, the late-filed claim would receive no payment because it is subordinated to timely filed claims. Therefore, Trustee argues that amendment of Claim 67 is futile. *Id.*, citing *Sambo's Restaurants*, 754 F.2d at 817 (no "relation back" where amendment constitutes new claim: a claim amendment must be for the purpose of curing a defect or describing the claim with greater particularity; not to "introduce a new claim in disguise."); *Matter of Alliance Operating Corp.*, 60 F.3d 1174, 1176-77 (5th Cir. 1995) (affirming denial of claim reclassification because an amendment purporting to change claim's priority, e.g., unsecured to secured, would not relate back to a timely-filed proof of claim); *In re Durango Georgia Paper Co.*, 314 B.R. 885, 888 (Bankr. S.D. Ga. 2004) (collecting cases holding that amending unsecured claim to secured status results in a new claim filing).

Trustee distinguishes *Sambo's Restaurants* in that it was a chapter 11 case where the creditor, Wheeler, filed a wrongful death case in a district court after the petition date in violation of the automatic stay. Wheeler and Sambo's attorneys filed a joint motion to stay proceedings and to transfer the wrongful death case to the bankruptcy court where the chapter 11 case was pending. The district court denied the motion and dismissed the case without prejudice. Rather than filing a timely proof of claim, Wheeler moved the bankruptcy court to amend her "informal claim" six month after the claims bar date. The bankruptcy court denied Wheeler's motion because Wheeler filed the district court complaint in violation of the automatic stay and no other documents set forth the nature and amount of the claim against the estate. The district court reversed, and Wheeler was given 15 days to file an amended proof of claim on grounds that it would relate back to the date when the wrongful death action was filed, which was before the claims deadline. *Sambo's Restaurants*, 754 F.2d at 812. On appeal,

the Ninth Circuit construed the complaint and other documents to be an amendable, informal proof of claim. *Id.* at 816. When considering whether the claim amendment should relate back to the timely filed informal proof of claim, the court held:

> In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity, should freely allow amendments to proofs of claim **that relate back** to the filing date of the informal claim **when the purpose is to cure a defect in the claim as filed or to describe the claim with greater particularity**. *See*, *e.g.*, *Waits v. Weller*, 653 F.2d 1288, 1290 (9th Cir. 1981). Wheeler is not seeking **to introduce a new claim in disguise**, and Sambo's has pointed out no actual prejudice that would result from allowing the amendment.

Id. at 816-17 (emphasis added).

Here, Trustee contends that Prime is not asking for authority to cure a defect in the claim as filed or to describe it with greater particularity. Instead, Prime is requesting authority to file a new unsecured claim years after the bar date. Since the amendment would change the fundamental nature of its claim from secured to unsecured, it would be a late-filed claim. Notably, Prime filed a *bona fide* secured claim here and is not seeking to amend an informal proof of claim.

As a late-filed claim, Trustee maintains that Prime cannot provide a cognizable basis for its allowance. Under 11 U.S.C. § 502(b)(9), late-filed claims are disallowed unless specific exceptions are met. In a chapter 7 case, a late-filed general unsecured claim will be allowed and paid on an equal basis with timely filed general, unsecured claims where (1) the creditor did not receive notice of the claim-filing deadline; (2) the creditor did not have actual knowledge of the bankruptcy case in time to file a timely proof of claim; and (3) the claim is filed in time to be paid with timely filed claims. 11 U.S.C. § 726(a). Here, Prime had notice of the bankruptcy and timely filed Claim 67. Since Creditor does not qualify for payment on an equal basis with timely filed claims, it will be allowed and paid on a subordinated basis if sufficient funds remain after all timely filed general, unsecured claims are paid in full. § 726(a)(3). However, since there is less than a 4% distribution to general allowed, unsecured claims, there will be no distribution to Prime.

Trustee also contends that the estate and creditors would be prejudiced by the claim amendment because neither Trustee nor creditors knew or had reason to know of Prime's deficiency claim. An analysis of the factors outlined in *Wilson*, 96 B.R. at 262, are as follows:

1. Bad faith or unreasonable delay: Prime contends that there is no bad faith or unreasonable delay. Doc. #163. Prime is not seeking the allowance of an untimely, new claim; rather, it is seeking to amend its timely filed claim after diligently pursuing the sale of its equipment and liquidation of its deficiency claims.

