



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

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

Hearing Date: Thursday, June 1, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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

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

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. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FW-8](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
5-1-2023 [[325](#)]

BINDER KAUR/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Debtors in possession Kulwinder Singh and Binder Kaur (collectively "Debtors") and chapter 12 trustee Michael H. Meyer ("Trustee") seek authorization to sell the estate's interest in real property located at 8460 E. Nebraska Avenue, Selma, CA 93662 ("Property") to Kuldip Singh ("Proposed Buyer") for \$1,050,000.00, subject to higher and better bids at the hearing pursuant to 11 U.S.C. § 363(b) and free and clear of certain interests under § 363(f). Doc. #325.

No party in interest timely filed written opposition. This motion will be GRANTED and the matter will be called to solicit higher and better bids at the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors filed chapter 12 bankruptcy on February 6, 2019. Doc. #1. One asset of the estate is Property, which consists of 40 acres of farmland. Doc. #328. Debtors and Trustee jointly seek to sell Property free and clear of liens pursuant to 11 U.S.C. § 363(b) and (f).

Under 11 U.S.C. § 1206, a chapter 12 trustee is authorized to sell property free and clear of any interest in such property if it is farmland provided that the proceeds of the sale are subject to such interest. Section 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing 240 *North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Under 11 U.S.C. § 363(f), the trustee may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if—" among other things, "such entity consents; . . . such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; . . . [or] such interest is in bona fide dispute." § 363(f)(2)-(f)(4).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Here, Proposed Buyer is an insider because he is joint debtor Kulwinder Singh's brother. Doc. #325.

A copy of the *Real Estate Purchase and Sale Agreement* ("Contract") is attached as an exhibit. Doc. #329. The Contract contains several terms that are advantageous to Debtors to allow all claims to be paid in full in this case, including:

- a. The sale is subject to court approval and higher and better bids at the time of the sale;
- b. The sale price is \$1,050,000.00;
- c. The sale includes an option for Debtors to purchase all or part of the Property back from Proposed Buyer at an agreed-upon purchase price;

- d. The sale authorizes Debtors to continue living on Property indefinitely for a set rental price;
- e. The sale contemplates that Debtors will be able to continue jointly farming the Property with Proposed Buyer and split the net proceeds from such farming; and
- f. Proposed Buyer agrees to pay all costs of sale, including all escrow and title costs.

Id. Debtors and Trustee also included a copy of the Preliminary Title Report as an exhibit. *Ex. B, id.* It lists the following encumbrances against Property:

- i. A deed of trust held by the David E. Jensen and Sherri E. Jensen Trust UDT 9/16/1991 as to an undivided 50% interest equal to \$150,000 and Esenarro Family LP as to an undivided 50% interest equal to \$150,000 ("Jensen/Esenarro Trusts"), which was recorded on July 20, 2017;
- ii. A *Notice of Independent Solar Energy Producer Contract* recorded February 15, 2018 by Vivint Solar Developer, LLC, a Delaware limited liability company ("Vivint");
- iii. Taxes owed to the Fresno County Tax Collector ("FCTC") in the amount of \$88,838.38 as of June 15, 2023;
- iv. An abstract of judgment recorded February 15, 2018 in the amount of \$5,930.79 in favor of Creditors Bureau USA ("Creditors Bureau");
- v. An abstract of judgment recorded May 2, 2018 in the amount of \$211,286.31 in favor of Farm Credit Services of America, PCA ("FCS");
- vi. An abstract of judgment recorded September 7, 2018 in the amount of \$68,188.38 in favor of GAR Tootelian, Inc. ("GTI"); and
- vii. An abstract of judgment recorded December 8, 2021 in the amount of \$22,524.17 in favor of Ag Valley Harvest, LLC ("AVH").

Doc. #328. All of these claims are provided for in Debtors' chapter 12 plan except for the claims in favor of Creditors Bureau and AVH.

Debtors assert that the AVH lien is void as a violation of the automatic stay because it was filed after the petition date.

Doc. #325. The sale will be and clear of AVH's lien pursuant to 11 U.S.C. § 363(f)(4) because a bona fide dispute exists as to the validity of that lien. But the lien shall attach to the proceeds of the sale until the dispute is resolved.

