



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

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

**Hearing Date: Tuesday, May 16, 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.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

**Video web address:** <https://www.zoomgov.com/j/1601763246?pwd=MXlNcjlgN2pSZW9aWXduZ2ZHSjBldz09>  
**Meeting ID:** 160 176 3246  
**Password:** 294848  
**ZoomGov Telephone:** (669) 254-5252 (Toll-Free)

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

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HATMAKER LAW  
GROUP FOR SUSAN K. HATMAKER, SPECIAL COUNSEL(S)  
4-20-2023     [[443](#)]

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

Susan K. Hatmaker of Hatmaker Law Group ("Applicant"), special counsel to chapter 11, subchapter V debtor in possession Valley Transportation, Inc. ("Debtor"), requests interim compensation under 11 U.S.C. § 331 in the sum of \$33,137.16, subject to final review pursuant to 11 U.S.C. § 330. Doc. #443. This amount consists of \$31,594.50 in fees as reasonable compensation for services rendered and \$1,542.66 in reimbursement for actual, necessary expenses from March 1, 2023 through March 31, 2023. *Id.*

Deborah Simpson—Debtor's President, CEO, and representative—filed a client approval statement with declaration indicating that she has reviewed the application, determined that the application accurately reflects services rendered and costs incurred, and has no objection to the proposed payment. Doc. #447.

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

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

Applicant's retention as special counsel was authorized for services related to the following: (a) serving as general counsel for Debtor and providing consultation regarding general business and employment matters; (b) representing Debtor in and addressing issues arising from any further actions taken in Fresno County Superior Court Case No.

22CECG01786, entitled *Mendoza v. Valley Transportation, Inc.* ("VTI Action"), including but not limited to appearing for Debtor at the Bankruptcy Status Conference scheduled for March 10, 2023; (c) serving as litigation counsel in defense of Debtor with regard to the dispute alleged in the VTI Action, whether that disputes proceeds as an action in Bankruptcy Court or in State Court; (d) serving as litigation counsel in defense of Debtor's employees, Deborah Simpson and Rodney Heintz, in Fresno County Superior Court Case No. 22CECG02752, entitled *Mendoza v. Deborah Simpson, Rodney Heintz, and Barrett Business Services, Inc.* ["BBSI"], et al ("Simpson Action"), whether it proceeds in Bankruptcy Court or in State Court. Doc. #101.

This is Applicant's fourth interim fee application. Doc. #443. Applicant was previously awarded the following fees:

Period	Fees	Expenses	Total
08/30/22-11/30/22	\$136,142.00	\$3,892.56	\$140,034.56
12/01/22-01/31/23	\$112,706.00	\$29,000.26	\$141,706.26
01/01/23-02/28/23 <sup>1</sup>	\$35,916.25	\$3,875.47	\$39,791.72
<b>Total fees awarded</b>			<b>= \$321,532.54</b>
Pre-petition retainer			- \$144,117.52
<b>Total fees paid or to be paid by Debtor</b>			<b>= \$177,415.02</b>

Docs. #320; #355; #440. Applicant now requests fees for 125.20 billable hours of legal services at the following rates, totaling **\$33,137.16**:

Professional	Rate	Hours	Fees
Susan K. Hatmaker, Attorney	\$325	26.50	\$8,612.50
Robert W. Branch, Attorney	\$305	39.40	\$12,017.00
Ray S. Pool, Law Clerk	\$250	20.70	\$5,175.00
Melanie Salas, Paralegal	\$150	26.70	\$4,005.00
Kathy Giambalvo, Paralegal	\$150	7.00	\$1,050.00
Melanie Grandalski, Paralegal	\$150	4.90	\$735.00
<b>Total Hours &amp; Fees</b>		<b>125.20</b>	<b>\$31,594.50</b>

Docs. #443; #446; *Exs. B-D*, Doc. #445. These fees can be further delineated as (a) 52.30 billable hours totaling \$13,709.00 in fees for the VTI Action; (b) 28.50 billable hours totaling \$7,612.00 in fees for the Debtor's general business operations; and (c) 44.40 billable hours totaling \$10,273.50 for this bankruptcy case. *Id.*

Applicant also incurred **\$1,542.66** in expenses:

///  
 ///  
 ///  
 ///  
 ///

VTI Action	
Filing Fees	\$459.65
Reproduction	\$111.82
Postage	\$4.32
Electronic Research	\$43.61
Court Research Fee	\$162.00
Subpoenaed Records	\$137.00
VTI Action Expenses	\$918.40
Simpson Action	
Filing Fees	\$25.38
Postage	\$3.66
Simpson Action Expenses	\$29.04
Bankruptcy Action	
Lexis Research Fees	\$66.26
Reproduction	\$475.02
Postage	\$53.94
Bankruptcy Action Expenses	\$595.22
<b>Total Expenses</b>	<b>\$1,542.66</b>

*Exs. E-G, id.* These combined fees and expenses total **\$33,137.16**.