Trustee does not assert bad faith; Trustee claims unreasonable delay is apparent because the claims bar date was May 20, 2019. Doc. #170. Trustee abandoned the watermelon packing line equipment on April 9, 2019, so Trustee expected that secured creditors would recover and liquidate their collateral shortly after to determine any deficiency. Had Prime amended its claim thereafter, even after the bar date, it may be a closer call in the balancing of equities. But now, four years have passed, and therefore, the delay is unreasonable.

Prime provides no evidence supporting its tardy effort to amend the proof of claim other than attaching a copy of the filed proof of claim. Though the court can take judicial notice of the fact of the filing of the proof of claim, that does not support an amendment now.

There is also no evidence regarding when Prime liquidated its collateral, nor is there any evidence as to why it took nearly four years for Prime to seek to amend its proof of claim. There is no evidence of any communication with the Trustee before the filing of the final report of an impending amendment. There is no evidence the Trustee received any notice of the disposition of the equipment. These are only some of the deficiencies with this objection and attempt to file an amended claim.

2. Impact on other claimants: Prime contends that other claimants will not be prejudiced because it is merely clarifying its earlier, timely filed proof of claim. Doc. #163.

In response, Trustee contends it prepared the Final Report based on filed claims, which was delivered to and approved by the UST. Doc. #170. The effect on unsecured claims cannot be determined with the information in Trustee's possession because Trustee does not know the deficiency claim amount. If Prime received nothing when liquidating its collateral, its claim would be $965,717.65. A new, near-million-dollar unsecured claim would necessarily reduce the distribution for unsecured creditors. Since the Final Report proposed a $408,241.36 distribution to unsecured claims, those distributions would be significantly reduced, and those creditors have had no opportunity to weigh in on Prime's objection.

3. Reliance by debtors or other creditors: Since this is a chapter 7 case, rather than chapter 11, this element appears to be inapplicable. This case did not involve a plan of reorganization, budgets, negotiations, or confirmation motions that relied on Prime's Claim 67. It is unlikely that unsecured claimants changed tactics in response to Prime's claim, and they could not change tactics now.

4. Change in Debtor's position: Since this is a chapter 7 case, rather than chapter 11, this element appears to be inapplicable.

In sum, the factors set forth in *Wilson* appear to weigh against allowing Prime's late filed proof of claim due to Prime's unreasonable delay in seeking to amend and the impact such amendment would have on other claimants, as well as the Trustee and UST in re-preparing and re-reviewing the Final Report.

In addition to considering (1) bad faith, (2) undue delay, and (3) prejudice to the opposing parties, the court should also consider (4) the futility of the amendment, and (5) previous opportunities to amend. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Based on the small distribution to unsecured claims and the lack of timeliness, amendment here would be futile because there is no distribution to pay on account of Prime's late filed claim. Lastly, Prime has had four years to amend its claim before now but did not do so.

True enough, Prime's proof of claim attachment contains language that it reserves the right to amend its claim. That reservation is unilateral and does not insulate Prime from unreasonable delay. A contrary view would result in paralysis of claims review while Trustees or other liquidating parties wait for claimants to decide when to amend their claims.

This matter will be called and proceed as scheduled. The court is inclined to OVERRULE Prime's objection to the Final Report, DENY Prime's request to amend Claim 67, and APPROVE the Final Report.

10. 19-10016-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
JES-3

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE
4-5-2023 [156]

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of $53,568.56 under 11 U.S.C. § 326, 330. Doc. #156. This amount consists of $52,176.00 in statutory fees for services rendered

to the estate and $1,392.56 in actual, necessary expenses from January 8, 2019 through April 3, 2023. *Id.*

No party in interest timely filed written opposition. However, this matter will be called and proceed as scheduled because creditor Prime Alliance Bank, Inc. ("Prime") has objected to the final report in matter #9 above. MJB-1. The court is inclined to GRANT this motion.

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 ("UST"), or any other party in interest except Prime to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Prime 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). 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 341 meeting of creditors on February 14, 2019. Doc. #5; docket generally. Trustee administered the estate, submitted the final report to the UST on or about January 17, 2023. Doc. #156. The final report was approved by the UST on or about March 7, 2023 and was filed with the court on March 21, 2023. Doc. #150. Trustee now seeks approval of final compensation. Doc. #156.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

> In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

(a) $1,250.00 (25%) of the first $5,000.00;
(b) $4,500.00 (10%) of the next $45,000.00; and
(c) $46,426.00 (5%) of the next $928,519.96.