Debtors were unaware of the Creditors Bureau claim at the time of filing. Doc. #328. As a result, it was not listed in the plan or the schedules and was only discovered after Debtors began the sale process. Since it is not provided for in the plan, Debtors intend to pay the Creditors Bureau USA claim through escrow. Debtors estimate the claim as of June 15, 2023 will be \$9,139.92. *Id.*

The remaining claims will be paid in accordance with the chapter 12 plan. Doc. #325. Trustee requests this sale to be free and clear only

to the extent there is a dispute regarding the amounts to be paid on account of each of these liens. *Id.* If any party objects to the amounts paid as proposed in the confirmed plan, then such lien will be treated as a disputed claim to attach to the proceeds of the sale until the dispute is resolved. Trustee has calculated the amounts he believes are due on each claim through June 15, 2023, along with per diem after June 15, 2023. Doc. #327. Trustee has made the normal payments to creditors through April 2023. Due to the pending sale, Trustee will not make the May payment to creditors and anticipates closing escrow to pay all secured creditors in full in June. *Id.* Trustee has calculated the following payments to each of these creditors as follows:

Class	Claimant	Claim through 06/15/23	Per diem after 06/15/23
3	Jensen/Esenarro Trusts	\$290,792.77	\$43.82
4	FCS	\$264,528.48	\$50.73
4.1	FCS	\$49,679.86	\$9.53
5	GTI	\$66,285.73	\$6.36

Id. The parties anticipate the sale proceeds will be paid as follows:

Sale price	\$1,050,000.00
Property taxes	- \$88,838.38
Jensen/Esenarro Trusts	- \$290,792.77
Creditors Bureau Judgment	- \$9,139.92
FCS	- \$264,528.48
FCS	- \$49,679.86
GTI	- \$66,285.73
Net proceeds to estate	= \$280,734.86

Id. The sale under these circumstances should maximize the potential recovery for the estate.

Overbid Procedure

Any party wishing to overbid shall comply with the following requirements prior to the hearing:

1. Deposit with Debtors' counsel certified monies in the amount of \$10,000 no later than seven days prior to the hearing. An unsuccessful bidder's deposit shall be returned at the conclusion of the hearing and a successful bidder's deposit will be applied towards the overbid purchase price;
2. Provide written proof of financial ability to cover the necessary overbid amount;
3. Provide written proof that the successful overbidder can close the sale with 15 days of delivery of a certified copy of the court's order approving the sale and can execute a purchase agreement for the Property;
4. Be prepared to match the terms and conditions of the stalking horse bidder;

5. Be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 15 days of the delivery of a certified copy of the court's order approving the sale for any reason, the deposit will become non-refundable;
6. Be present at the sale hearing and be prepared to match non-monetary terms included in the contract or by other bidders;
7. Make all overbids in the amount of \$5,000.00; and
8. Acknowledge that the sale of Property shall be "as-is, where-is" with no warranty or representations, express, implied, or otherwise by the bankruptcy estate, the Debtors, or their representatives.

Conclusion

No party in interest timely filed written opposition. The court will inquire at the hearing about the Vivint solar lien and whether it encumbers Property. The court intends to GRANT this motion and solicit higher and better bids at the hearing.

Trustee will be authorized to sell Property free and clear of the claims outlined above and to execute all documents necessary to effectuate the sale of the property, with any remaining liens (AVH) attaching to the proceeds of the sale. Trustee will be further authorized to make payment through escrow of the full amounts outlined above in full satisfaction of the claims on the proceeds. Trustee's settlement agent will be authorized to pay the remaining proceeds directly to the Trustee.

2. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
2-7-2023 [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 11, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

The court is in receipt of the debtor's May 24, 2023 status report and the April 2023 monthly operating report. Docs. #45, #47. This status conference will be CONTINUED to July 11, 2023 at 9:30 a.m. to be heard in connection with the confirmation hearing on the debtor's subchapter V plan. See FW-2.

3. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-23](#)

AMENDED MOTION TO BORROW AMENDED MOTION FOR
ADEQUATE PROTECTION
5-19-2023 [\[483\]](#)

VALLEY TRANSPORTATION, INC./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.

This motion was originally heard on May 19, 2023. Doc. #462.

Chapter 11, subchapter V debtor in possession Valley Transportation, Inc. ("Debtor"), moved 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 sought 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.*

At Debtor's request, this motion was continued to June 1, 2023. Docs. #462, #470. Debtor was ordered to file a modified agreement or additional evidence no later than May 25, 2023. *Id.*

Debtor timely filed an amended motion with an amended copy of the Agreement. Docs. ##483-84. The amended motion makes the following modifications to the Agreement:

- a. The Agreement has been modified to strike out all references to Debtor not being insolvent or in bankruptcy, and such change has been approved by Lenders;
- b. Debtor withdraws its request for automatic relief from the stay in the event of a default under the Agreement. If Debtor fails to timely make payments as described, Lenders may seek relief from the automatic stay in accordance with Rule 4001.

Id.

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 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:

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, Lenders may seek relief from the automatic stay under Rule 4001. *Ex. A*, Docs. ##483-84.

This matter will be called and proceed as scheduled. Opposition may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-18](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[198](#)]

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

NO RULING.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[204](#)]

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

NO RULING.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-20](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[212](#)]

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

NO RULING.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[218](#)]

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

NO RULING.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [[230](#)]

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

NO RULING.

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

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-9-2023 [[373](#)]

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

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-39](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-9-2023 [[358](#)]

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

NO RULING.