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 here included, without limitation: (1) preparing and filing Applicant’s third interim fee application (HLG-4); (2) arranging mediation with creditor Andrew Mendoza regarding his contested claim; (3) assisting in analyzing and responding to objections to Debtor’s plan of reorganization; (4) providing a requested accounting of the fees and expenses for services provided to Debtor since the filing of this bankruptcy; (5) in the VTI Action, (a) preparing for and participating in a court-conducted hearing that combined four pretrial discovery conference requests for the parties, (b) preparing the paperwork for an IME of plaintiff Mendoza, (c) engaging in continuing third-party discovery and informal discovery efforts; and (6) in the Simpson Action, (a) reviewing oppositions, and (b) drafting replies in support of a pending demurrer and motion to strike by Simpson. *Ex. A*, Doc. #445. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses. Doc. #447.

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 \$31,594.50 in fees as reasonable compensation and \$1,542.66 in reimbursement for actual, necessary expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Debtor will be authorized to pay Applicant a total of \$33,137.16 for fees and expenses from March 1, 2023 through March 31, 2023.

---

<sup>1</sup> This fee application covered January 1-February 28, 2023 for general matters, and February 1-28, 2023 for all other matters. See Docs. #433; #440.

2. [23-10244](#)-B-11     **IN RE: BEAM & COMPANY, INC**  
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL  
2-13-2023    [[6](#)]

BEAM & COMPANY, INC/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of debtor Beam & Company's status report and Hanmi Bank's opposition. Docs. #86; #90. This hearing will be called and proceed as scheduled.

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

CONTINUED 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

NO RULING.

The court is in receipt of debtor Madera Community Hospital's notice advising the court of the status of this motion. Doc. #405. This hearing will be called and proceed as scheduled.

4. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-40](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-26-2023    [[301](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject the following agreements (collectively, the "Agreements") with Beckman Coulter ("Beckman"):

- (1) *Quote No. 2016-197567650*: a five-year agreement dated September 12, 2016, by which Beckman leases two (2) Unicel DXH 600 lab analyzers to Debtor, and which was extended for two years and requires (i) Beckman to warrant the equipment and (ii) Debtor to purchase annually from Beckman a minimum amount of equipment-related consumable products; and
- (2) *Quote No. 2018-814436939*: a five-year agreement dated January 28, 2019, by which Beckman leases to Debtor: one (1) Remisol Advance Tower; two (2) Unicel DxC600(i), and one (1) iQ1500 Workcell US, and which requires (i) Beckman to warrant the equipment and (ii) Debtor to purchase annually from Beckman a minimum amount of equipment-related consumable products.

Doc. #301. Debtor also requests 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.<sup>2</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##301-04. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by Beckman. Doc. #303.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented

at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed the Agreements to lease various lab equipment from Beckman and receive related products and services for Debtor's hospital. Doc. #303. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. Doc. #301 at 3 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the lab equipment and related products and services for the hospital 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 lab equipment and related products and services, so the Agreements are no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims



based on this motion at the hearing, but the court is inclined to set July 17, 2023 as the bar date to coincide with the non-governmental proofs of claim bar date. Regardless of which date is selected, 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.

---

<sup>2</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a Beckman's CEO and the creditor's committee via first class mail on April 26, 2023. Doc. #305.

5. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-41](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
5-1-2023    [\[318\]](#)

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject a sixty-three (63) month *Total Solution Lease Agreement* dated June 14, 2018 ("Agreement") by and between Debtor and Canon Financial Services, Inc. ("Canon") for thirty-one (31) copiers. Doc. #318. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.<sup>3</sup> 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. ##318-21; #324.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether

further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed the Agreement to lease thirty-one copiers for its hospital and rural health clinics. Doc. #320; *Ex. A*, Doc. #321. Debtor acknowledges that the Agreement may not constitute as an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreement out of an abundance of caution and to avoid any doubt. Doc. #318 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 copiers for the hospital and rural health clinics for which it contracted under the Agreement. *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 Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing copiers, so the Agreement is no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims based on this motion at the hearing, but the court is inclined to set July 17, 2023 as the bar date to coincide with the non-governmental

proofs of claim bar date. Regardless of which date is selected, 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.

---

<sup>3</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Canon's CEO and the creditor's committee via first class mail on May 1, 2023. Doc. #325.