Ex. A, Doc. #161. These percentages comply with the restrictions imposed by § 326(a) and total **$52,176.00**. The total disbursements in this case were $978,519.96. *Id.* Trustee also incurred **$1,392.56** in expenses as follows:

Copies (310 @ $0.20)	$62.00
Postage (2 @ $2.40)	$4.80
Abandonment notice /w exhibits	$1,302.84
Abandonment notice	$4.44
Realtor employment app'l.	$18.48
Total Costs	**$1,392.56**

Exs. A-B, *id.* These combined fees and expenses total **$53,568.56**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). 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).

Trustee's services include, but are not limited to: (1) conducting the meeting of creditors; (2) employing general counsel (LNH-1), an accountant (RTW-1), a real estate broker (JES-2), and special counsel (LNH-2); (3) abandoning property of the estate (JES-1); (4) settling claims against the estate and compensating special counsel (LNH-6); (5) seeking approval to pay administrative expenses (LNH-7); (6) compensating general counsel (LNH-8) and accountant (RTW-2); (7) preparing the final report; and (8) preparing and filing this fee application (JES-3). The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. However, this matter will be called and proceed as scheduled because Prime has objected to the final report in matter #9 above. The court is inclined to GRANT this motion. Trustee will be awarded $53,568.56 as final compensation pursuant to 11 U.S.C. §§ 326 and 330. The final report will be approved.

11. 10-12725-B-7 **IN RE: LEONARD/DEANNA RAGLE**
JES-2

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT
4-3-2023 [94]

JAMES SALVEN/MV
R. BELL/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.

James E. Salven ("Applicant"), in his capacity as certified public accountant engaged by the estate in his capacity as chapter 7 trustee, seeks final compensation under 11 U.S.C. § 330 in the sum of $1,969.03. Doc. #94. This amount consists of $1,820.00 in fees as reasonable compensation for services rendered and $157.03 in reimbursement for actual, necessary services from August 26, 2022 through March 10, 2023. Doc. #94.

Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and supporting documents, and consents to the proposed payment. Doc. #98.

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 debtors, 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.

Leonard A. Ragle and Deanna K. Ragle (collectively "Debtors") filed chapter 7 bankruptcy on March 16, 2010. Doc. #1. Then-chapter 7 trustee Randall Parker filed a *Report of No Distribution* on May 13,

2010, Debtors' chapter 7 discharge was entered on July 15, 2010, and the case was closed by final decree the next day. Docs. #2; ##14-15. On July 27, 2021, the case was reopened at the U.S. Trustee's request. Docs. ##18-19. Applicant was appointed as successor trustee the next day and filed a notice of assets on August 6, 2021. Doc. #21.

On September 12, 2022, the court authorized Applicant's employment as accountant for the estate under 11 U.S.C. §§ 327, 330-31, effective August 25, 2022. Applicant's services here were within the authorized time period. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment would be deemed to be an irrevocable waiver of Applicant of any pre-petition claims against the bankruptcy estate.

This is Applicant's first and final fee application. Doc. #94. Applicant performed 6.5 billable hours of accounting services at a rate of $280.00 per hour, totaling **$1,820.00** in fees. Doc. 96; *Ex. A*, Doc. #97. Applicant also incurred **$157.03** in expenses:

Copies (83 @ $0.20)	$16.60
Envelopes (5 @ $0.25)	$1.25
Lacerte Tax Proc (1 @ $91.00)	$91.00
Service—Fee App (22 @ $2.19)	$48.18
Total Costs	**$157.03**

Ex. B, *id.* These combined fees and expenses total **$1,977.03**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-1); (2) prepared and filed taxes for the estate; (3) prepared prompt determination letters; (4) prepared, filed, and served fee application (JES-2). The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as the chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded $1,820.00 in fees and $157.03 in expenses on a final basis pursuant to 11 U.S.C.

§ 330. Applicant will be authorized, in his capacity as trustee, to pay $1,977.03 as reasonable compensation for services rendered and expenses incurred from August 26, 2022 through March 10, 2023.