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

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

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

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-41](#)

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

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

NO RULING.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

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

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

NO RULING.

14. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-43](#)

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

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

NO RULING.

15. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-45](#)

CONTINUED 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.

This motion was originally heard on May 16, 2023. Docs. #449, #457.

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

Debtor sought to reject the Agreement 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. ##343-47.

At the Debtor's request, the court continued this motion. Docs. #449, #457. 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 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.

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 proposed claims bar date for claims based on this motion at the hearing.

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.

¹ 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.

16. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-47](#)

MOTION TO EMPLOY NEWMARK PEARSON COMMERCIAL AS BROKER(S)
5-18-2023 [\[473\]](#)

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") asks the court to approve Debtor's retention of Newmark Pearson Commercial ("Applicant") as the estate's leasing broker in connection with the proposed leases of portions of Debtor's real property consisting of medical office buildings located upon Debtor's hospital campus at 1250 E. Almond Ave., Madera, CA 93639 ("Hospital"). Doc. #473. The application is supported by a copy of the parties' leasing agreement, a verified statement of connections, and the declaration of Phil Souza. Docs. #475-76.

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 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. Since Debtor has ceased providing healthcare services at the Hospital, Debtor seeks to employ Applicant as a leasing broker pursuant to 11 U.S.C. §§ 327(a), 328, and Fed. R. Bankr. P. 2013-14, 2016, 5002, 5004, and 9001 to lease out several available spaces at the Hospital to generate revenue and pay claims. Docs. #473, #475.

Debtor selected Applicant as its leasing broker because of Applicant's experience and knowledge in the leasing of commercial office spaces. Doc. #473. Debtor believes Applicant is well qualified to provide such services in this case. *Id.* Debtor proposes paying Applicant from the rent proceeds received in connection with leasing the available spaces at the Hospital. *Id.*

A copy of the *Exclusive Authorization to Lease or Rent* ("Leasing Agreement") was included as an exhibit. *Ex. A, Doc. #476*. Under the terms of the Leasing Agreement, Debtor is granting Applicant an exclusive and irrevocable right to lease or rent the Hospital between April 15, 2023 and October 14, 2023. *Id.* The Lease Agreement includes an attached schedule of lease commissions under which Applicant will be paid a 5% commission of total scheduled rent if the lease term is less than five years. *Id.* at 4. However, if the lease term ranges from 6-10 years, Applicant will be paid 5% of total scheduled rent for the first five years, plus 2.5% of total scheduled rent in excess of five years. *Ibid.* Leases ranging from 11-25 years are paid as scheduled above, plus 3% of total scheduled rent in excess of 10 years. Leases beyond 25 years are to be negotiated with company approval, and leases beyond 30 years will be computed at 6% of the appraised value of the leased property and shall be treated as a sale of real estate. *Ibid.*

Also 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 previously consulted with Debtor several years ago regarding leasing space for an urgent care facility, but no lease resulted.
- (2) Applicant does not currently represent any creditors on totally unrelated matters, but some of them may have been involved in lease or sale deals in the past. Applicant's position is that it has no prior or existing connection to any creditor that would be adverse to the creditor or Debtor. Further, it is Applicant's position that closed matters are not related to this bankruptcy case, and 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, except as noted below.
- (4) Applicant has no connections with any attorneys in this case except that Applicant has represented buyers, sellers, lessors, and lessees of real property that were represented by Riley C. Walter and Wanger Jones Helsley.
- (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.
- (8) If additional connections are discovered, Applicant will disclose such connections.

Ex. B, Doc. #476. The verified statement of connections is incorporated by reference in the declaration of Phil Souza, the Senior Vice President of the Office Division of Applicant.

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."

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED. The court may find that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

17. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-54](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSEY FOR RILEY C WALTER, DEBTORS ATTORNEY(S)
4-27-2023 [\[308\]](#)

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.

Wanger Jones Helsley, P.C. ("Applicant"), general bankruptcy counsel for chapter 11 debtor in possession Madera Community Hospital ("Debtor"), requests compensation in the sum of \$171,957.95 on an interim basis pursuant to 11 U.S.C. § 331, subject to final review under § 330. Doc. #308. This amount consists of \$166,909.50 in fees and \$5,048.45 in reimbursement for expenses from March 10, 2023 through April 15, 2023. *Id.*

Karen Paolinelli, Debtor's representative, has received and reviewed the fee application and has no objections. Doc. #312.