6. [23-10457](#)-B-11      **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-42](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
5-2-2023    [\[334\]](#)

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject the following agreements (collectively, the "Agreements") with CareFusion Solutions, LLC ("CareFusion"):

- (1) *Quote No. 100002578* dated November 30, 2016: a five-year rental and support agreement relating to PYXIS Medication Dispensing Equipment and Software with automatic renewals pursuant to a *Master Rental Terms and Conditions* dated October 11, 2010; and
- (2) *Quote No. 1000131801* dated December 17, 2018: a five-year rental agreement relating to PYXIS Medication Dispensing Equipment and Software with automatic renewals pursuant to a *Master Rental Terms and Conditions* dated October 11, 2010.

Doc. #334. Debtor also requests 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.<sup>4</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##334-37. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by CareFusion. Doc. #337.

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

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

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed the Agreements to lease the medication dispensing equipment for its hospital and rural health clinics. Doc. #337. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreement out of an abundance of caution and to avoid any doubt. Doc. #334 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 copiers for the hospital and rural health clinics for which it contracted under the Agreement. *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 medication dispensing equipment for its hospital and rural health clinics, so the Agreements are no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims based on this motion at the hearing, but the court is inclined to set July 17, 2023 as the bar date to coincide with the non-governmental proofs of claim bar date. Regardless of which date is selected, 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.

---

<sup>4</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a CareFusion's managing member and the creditor's committee via first class mail on May 2, 2023. Doc. #349.

7. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-43](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
5-2-2023    [[338](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject the following agreements (collectively, the "Agreements") with Leasing Associates of Barrington, Inc. ("Barrington") and Becton Dickenson and Company ("BDC"):

- (1) *Lease Agreement* dated December 21, 2020: a five-year lease between Debtor and Barrington for one (1) BD Max Clinical Analyzer and related software and warranty service; and
- (2) *Agreement # 07092015PB* dated January 13, 2021: a related five-year annual consumable purchase agreement between Debtor and BDC.

Doc. #338. Debtor also requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.<sup>5</sup> 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. ##338-342.

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

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

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed the Agreements to procure clinical testing equipment and related software, service, and products for use in Debtor's hospital and rural health clinics. Doc. #341; *Exs. A-B*, Doc. #342. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. Doc. #341 at 2 n.1.

Debtor ceased all patient care and shut down the operations of its hospital and healthcare clinics, and therefore, Debtor no longer needs the clinical testing equipment and related software, service, and products for the hospital and rural health clinics 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 clinic testing equipment and related software, service, and products for its hospital and rural health clinics, so the Agreements are no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims based on this motion at the hearing, but the court is inclined to set July 17, 2023 as the bar date to coincide with the non-governmental proofs of claim bar date. Regardless of which date is selected, 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.

---

<sup>5</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving BDC's President & CEO, Becton's President & CEO, and the creditor's committee via first class mail on May 2, 2023. Doc. #351.

8. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-45](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
5-2-2023    [[343](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moves for an order authorizing Debtor to reject *Short Form Lease Agreement No. 0110054277* dated July 30, 2018 ("Agreement") between Debtor and Flex Financial, a division of Stryker Sales Corporation ("Stryker") for certain surgical equipment. Doc. #343. Debtor also

requests the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor seeks to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.<sup>6</sup> 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. ##343-47.

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

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

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor executed the Agreement to procure surgical equipment for use in Debtor's hospital and rural health clinics. Doc. #345; *Ex. A*, Doc. #346. Debtor acknowledges that the Agreement may not constitute as an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreement out of an abundance of caution and to avoid any doubt. Doc. #345 at 2 n.1.

Debtor ceased all patient care and shut down the operations of its hospital and healthcare clinics, and therefore, Debtor no longer needs the surgical equipment for the hospital and rural health clinics for which it contracted under the Agreement. *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 Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing surgical equipment for its hospital and rural health clinics, so the Agreement is no longer beneficial to Debtor or the estate.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. The court will inquire about the proposed claims bar date for claims based on this motion at the hearing, but the court is inclined to set July 17, 2023 as the bar date to coincide with the non-governmental proofs of claim bar date. Regardless of which date is selected, 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.

---

<sup>6</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Stryker's CEO and the creditor's committee via first class mail on May 2, 2023. Doc. #352.

9. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-30](#)

MOTION TO EMPLOY NEWMARK PEARSON COMMERCIAL AS BROKER(S)  
5-12-2023    [[422](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.  
OST 5/15/2023

NO RULING.

As a preliminary matter, the court notes that the notice of hearing references 11 U.S.C. § 365 and contains contradictory language regarding whether written opposition is required or whether it may be presented at the hearing.

This matter will be called and proceed as scheduled.