12. 21-10762-B-7 **IN RE: STEVEN/SANDRA SLUMBERGER**
JES-1

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE
4-5-2023 [98]

JAMES SALVEN/MV
PETER FEAR/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.

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of $33,863.85 under 11 U.S.C. § 326, 330. Doc. #98. This amount consists of $33,709.35 in statutory fees for services rendered to the estate and $154.50 in actual, necessary expenses from March 30, 2021 through April 3, 2023. *Id.*

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 debtors, 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.

Steven Norman Slumberger and Sandra Sims Slumberger (collectively "Debtors") filed chapter 7 bankruptcy on March 30, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became

permanent trustee at the first 341 meeting of creditors on April 22, 2021. Docs. #3; docket generally. Trustee administered the estate, submitted the final report to the UST on or about January 17, 2023. The final report was approved by the UST on or about March 7, 2023 and was filed with the court on March 9, 2023. Doc. #92. Trustee now seeks approval of final compensation. Doc. #98.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

> In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

(a) $1,250.00 (25%) of the first $5,000.00;
(b) $4,500.00 (10%) of the next $45,000.00; and
(c) $27,959.35 (5%) of the next $559,187.06.

Ex. A, Doc. #101. These percentages comply with the restrictions imposed by § 326(a) and total **$33,709.35**. The total disbursements in this case were $609,187.06. *Id.* Trustee also incurred **$154.50** in expenses as follows:

Copies (445 @ $0.20)	$89.00
Distribution (12 @ $1.00)	$12.00
Letter (7 @ $1.00)	$7.00
Bond Payments (8 @ $3.00)	$24.00
CourtCall (1 @ $22.50)	$22.50
Total Costs	**$154.50**

Exs. A-B, *id.* These combined fees and expenses total **$33,863.85**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). 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).

Trustee's services include, but are not limited to: (1) conducting the meeting of creditors; (2) employing general counsel and an accountant (DMG-1; RTW-1); (3) selling property of the estate (DMG-2); (4) objecting to claims filed in the wrong case (DMG-3; DMG-4); (5) negotiating the settlement of claims (DMG-5); compensating counsel and an accountant (DMG-6; RTW-2); (6) preparing the final report; and (7) preparing and filing this fee application (JES-1). The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded $33,863.85 as final compensation pursuant to 11 U.S.C. §§ 326 and 330. The final report will be approved.

13. 15-14892-B-7 **IN RE: ROSA CABRERA**
ADJ-5

MOTION TO COMPROMISE CONTROVERSY WITH ROSA CABRERA, MOTION FOR COMPENSATION FOR MARIE IANNIELLO-OCCHIGROSSI, SPECIAL COUNSEL(S), MOTION FOR COMPENSATION FOR MATTHEW NEZHAD, SPECIAL COUNSEL(S)
3-17-2023 [48]

IRMA EDMONDS/MV
MARIO LANGONE/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving the compromise of the estate's interest in a toxic substance exposure claim as part of a litigation settlement program pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #48. Trustee also requests authority to pay the estate's special counsel, NSL Law Firm aka Oaks Law Firm ("NSL") and Weitz & Luxenberg, P.C. ("W&L" or collectively, "Special Counsel"), a 33.33% contingency fee under 11 U.S.C. §§ 328 and 330. *Id.*

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 Rule 2002(a)(3) 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). 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.

BACKGROUND

Rosa Cabrera ("Debtor") filed chapter 7 bankruptcy on December 23, 2015. Doc. #1. Trudi Manfredo was appointed as the chapter 7 trustee and filed a report on no distribution on February 2, 2016. Doc. #2; docket generally. Debtor's discharge was entered on April 25, 2016, and the case was closed by final decree on April 29, 2016. Docs. #16; #18.

Prior to filing bankruptcy, Debtor was exposed to a toxic substance, which allegedly caused her to be diagnosed with Non-Hodgkin's Lymphoma (the "Claims"). Doc. #51. After discharge was entered, Debtor retained NSL on or about September 27, 2019 to pursue the Claims. Thereafter, W&L was retained as co-counsel to prosecute the Claims and began working on a potential settlement. *Id.*

The case was reopened at the U.S. Trustee's request to administer the estate's interest in the Claims. Docs. #20; #22. On August 11, 2021, Trustee was appointed as successor trustee, and on September 2, 2021, Trustee filed a notice of assets. Doc. #23.