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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Applicant was employed as Debtor's general bankruptcy counsel pursuant to 11 U.S.C. §§ 327 and 329-31 effective as of thirty days before the petition date. Doc. #259. No compensation was permitted except upon

court order following application under § 330(a) and compensation was set at the “lodestar rate” applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 287 (9th Cir. 1988). Mostly applications for interim compensation pursuant to § 331 were permitted provided that the combined fees and expenses exceed \$5,000. *Id.*

This is Applicant’s first interim fee application. Doc. #308. Applicant’s firm provided 508.50 billable hours of legal services at the following rates, totaling **\$166,909.50** in fees:

Professional	Rate	Hours	Amount
Riley C. Walter	\$550.00	175.6	\$96,580.00
Kurt F. Vote	\$450.00	0.70	\$315.00
Michael Helsley	\$435.00	0.60	\$261.00
Danielle J. Bethel	\$325.00	152.50	\$49,562.50
Colten D. Ballinger	\$235.00	3.10	\$728.50
Nicole Medina	\$170.00	105.50	\$17,935.00
Sherri Large	\$185.00	0.50	\$92.50
April Summers	\$20.50	70.00	\$1,435.00
Total Fees & Expenses		508.50	\$166,909.50

Id.; *Ex. B*, Doc. #310. Applicant also incurred **\$5,048.45** in expenses:

Courthouse News Service	\$5.00
Copies of State Court Complaints	\$74.50
Recorder fees	\$104.00
PACER	\$295.20
CourtCall	\$22.50
Valley Document Solutions	\$43.34
Copying (20,523 @ \$0.15)	\$3,078.45
Postage	\$1,213.89
Mileage expenses	\$211.57
Total Expenses	\$5,048.45

Ex. C, id. These combined fees and expenses total **\$171,957.95**. Applicant is holding a pre-petition retainer in the amount of \$173,628.80, which will be used to fund the fee application and leave \$1,670.85 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) preparing the schedules and IDI/341 documents, attending the initial debtor interview, meeting of creditors, and conferences with committee counsel; (2) preparing and filing emergency first day motions, including seeking approval of use of cash collateral, existing bank account systems, payment of prepetition claims, and sales of assets; (3) drafting the chapter 11 plan and related documents; (4) preparing motions to reject executory contracts and nonresidential real property leases; (5) analyzing claims by former employees; and (6) preparing various employment applications of professionals. *Ex. A*, Docs. ##310-11. 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. #312.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$166,909.50 in fees as reasonable compensation for services rendered and \$5,048.45 in reimbursement for actual, necessary expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be authorized to draw \$171,957.95 from the pre-petition retainer on the terms outlined above for services rendered and costs incurred from March 10, 2023 through April 15, 2023.

1:30 PM

1. [15-12406](#)-B-7 **IN RE: ANDREW/KRISTA MIRELEZ**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-26-2023 [\[87\]](#)

JAMES SALVEN/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.

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$1,669.30. Doc. #87. This amount consists of \$1,400.00 in fees and \$269.30 in reimbursement for expenses from April 15, 2023 through April 24, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #91.

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 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.

Andrew Robert Mirelez and Krista Michele Mirelez (collectively "Debtors") filed chapter 7 bankruptcy on June 17, 2015. Doc. #1. The court entered Debtors' discharge on October 19, 2015, and the case was

closed by final decree on March 10, 2017. Docs. #23, #39. The case was reopened on August 11, 2022 and Trustee was reappointed as Trustee. Docs. #42, #52. The court approved Applicant's employment as the estate's accountant on April 25, 2023, effective for services rendered on or after April 1, 2023. Doc. #86. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services 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 was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #87. Applicant provided 5.1 billable hours of accounting services at a rate of \$280.00 per hour, totaling \$1,428.00 in fees. *Ex. A*, Doc. #90. However, Applicant has reduced the fee request to **\$1,400.00**. Doc. #87. Applicant also incurred **\$269.30** in expenses:

Copies (283 @ \$0.20)	\$56.60
Envelopes (5 @ \$0.20)	\$1.00
Lacerte Tax Proc (2 @ \$91.00)	\$182.00
Service fee app	\$29.70
Total Expenses	\$269.30

Ex. B, Doc. #90. These combined fees and expenses total **\$1669.30**.

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 app; (2) reviewing personal injury compromise to determine tax status; (3) inputting settlement sheet into tax system; (4) corresponding with attorney to obtain professional fee estimates for returns; (5) processing tax returns for prompt tax determinations; and (6) preparing and filing this fee application. *Ex. A*, Doc. #90. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #91.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$1,400.00 in fees and \$269.30 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be

authorized to pay Applicant \$1,669.30 for services rendered and costs incurred from April 15, 2023 through April 24, 2023.

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

MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM
4-28-2023 [\[1079\]](#)

PILOT TRAVEL CENTERS LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
MARIA GARCIA/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

Pilot Travel Centers LLC ("Movant") requests an order allowing for payment of its administrative expense claim pursuant to 11 U.S.C. § 503(b)(1) in the amount of \$133,521.43 for amounts past due and owing to Movant arising on the petition date but before conversion to chapter 7. Doc. #1079.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") timely responded. Doc. #1102.

This matter will be called and proceed as scheduled.

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 except Trustee 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 Trustee 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).