1:30 PM

1. [23-10900](#)-B-7     **IN RE: EMILIO REYES**  
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT  
5-2-2023    [\[10\]](#)

EMILIO REYES/MV  
BENNY BARCO/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.

Emilio Andrew Reyes ("Debtor") moves for an order compelling chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's real estate business (collectively "Business Assets"). Doc. #10.

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

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the

interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at \*16-17 (B.A.P. 9th Cir. 2014).

Debtor is a licensed real estate agent and operates a sole proprietorship in Fresno. Doc. #12. Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
2016 Honda Civic	\$13,000.00	\$13,000.00	\$0.00	\$0.00
Real Estate Sales Person License	\$0.00	\$0.00	\$0.00	\$0.00
Laptop, Desktop, Cellphone	\$1,200.00	\$1,200.00	\$0.00	\$0.00
Business Checking Acct: FBB	\$3,712.82	\$3,712.82	\$0.00	\$0.00
Black leather coach workbag/handbag	\$250.00	\$250.00	\$0.00	\$0.00
Escrow (Buying Agent). <sup>7</sup>	\$6,767.00	\$6,767.00	\$0.00	\$0.00
Total	\$24,929.82	\$24,929.82	\$0.00	\$0.00

*Id.*; *Sched. A/B*, Doc. #1. None of the Business Assets are encumbered by any secured creditors. *Sched. D, id.* Debtor exempted all of the Business Assets for their full value under Cal. Code Civ. Proc. ("CCP") § 703.140(b)(2), (b)(5), and (b)(6). *Sched. C, id.*

Debtor contends there is no goodwill value in the business because substantially all of the income from the business is the result of the labor of Debtor, and Debtor does not have any employees. Doc. #10. Further, Debtor certifies that he was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that he is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that he compensate the estate for any damage caused by the claimed exemption. Debtor agrees not to amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Business Assets are of inconsequential value and benefit to the estate, and the Business Assets were accurately scheduled and exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

---

<sup>7</sup> Debtor is the Buying Agent for 5481 W. Everett, Fresno, CA 93722, which is anticipated to close May 18, 2023. *Sched. A/B*, Doc. #1.

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

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC  
STAY

4-18-2023    [[1056](#)]

INDIGO COMMERCIAL FUNDING, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
BRIAN HEALY/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.

Indigo Commercial Funding ("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. #1056. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). Doc. #1061. Trustee also filed a *Notice of Abandonment* on April 13, 2023, abandoning the estate's interest in all of Debtor's trucks and trailers. Doc. #1038.

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.

As an informative matter, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(i), which provides, "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition."

Movant is a secured creditor of debtor with a perfected security interest in 14250 County Line Road, Delano, California ("Property"). Doc. #1059.

Under the Stipulation, Movant and Trustee agreed to grant Movant relief from the automatic stay to permit Indigo to record a Notice of Default pursuant to California law. The Trustee may continue to market the Property and agrees to maintain insurance for the Property. In the event that the Trustee obtains a fully executed contract for sale of the Property with a buyer's earnest money deposit, and a sales price sufficient to pay the Indigo debt, Indigo shall not record a Notice of Sale. Movant separately filed the Stipulation and docketed it as a stipulation. *Id.* Movant now requests approval of the Stipulation. Doc. #1056.

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.

Accordingly, 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.

3. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD WELSH, SPECIAL  
COUNSEL(S)  
4-24-2023     [[1064](#)]

LEONARD WELSH/MV  
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"), special counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests final compensation in the sum of \$7,126.60 under 11 U.S.C. § 330.

Doc. #1064. This amount consists of \$7,115.00 in fees as reasonable compensation for services rendered and reimbursement of \$11.60 in actual, necessary expenses from December 13, 2022 through March 29, 2023. *Id.*

Chapter 7 trustee Jeffrey M. Vetter declares he has reviewed the fee application, determined that it reflects services rendered by Applicant, and has no objection to Applicant being paid from money paid on deposit in its Attorney Client Trust Account. Doc. #1066.

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.

Freon Logistics ("Debtor") filed chapter 11 bankruptcy on November 8, 2022. Doc. #1. Applicant was employed as Debtor's general bankruptcy counsel effective as of the petition date. Doc. #112. The case was converted to chapter 7 on December 14, 2022. Doc. #290. Applicant was awarded \$33,292.38 in fees and expenses for its services as general bankruptcy counsel, which was drawn down from a pre-petition retainer of \$49,062.00, leaving \$15,769.62. Docs. #657; 686. At the hearing on that motion, Applicant and Trustee indicated that they agreed to employ Applicant as special counsel and to limit Applicant's fees as special counsel to \$7,126.60, with the remaining \$8,643.02 to be delivered to Trustee. Applicant's employment as special counsel was subsequently authorized under 11 U.S.C. § 327(a) on February 14, 2023. Doc. #861.