On or about April 26, 2022, Trustee and Special Counsel entered into a contingency fee agreement under which Special Counsel will receive a 33% contingency fee from the gross recovery of proceeds, if any, made from the prosecution of the Claims, plus costs. *See*, *Exs. 1*, Docs. #32; #37; *Ex. A*, Doc. #54. Of this amount, the fee will be further divided with 33.3333% to NSL and 66.6667% to W&L. *Id.*

On July 5, 2022, the court approved the estate's retention of Special Counsel pursuant to 11 U.S.C. §§ 327 and 330. Docs. ##41-42. Special Counsel's compensation was fixed under 11 U.S.C. § 328(a) to a contingency fee equal to 33% of any gross recovery, whether by settlement or judgment.

The manufacturer of the allegedly toxic substance agreed to resolve the Claims and other similar cases through the W&L Private Resolution Program (the "Program"), which is overseen by an independent claim administrator that evaluates each individual claimant's claim and assigns a point value based on a variety of proprietary factors. Doc. #52. Through the Program, the estate and Debtor have been offered a gross settlement of $212,782.50, which is subject to the following deductions:

Gross Settlement Offered	$212,782.50
33% Contingency Fee (split by NSL & W&L)	($70,218.23)
Special Counsel's Costs	($161.35)
EIF Application Fee	($750.00)
Medicare Lien	($61,875.39)
Net proceeds	**$79,777.53**

Id. Marie Ianniello-Occhigrossi, associated with W&L, declares that the Program is unlike mass tort proceedings in that it is available only to those represented by W&L. *Id.* If the settlement is not approved, the claim would not process through the Program and W&L would not proceed with the litigation of this case because it would jeopardize its ability to participate in the Program in its other cases. *Id.*

DISCUSSION

Approval of Settlement Agreement

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 says that approving the compromise is better for the estate because it is unlikely that Trustee would obtain a better resolution in this action than what is before the court now. Doc. #51. The offer is only available to those represented by W&L and eligible participants of the Program. If not accepted, W&L would cease representation of the debtor and Trustee would be required to hire new counsel.

2. Difficulties in collection: Collection is not at issue if the settlement agreement is approved because a third-party settlement administrator is responsible for handling the settlement funds, the balance of which will be remitted to the bankruptcy estate. Further, the manufacturer has already seeded the Program. *Id.* If not approved, collection will require years of litigation and potentially an appeals process. This factor supports approval.

3. Complexity of litigation: The litigation is highly complex and would involve significant discovery. This case is not being treated as litigation at the present because it is included in the Program. Disclaiming the settlement would require initiation of litigation. Causation alone is highly complicated given the large timespan from the alleged exposure, and evaluation of potentially intervening causes would require extensive expert discovery likely to exceed the amount offered here.

4. Interests of creditors: This case was previously closed as a "no asset" case. Approval of the settlement will result in a net to the estate of $79,777.53 after payment of attorneys' fees, costs, and liens. The estate only has one creditor it must pay, which is the Franchise Tax Board's claim of $9,995.42. Trustee therefore believes that the settlement is fair and equitable and in the best interests of creditors and the estate.

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

Compensation

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by Trustee here as to Special Counsel and use the court's discretion to add the two parties under Civ. Rule 21.

LBR 9014-1(d)(5)(B)(v) permits joinder of claims for approval of compromise and compensation of special counsel previously authorized to be employed relating to the underlying compromise under Rule 9019 and 11 U.S.C. §§ 327, 328, and 330.

As noted above, the court previously approved Special Counsel's employment by the estate and set its compensation at a 33% contingency fee on gross settlement proceeds, plus fees and costs. Docs. ##41-42. Special Counsel's compensation was fixed under 11 U.S.C. § 328(a) to a contingency fee equal to 33% of any gross recovery, whether by settlement or judgment. This amount will be split with 33.3333% to NSL and 66.6667% to W&L. Trustee will be authorized to pay Special Counsel's fees as prayed.

CONCLUSION

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and the settlement agreement approved. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Trustee will also be authorized to pay Special Counsel its contingency fee as prayed.

The proposed order shall include an attached, redacted copy of the stipulation as an exhibit.