Freon Logistics ("Debtor") filed chapter 11 bankruptcy on November 8, 2022. Doc. #1. The case was converted to chapter 7 on December 14, 2022. Doc. #290. Prior to conversion, Movant sold fuel to Debtor to help it run its business. On November 18, 2022, the court granted Debtor's motion to allow Movant's claim as an administrative expense

pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$1,696,443.20 and Debtor was authorized to pay Movant's administrative expense claim in the ordinary course of business as part of its chapter 11 case. LKW-4; Doc. #67.

After the case was converted to chapter 7, Movant filed Proof of Claim No. 67-1 asserting a pre-petition priority administrative expense claim pursuant to §§ 507(a)(2) and 503(b)(9) in the total amount of \$2,021,203.92.

Separately, Movant has an administrative expense claim for selling and delivering fuel to Debtor in the ordinary course of business after the petition date (Nov. 8, 2022) and before conversion (Dec. 14, 2022) in the amount of \$133,521.43, which is the subject of this motion. Doc. #1081. Debtor failed to pay for goods sold and delivered between these dates. *Id.* Movant included as an exhibit a copy of the itemization of invoices totaling \$133,521.43. *Ex. A*, Doc. #1082.

Trustee does not have any objection to the granting of the motion provided that (1) the order does not make a determination as to the allowance of Movant's claim filed under Claim 67-1, and (2) the order makes no determination as to the priority of payment under the Bankruptcy Code, or the amount paid to Movant, whether Movant is paid in full or on a pro-rata basis with other chapter 11 administrative claims if and when those claims are paid. Doc. #1102.

11 U.S.C. § 503(b)(9) permits the allowance of an administrative expense claim to any party selling goods to a debtor in the ordinary course of business within the twenty days before commencement of the bankruptcy case. The amount of the administrative expense claim is "the value of any goods received by the debtor within twenty (20) days before the commencement of a case under [the Bankruptcy Code]." § 503(b)(9). Courts have applied a three-part test to evaluate potential administrative expense claims:

- a. the claimant must have sold goods to the debtor;
- b. the goods must have been received by the debtor within twenty (20) days before the bankruptcy filing; and
- c. the sale must have occurred in the ordinary course of business.

In re Skyler Exploration Co., 638 F.2d 627, 630 (Bankr. D. Colo. 2022); *In re World Imports, Ltd.*, 862 F.2d 338, 341 (3d Cir. 2017).

Here, (a) Movant sold fuel to Debtor, (b) the fuel was received by Debtor within the 20 days preceding the petition date, and (c) the fuel was sold to Debtor in the ordinary course of business.

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

[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-2023 [\[17\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
T. O'TOOLE/ATTY. FOR DBT.
AUSTIN NAGEL/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 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. #17.

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.

As an informative matter, Movant's Certificate of Service (Doc. #22) lists the Sacramento address for the U.S. Trustee, rather than the Fresno address. Since the debtors are surrendering the Vehicle and no relief is being sought from the U.S. Trustee, the court will overlook this deficiency in this instance.

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 post-petition payments. Movant has produced evidence that debtors are delinquent at least \$3,147.40. Docs. #19, #21. Additionally, Debtors have failed to provide proof of insurance coverage and have indicated that they intend to surrender Vehicle. *Id.*; Doc. #1.

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 \$39,100.00 and debtors owe \$46,459.00. Docs. #19, #21.

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. No other relief is awarded.

4. [23-10829](#)-B-7 **IN RE: LUIS PADILLA REYES**
[LKW-1](#)

MOTION TO COMPEL ABANDONMENT
5-16-2023 [\[12\]](#)

LUIS PADILLA REYES/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.

Luis Padilla Reyes ("Debtor") moves for an order compelling chapter 7 trustee Jeffrey M. Vetter ("Trustee") to abandon the estate's interest in a 2013 Kenworth T-800 Tractor ("Tractor"). Doc. #12.

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 the owner and operator of L. Padilla Trucking, LLC and uses the Tractor as part of his business. Docs. #1, #15. Debtor seeks to compel Trustee to abandon the Tractor because it is burdensome and of inconsequential value to the estate. Doc. #12. The Tractor is listed in the schedules with a value of \$42,500.00, but it is encumbered by a \$56,000.00 security interest in favor of Ascentium Capital as of the petition date. *Scheds. A/B, D*, Doc. #1; Doc. #15.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Tractor is of inconsequential value and benefit to the estate. The Tractor was accurately scheduled and is encumbered in its entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

5. [23-10829](#)-B-7 **IN RE: LUIS PADILLA REYES**
[LKW-2](#)

MOTION TO COMPEL ABANDONMENT
5-16-2023 [\[18\]](#)

LUIS PADILLA REYES/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.

Luis Padilla Reyes ("Debtor") moves for an order compelling chapter 7 trustee Jeffrey M. Vetter ("Trustee") to abandon the estate's interest in a 2014 Kenworth T-660 Tractor ("Tractor"). Doc. #18.