This is Applicant's first and final Application in his capacity as special counsel. Doc. #1064. Applicant's firm provided 25.6 billable hours of legal services at the following rates, totaling **\$7,115.00** in fees:

Professional	Rate	Hours	Fees
Leonard K. Welsh	\$400	17.60	\$7,040.00
Leonard K. Welsh (no charge)	\$0	7.50	\$0.00
Trinette Lidgett	\$150	0.50	\$75.00
<b>Total Hours &amp; Fees</b>		<b>25.60</b>	<b>\$7,115.00</b>

*Id.*; Doc. #1067; *Ex. B*, Doc. #1068. Applicant also incurred **\$11.60** in WebPACER charges. These combined fees and expenses total **\$7,126.60**, which will be paid from the remaining funds in Applicant's attorney client trust account.

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) acting as liaison between Trustee and Debtor's principals in responding to and furnishing documentation regarding Debtor's financial condition to the Trustee and other parties in interest; (2) appearing for Debtor at the meeting of creditors and continued meeting of creditors conducted January 20, February 15, March 8, and March 29, 2023; (3) appearing for Debtor at the Rule 2004 examinations conducted by Trustee and other parties in interest on December 19, 2022 and February 6, 2023; and (4) other services described in the exhibits, including preparing this fee application, for which Applicant is not seeking compensation from the estate. Docs. #1064; #1067; *Ex. B*, Doc. #1068. The court finds the services and expenses reasonable, actual, and necessary. Trustee has consented to payment of the proposed fees and expenses from the remaining pre-petition retainer. Doc. #1066.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. Applicant will be awarded \$7,115.00 in fees as reasonable compensation and \$11.60 in reimbursement for actual, necessary expenses on a final basis under 11 U.S.C. § 330. Applicant will be authorized to draw \$7,126.60 from the pre-petition retainer on the terms outlined above for services rendered and costs incurred from December 13, 2022 through March 29, 2023.

4. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[LLD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
RELIEF FROM CO-DEBTOR STAY  
4-7-2023     [[1017](#)]

SALVADOR MAYA/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LAURA DAVIDSON/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

Salvador Pacheco Maya ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a state court action in

Fresno County Superior Court, Case No. 20CECG01835 ("State Court Action"). Doc. #1017.

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

First, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").<sup>8</sup> Here, Movant used the Official Form but omitted certain sections. Docs. #1022; #1024. Sections 2-3, 5, 6B and 7B are wholly or partially incomplete, and therefore, the certificate is deficient. *Id.*

Second, LBR 7005-1(a) and (d) require, unless six or fewer parties are served, the certificate to include an attached, official Matrix of Creditors from the Clerk of the Court, which shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. Here, the matrices attached to the certificate were custom matrices. Official matrices can be downloaded from the court's website or from PACER.<sup>9</sup>

Third, the notice of hearing directs potential respondents to the website for the U.S. Bankruptcy Court in the Central District of California and a local form for use in their courts. Doc. #1018. Additionally, although the notice does contain accurate deadlines to file and serve a written response, it cites to LBR 9013-1(d) (C.D. Cal.), but there is no "LBR 9013-1" in this district. See LBR 9014-1(f)(1).

Fourth, the *Stipulation for Relief from the Automatic Stay* filed April 11, 2023 was not signed by the chapter 7 trustee. Doc. #1023.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

---

<sup>8</sup> The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 11, 2023).

<sup>9</sup> *Id.*



5. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[RK-8](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-26-2023    [[1070](#)]

FIRST-CITIZENS BANK & TRUST COMPANY/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/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.

First-Citizens Bank & Trust Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a two 2019 Peterbilt 579 Series tractor trucks and one 2022 Peterbilt 579 Series tractor truck ("Vehicles"). Doc. #1070. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed a *Notice of Abandonment* on April 13, 2023, abandoning the estate's interest in all of Debtor's trucks and trailers. Doc. #1038.

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

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

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 the debtor has missed 7 payments and

is delinquent in the amount of \$44,209.69. Docs. #1072; #1075. Additionally, Debtor has failed to maintain insurance coverage.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Vehicles are not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$73,412.90 in equity. Doc. #1075. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Vehicles. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make pre- and post-petition payments, the Vehicles are depreciating assets, and Debtor has not maintained insurance coverage.

6. [21-10316](#)-B-7      **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER A. RATZLAFF,  
ACCOUNTANT(S)  
4-14-2023    [\[108\]](#)

RATZLAFF TAMBERI & WONG/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

First, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").<sup>10</sup> Here, neither of Applicant's certificates of service use the Official Form. Docs. #113-14. To prove service, the Official Form is obligatory in

"all other proceedings" before this court, which includes compensation motions. One Official Form can be used for both certificates provided that the appropriate matrices are attached.