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 the owner and operator of L. Padilla Trucking, LLC and uses the Tractor as part of his business. Docs. #1, #20. Debtor seeks to compel Trustee to abandon the Tractor because it is burdensome and of inconsequential value to the estate. Doc. #18. The Tractor is listed in the schedules with a value of \$34,000.00, but it is encumbered by a \$29,000.00 security interest in favor of Ascentium Capital as of the petition date. *Scheds. A/B, D*, Doc. #1; Doc. #20. If Tractor was sold for that amount, no equity would remain after payment of 15% costs of sale (\$5,100.00).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Tractor is of inconsequential value and benefit to the estate. The Tractor was accurately scheduled and is encumbered such that if sold, there would be no appreciable benefit to the estate and no significant distribution to creditors. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

6. [23-10829](#)-B-7 **IN RE: LUIS PADILLA REYES**
[LKW-3](#)

MOTION TO COMPEL ABANDONMENT
5-16-2023 [\[24\]](#)

LUIS PADILLA REYES/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.

Luis Padilla Reyes ("Debtor") moves for an order compelling chapter 7 trustee Jeffrey M. Vetter ("Trustee") to abandon the estate's interest in a 2014 Kenworth T-680 Tractor ("Tractor"). Doc. #24.

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 the owner and operator of L. Padilla Trucking, LLC and uses the Tractor as part of his business. Docs. #1, #26. Debtor seeks to compel Trustee to abandon the Tractor because it is burdensome and of inconsequential value to the estate. Doc. #24. The Tractor is listed in the schedules with a value of \$21,250.00, but it is encumbered by a \$29,928.70 security interest in favor of Financial Pacific Leasing as of the petition date. *Scheds. A/B, D*, Doc. #1; Doc. #20. If Tractor was sold for that amount, no equity would remain after payment of 15% costs of sale (\$3,187.50).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Tractor is of inconsequential value and benefit to the estate. The Tractor was accurately scheduled and is encumbered such that if sold, there would be no appreciable benefit to the estate and no significant distribution to creditors. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

7. [01-61942](#)-B-7 **IN RE: RICHARD WARREN**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
4-21-2023 [\[55\]](#)

DAVID ADALIAN/ATTY. FOR DBT.
PETER SAUER/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.

Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$20,284.58. Doc. #55. This amount consists of \$20,098.50 in fees and \$186.08 for reimbursement of expenses from December 27, 2021 through April 18, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #57.

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 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.

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. The court entered Debtors' discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. ##8-9. The case was reopened on

December 17, 2021 and Trustee was reappointed as trustee. Docs. #11, #13. The court approved Applicant's employment under 11 U.S.C. §§ 327, 329-31 as the estate's general bankruptcy counsel on January 13, 2022, effective December 17, 2021. Doc. #22. No compensation was permitted except upon court approval following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for services at the time rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 287 (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. Doc. #55. Applicant's firm provided 76.30 billable hours of legal services at the following rates, totaling **\$20,098.50** in fees:

Professional	Rate	Hours	Fees
Peter L. Fear (2021)	\$410	0.5	\$205.00
Peter L. Fear (2022)	\$425	1	\$425.00
Peter A. Sauer (2021)	\$245	8.9	\$2,180.50
Peter A. Sauer (2022)	\$260	47.2	\$12,272.00
Peter A. Sauer (2023)	\$280	13.3	\$3,724.00
Katie Waddell (2023)	\$260	4.7	\$1,222.00
Laurel Guenther (2022)	\$100	0.7	\$70.00
Total Hours & Fees		76.3	\$20,098.50

Id.; Exs. B-C, Doc. #59. Applicant also incurred **\$186.08** in expenses:

Copying	\$106.78
Court fees	\$0.30
Postage	\$79.00
Total Expenses	\$186.08

Id. These combined fees and expenses total **\$20,284.58**.

11 U.S.C. § 330(a)(1)(A) & (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 here included, without limitation: (1) seeking authorization to employ general counsel, special counsel, and an accountant (FW-1; FW-2; FW-3); (2) analyzing the status of the case and communicating with Trustee regarding the same; (3) negotiating with Debtors' nonbankruptcy counsel that the estate had an interest in administering Debtors' claim against third parties and filing a motion to approve the same (FW-4) and compensate special counsel; (4) filing

settlement agreement under seal; and (5) preparing and filing this fee application (FW-6). The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #57.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$20,098.50 in fees as reasonable compensation for services rendered and \$186.08 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$20,284.58 for services rendered and costs incurred from December 27, 2021 through April 18, 2023.

8. [22-11943](#)-B-7 **IN RE: RAYMOND KRAUSE**
[JES-1](#)

MOTION TO SELL
4-12-2023 [[23](#)]

JAMES SALVEN/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

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 an order authorizing the sale of the estate's interest in a 2001 Porsche Boxster S ("Vehicle") for \$8,625.00 under 11 U.S.C. § 363, subject to higher and better bids at the hearing. Doc. #23.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

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)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

Raymond Adam Krause ("Debtor") filed chapter 7 bankruptcy on November 15, 2022. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on December 12, 2022. Doc. #5. Among the assets of the estate is Vehicle, which Trustee now seeks to sell to Debtor pursuant to 11 U.S.C. § 363(b).

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

Property is listed in the schedules as having 135,375 miles and is valued at \$4,147.00. *Am. Sched. A/B*, Doc. #21. Debtor claimed a \$3,625.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Sched. C*, Doc. #1. Vehicle does not appear to be encumbered by any security interests, but the sale is subject to all liens and encumbrances of record. Debtor will receive a \$3,625.00 exemption credit towards the purchase price, resulting in \$5,000.00 in net proceeds to the estate if the sale is completed as proposed.

Trustee received an offer from Debtor to purchase the Vehicle at the sale price indicated, which he accepted subject to court approval and higher and better bids. Doc. #25. Trustee has received a \$2,000.00 deposit and the \$3,000.00 balance will be sent to Trustee within 60 days of the motion (prior to the hearing). Doc. #23. Trustee believes the sale price is fair when considering the fair market value of the Vehicle and Debtor's exemption.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price.

No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing, acknowledge that the sale is "as-is, where-is," with no representations or warranties, express, implied, or otherwise from the bankruptcy estate, the Debtor, or their representatives.

9. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-7](#)

MOTION TO APPROVE STIPULATION WITH SUN PACIFIC FARMING
COOPERATIVE, INC.
5-3-2023 [[130](#)]

PETER FEAR/MV
MARK ZIMMERMAN/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.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a stipulation between the bankruptcy estate of Stephen L. Meza ("Debtor") and Sun Pacific Farming Cooperative, Inc. ("Sun Pacific") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #130.

Sun Pacific filed non-opposition. Doc. #143.

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.

Debtor filed chapter 7 bankruptcy on January 31, 2020. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on March 2, 2020. Doc. #5.

While administering the estate, Trustee analyzed Proof of Claim No. 1 filed by Sun Pacific, which is the largest claim filed in this case and comprises approximately 44% of all unsecured claims. Doc. #132. Claim 1 is derived from a judgment obtained by Sun Pacific against D&S Ag Designs, Inc., a corporation owned by Debtor. Debtor is not named as a judgment debtor and nothing in the claim connects him individually. As a result, Trustee contacted counsel for Sun Pacific, who informed Trustee that its claim is based on the theory of alter ego and piercing the corporate veil, as well as Debtor's listing of D&S Ag Designs Inc.'s property on his schedules with Sun Pacific as a creditor. Since no factual determinations have been made with respect to these issues, Trustee believes he has a fiduciary duty to creditors to object to Sun Pacific's claim. In an effort to maximize the payout to unsecured claims, Trustee and Sun Pacific agreed to resolve this potential claim objection.

Under the terms of the settlement, Sun Pacific's Claim 1 shall be reduced by half to \$183,327.71, which shall be treated as an allowed unsecured claim in this case. Doc. #129.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). 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).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the stipulation as follows:

1. Probability of success in litigation: If the issues were litigated, Trustee believes he would prevail in seeking the avoidance of Claim 1. However, whether the corporate veil should be pierced is factual in nature and Trustee acknowledges a significant possibility that Sun Pacific could demonstrate the necessary facts for this determination. Significant administrative expenses would be required to litigate this issue, which would reduce or eliminate amounts available to unsecured claims. This factor supports approval of the stipulation.
2. Collection: Collection would not be an issue since the litigation involves a claim objection. This factor is inapplicable.
3. Complexity of litigation: The issues raised in Sun Pacific's claims are not particularly complex. However, factual issues are raised that would require significant discovery, necessitating significant administrative expenses and inconvenience for all parties. This factor supports approval of the stipulation.
4. Paramount interests of creditors: Trustee contends the stipulation maximizes the recovery for unsecured creditors in this bankruptcy and avoids the risk that the estate would be significantly reduced. Since the stipulation eliminates potential administrative expenses, Trustee believes the stipulation is in the best interests of creditors and the estate.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the stipulation. Therefore, the stipulation appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. 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.*

Accordingly, this motion will be GRANTED. The stipulation between the estate and Sun Pacific will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the stipulation. The proposed order shall attach the stipulation as an exhibit.

10. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-8](#)

MOTION TO APPROVE STIPULATION WITH QUIEDAN COMPANY
5-3-2023 [[136](#)]

PETER FEAR/MV
MARK ZIMMERMAN/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.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a stipulation between the bankruptcy estate of Stephen L. Meza ("Debtor") and Quiedan Company ("Quiedan") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #136.

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.

Debtor filed chapter 7 bankruptcy on January 31, 2020. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on March 2, 2020. Doc. #5.