Second, LBR 7005-1(a) and (d) require, unless six or fewer parties are served, the certificate to include an attached Matrix of Creditors from the Clerk of the Court, which shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. Here, the matrix for the notice-only certificate of service for all parties in interest was downloaded on March 22, 2023, which is not within seven days of service. Doc. #114. The court notes that the first certificate for all motion documents did not require an official matrix because fewer than six parties were served. LBR 7005-1(a).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

---

<sup>10</sup> The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 11, 2023).

7. [23-10223](#)-B-7     **IN RE: SHANNON/DAWN ANDERSON**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-10-2023    [[14](#)]

TD BANK, N.A./MV  
JERRY LOWE/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) with respect to a 2017 Toyota Tundra ("Vehicle"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Shannon Joe Anderson and Dawn Rene Anderson (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 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 Debtors have failed to make at least two complete post-petition payments. Movant has produced evidence that debtors are delinquent at least \$25,849.61 plus late fees of \$149.75. Docs. #17; #19.

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 \$39,200.00 and Debtors owe \$39,104.21. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. According to the Debtors' *Statement of Intention*, the Vehicle will be surrendered.

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.

8. 22-11224-B-7      **IN RE: PAULETTA SEEBOHM**  
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
3-28-2023    [73]

RATZLAFF TAMBERI & WONG/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").<sup>11</sup> Here, neither of Applicant's certificates of service use the Official Form. Docs. ##78-79. To prove service, the Official Form is obligatory in "all other proceedings" before this court, which includes compensation motions. One Official Form can be used for both certificates provided that the appropriate matrices are attached.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

---

<sup>11</sup> The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 11, 2023).

9. [23-10527](#)-B-7     **IN RE: PATRICIA CORRALES**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-17-2023    [[13](#)]

TOYOTA LEASE TRUST/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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.

Toyota Lease Trust as serviced by Toyota Motor Credit Corporation  
("Movant") seeks relief from the automatic stay under 11 U.S.C.  
§ 362(d)(1) and (d)(2) with respect to a 2022 Toyota Highlander  
("Vehicle"). Doc. #13. Patricia I. Corrales ("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.

This motion relates to an executory contract or lease of personal  
property. This case was filed on March 17, 2023. Doc. #1. The 60-day  
time period for the chapter 7 trustee to assume the lease under 11  
U.S.C. § 365(d)(1) will expire on May 16, 2023, which is the date of  
this hearing. If the trustee does not assume the lease on or before  
May 16, 2023, the lease will be deemed rejected. Pursuant to  
§ 365(p)(1), the leased property would no longer be property of the  
estate, and the automatic stay would terminate by operation of law.  
Since that has not yet occurred, this motion is not yet moot as to the  
trustee.

Since there is no opposition from Debtor, the court is unaware whether Debtor exercised an option to assume the lease under § 365(p)(2).

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 defaulted on the lease pre-petition and failed to make three payments totaling \$1,599.76. Docs. #16-17. Additionally, Debtor has not maintained adequate insurance coverage. *Id.*

The court also finds that Debtor does not have any equity in the Vehicle because it is leased. Since this is a chapter 7 case, the Vehicle is not necessary for an effective reorganization.

Accordingly, this motion will be GRANTED as to Debtor and the estate 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.

10. [21-12473](#)-B-7      **IN RE: BLAIN FARMING CO., INC.**  
[FW-11](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH WILLIAMS, BRODERSEN, PRITCHETT & BURKE LLP ,  
MOTION TO AUTHORIZE DISTRIBUTION OF PROCEEDS  
4-14-2023    [\[210\]](#)

JAMES SALVEN/MV  
RILEY WALTER/ATTY. FOR DBT.  
PETER FEAR/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 James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Williams,

Brodersen, Pritchett & Burke LLP ("WBPB") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #210. Pursuant to the settlement agreement, Trustee requests:

- (1) authority to release \$81,050.00 to WBPB from the proceeds of the sale of real property at 15013 Ivanhoe Drive, Visalia, CA ("Ivanhoe Property");
- (2) an order avoiding WBPB's remaining lien as result of a deed of trust on the Ivanhoe Property and another real property located at 1240 E. Caldwell Ave., Visalia, CA ("Caldwell Property"), and preserving the proceeds of the sale of those properties for the benefit of the estate under 11 U.S.C. § 551; and
- (3) an order authorizing Trustee to transfer \$93,679 of the proceeds of the sale of the Ivanhoe Property from the estate's blocked account to an unblocked account in the name of the bankruptcy estate.

*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.

Prior to filing bankruptcy, WBPB represented Blain Farming Co., Inc. ("Debtor") and other defendants in an action brought against them by the City of Visalia. Doc. #212. In consideration, WBPB obtained a deed of trust in the amount of \$300,000 secured by Ivanhoe Property and Caldwell Property, which was recorded in Tulare County as document no. 2019-0007113. *Id.*; *Ex. A*, Doc. #213.

Both Ivanhoe Property and Caldwell Property were property of the estate. On December 14, 2021 and March 30, 2022, the court authorized the sale of Caldwell Property and Ivanhoe Property, respectively, free and clear of the lien of WBPB and others. Docs. ##59-60; #128; #131. However, the court ordered the proceeds from the sales, after certain



deductions and payments, to be held in an impound account pending a determination of the parties' interests. *Id.*

Trustee indicates that there are \$174,729 in proceeds remaining from the sale of Ivanhoe Property. Doc. #212. WBPB has asserted that it is entitled to the entirety of the remaining Ivanhoe Property proceeds. Trustee, meanwhile, contends that the deed of trust should be avoided, in whole or in part, as a fraudulent transfer because it secures an amount that was unreasonable at the time the contract was entered. The deed of trust was intended to fund the defense of all defendants to the litigation, including related entity and individual defendants. As a result of the bankruptcy filing, WBPB's representation ceased, so the work contemplated by the deed of trust was not completed.

The parties executed a settlement agreement to resolve this dispute. Under the terms of the settlement agreement,

- (1) From the proceeds of the sale of Ivanhoe Property, WBPB shall be entitled to payment of \$81,050.00;
- (2) The remaining balance of WBPB's claim based on the deed of trust totaling \$218,950.00, as to the proceeds of either Ivanhoe Property or Caldwell Property, is avoided for the benefit of the bankruptcy estate; and
- (3) The agreement is effective only upon bankruptcy court approval.

*Ex. A, Doc. #213.* Trustee now seeks approval of the 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: If the issues were litigated, Trustee believes the estate would prevail in avoiding the deed of trust in whole or in part. Doc. #212. However, Trustee acknowledges that there is significant risk that litigating could result in the avoidance less beneficial to the estate than agreed in the settlement. Additionally, litigation would require Trustee to expend significant amounts on attorneys' fees and costs to pursue an adversary proceeding, thus reducing the amounts available for unsecured claims. Trustee therefore believes that settling will result in more funds for

distribution to creditors. This factor appears to support approval of the settlement.

2. Difficulties in collection: Trustee is currently holding \$174,729 in a segregated account for the proceeds of the sale of Ivanhoe Property. If the estate did successfully avoid all or a portion of the deed of trust, collectability would not be an issue. However, Trustee says that administrative expenses would diminish these funds available for unsecured claims. This factor is either neutral or weighs against approving the settlement.

3. Complexity of litigation: The issues raised in a potential avoidance action are not particularly complex, but would involve factual issues requiring discovery, including document analysis and depositions relating to the discussions surrounding the deed of trust, and work undertaken by WBPB. This would necessitate significant attorneys' fees and costs to prove the avoidance while delaying resolution. Since the settlement removes the necessity of those administrative expenses and the delay of litigation, this factor supports approving the settlement.

4. Interests of creditors: Trustee declares that approval of the settlement will maximize the recovery for unsecured creditors in this case and avoid the risk of high administrative expenses and costly delay. This factor supports approving the settlement.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of 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.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee is authorized to release \$81,050.00 to WBPB from the proceeds of the sale of Ivanhoe Property. WBPB's remaining lien on both the Ivanhoe and Caldwell Properties as result of its deed of trust is avoided, and those proceeds are preserved for the benefit of the bankruptcy estate. Trustee is authorized to transfer \$93,679 of the proceeds of the sale of Ivanhoe Property from the estate's blocked account to an unblocked account in the name of the bankruptcy estate.

Other than the above-described payment, this ruling is not authorizing payment of any fees or costs associated with the dispute between the estate and WBPB. Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

11. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[FW-12](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT/STIPULATION WITH BRODY BLAIN AND SHERIDYN BLAIN  
4-14-2023     [[217](#)]

JAMES SALVEN/MV  
RILEY WALTER/ATTY. FOR DBT.  
PETER FEAR/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 James E. Salven ("Trustee") requests an order approving a settlement agreement between (1) the bankruptcy estate of Blain Farming Co., Inc. ("Debtor"), (2) the bankruptcy estate of Atlas World Food & Ag., Inc.<sup>12</sup> ("Atlas"), and (3) Brody Blain and Sheridyn Blain (the "Blains") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #217. Trustee also requests authority to enter into, execute, and deliver any documents as may be required to effectuate the settlement agreement. *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.

Before the filing of Debtor's or Atlas' bankruptcy cases, real property located at 1047 E. Arlen Ave., Visalia, CA ("Property") was transferred to the Blains. Doc. #219. Trustee filed Adv. proc. No. 22-

01015 against the Blains to avoid the pre-petition transfer of the Property, as well as the recovery of a Ford F-250. *Id.* After filing the adversary proceeding, the Blains provided Trustee with documentation tending to demonstrate that they paid \$2,000 and forgave a \$30,785.00 debt in exchange for the transfer of the Property. Additionally, the Blains demonstrated that a significant number of payments on the Ford F-250 were paid by the Blains, rather than Debtor. *Id.*

As a result, the Blains, Trustee on behalf of Debtor, and Atlas entered into a stipulation to resolve the adversary proceeding. Under the terms of the settlement agreement, the parties have agreed:

- (1) The transfer of the Property to the Blains shall be avoided in its entirety, except that the Blains shall be entitled to payment of \$2,000 from escrow if and when the Property is sold by either bankruptcy estate;
- (2) The Blains shall retain title to the Ford F-250, and neither bankruptcy estate has any interest in the vehicle;
- (3) The Blains shall be entitled to an allowed unsecured claim in the Atlas bankruptcy in the amount of \$30,785.00; and
- (4) The stipulation is effective only upon bankruptcy court approval in each bankruptcy case.<sup>13</sup>

*Id.*; *Ex. A*, Doc. #220. Trustee now seeks approval of the 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: if the adversary proceeding were litigated, Trustee believes he would prevail in seeking the avoidance of the transfer of Property. Doc. #219. However, this avoidance does not account for the amounts actually paid by the Blains, which appear to be \$2,000 plus forgiveness of a pre-petition debt. Trustee also believes he could prevail on the recovery of the vehicle, but he has been informed that the Blains have spent significant funds in paying off the vehicle, which could reduce or eliminate any monetary recovery. If forced to litigate, Trustee believes administrative expenses required to prevail would be very high in light of the value of the recovery, which would reduce or

eliminate any amounts available to unsecured claims. This factor supports approval of the settlement.

2. Collection: If the estate prevails against the Blains, the transfer of Property would be avoided and collectability would likely not be an issue. However, Trustee says that the delay in litigation could reduce amounts available to creditors from a judgment avoiding the transfer due to the potential changes in the housing market. *Id.* Although such changes are speculative, uncertainty exists in collection if the parties litigate instead of settling. This factor is either neutral or weighs in favor of rejecting the settlement.

3. Complexity of Litigation: The issues raised in the adversary proceeding are not particularly complex. Litigation would raise factual issues requiring discovery and would necessitate significant administrative expenses, inconvenience for all, and delay. Trustee says the housing market could result in a less favorable sale price if the liquidation of Property is delayed by litigation. *Id.* Since the Stipulation removes administrative expenses and avoids delay, this factor supports approving the settlement.

4. Interests of creditors: Trustee declares that approval of the settlement will maximize the recovery for unsecured creditors in this case and avoid the risk of high administrative expenses and costly delay. This factor supports approving the settlement.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of 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.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. This ruling is not authorizing payment of any fees or costs associated with the litigation. Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

---

<sup>12</sup> See Case No. 21-11448-A-7 (Bankr. E.D. Cal.).

<sup>13</sup> The court notes that a similar motion to approve this settlement agreement was filed in the Atlas bankruptcy on April 26, 2023 and is set for hearing on May 24, 2023. ADJ-5, *id.*

12. [23-10289](#)-B-7      **IN RE: LACEY GIBSON**

CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
2-21-2023    [\[7\]](#)

LACEY GIBSON/MV

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied; filing fee to be paid in installments.

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

The motion was originally heard on April 11, 2023. Doc. #17. Lacey Gibson ("Debtor") appeared. At the hearing, the court outlined that Debtor needed to file (1) a corrected *Schedule I* to establish her income and (2) a corrected *Schedule J* to list her dependents. Additionally, Debtor was informed that she needed to correct the petition regarding the credit counseling briefing and file a credit counseling certificate. The hearing was continued to give Debtor time to make those corrections and file amendments.

Debtor has not filed any amended schedules or other evidence of income, and therefore, the court is unable to determine whether Debtor's income is below 150% of the U.S. Dept. of Health and Human Services' poverty guidelines for a household of her family size.

This matter will be called and proceed as scheduled. The court is inclined to DENY this motion and have the Clerk's office issue an order that Debtor shall pay the chapter 7 filing fee in installments.