While administering the estate, Trustee analyzed Proof of Claim No. 2 filed by Quiedan, which is the second largest claim filed in this case and comprises approximately 42% of all unsecured claims. Doc. #138. Claim 2 is derived from contracts between Quiedan and D&S Ag Designs,

Inc., a corporation owned by Debtor. Debtor is not named in the contract individually. As a result, Trustee contacted counsel for Quiedan, who informed Trustee that Debtor solely negotiated the contracts, admitted he owed the funds, and treated D&S Ag Designs, Inc. as a "shell" and "purported D&S was him." *Id.* Since no factual determinations have been made with respect to whether it is appropriate to pierce the corporate veil or treat D&S Ag Designs, Inc. as the alter ego of Debtor, Trustee believes he has a fiduciary duty to creditors to object to Quiedan's claim. In an effort to maximize the payout to unsecured claims, Trustee and Quiedan agreed to resolve this potential claim objection.

Under the terms of the settlement, Quiedan's Claim 2 shall be reduced by half to \$174,444.82, which shall be treated as an allowed unsecured claim in this case. Doc. #139.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). 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).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the stipulation as follows:

1. Probability of success in litigation: If the issues were litigated, Trustee believes he would prevail in seeking the avoidance of Claim 2. However, whether the corporate veil should be pierced is factual in nature and Trustee acknowledges a significant possibility that Quiedan could demonstrate the necessary facts for this determination. Significant administrative expenses would be required to litigate this issue, which would reduce or eliminate amounts available to unsecured claims. This factor supports approval of the stipulation.
2. Collection: Collection would not be an issue since the litigation involves a claim objection. This factor is inapplicable.
3. Complexity of litigation: The issues raised in Quiedan's claims are not particularly complex. However, factual issues are raised that would require significant discovery, necessitating significant administrative expenses and inconvenience for all parties. This factor supports approval of the stipulation.

4. Paramount interests of creditors: Trustee contends the stipulation maximizes the recovery for unsecured creditors in this bankruptcy and avoids the risk that the estate would be significantly reduced. Since the stipulation eliminates potential administrative expenses, Trustee believes the stipulation is in the best interests of creditors and the estate.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the stipulation. Therefore, the stipulation appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. 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.*

Accordingly, this motion will be GRANTED. The stipulation between the estate and Quiedan will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the stipulation. The proposed order shall attach the stipulation as an exhibit.

11. [23-10275](#)-B-7 **IN RE: RAQUEL CHAVEZ**
[SL-1](#)

MOTION TO AVOID LIEN OF ABSOLUTE RESOLUTIONS INVESTMENTS,
LLC
4-26-2023 [\[20\]](#)

RAQUEL CHAVEZ/MV
SCOTT LYONS/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.

Raquel Chavez ("Debtor") moves to avoid a lien in favor of Absolute Resolutions Investments, LLC ("Creditor") in the sum of \$2,356.67 and encumbering residential real property located at 1515 Hartley Ave., Farmersville, CA 93223 ("Property").² Doc. #20.

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 chapter 7 trustee, 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.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$2,356.67 on August 26, 2021. *Ex. D*, Doc. #22. The abstract of judgment was issued on November 29, 2022 and was recorded in Tulare County on January 5, 2023. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #23. Debtor estimates that the current amount owed to Creditor is approximately \$2,668.00 as of the petition date. *Id.*

On the petition date, Property had an approximate value of \$261,300.00. *Id.*; *Am. Sched. A/B*, Doc. #18. Debtor claimed a homestead exemption in Property in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *id.*

Debtor claims that Property was encumbered by a first deed of trust in favor of Guild Mortgage Company in the approximate amount of \$72,373.00, and a second deed of trust in favor of the City of Farmersville in the approximate amount of \$56,000.00. Doc. #23. The court notes that Debtor failed to attach copies of these deeds of trust. However, since the exempted value exceeds the unencumbered value of Property, such evidence of the deeds of trust is not necessary here.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re*

Brantz, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Here, there is no equity to support any judicial liens. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$2,356.67
Total amount of unavoidable liens	+ \$128,373.00
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$430,729.67
Debtor's claimed value of interest absent liens	- \$261,300.00
Extent lien impairs exemption	= \$169,429.67

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$261,300.00
Total amount of unavoidable liens	- \$128,373.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$167,073.00)
Creditor's judicial lien	- \$2,356.67
Extent Debtor's exemption impaired	= (\$169,429.67)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

² Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's officer and registered agent for service of process on April 26, 2023. Doc. #24.

12. [22-12183](#)-B-7 **IN RE: ELIJAH/DALILA GARZA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-2023 [\[17\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 3/27/23

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

DISPOSITION: Granted in part and denied as moot in part.

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

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 2107 Toyota Highlander ("Vehicle"). Doc. #17. Elijah Javier Garza and Dalila Betsabe Garza (collectively "Debtors") and chapter 7 trustee Jeffrey M. Vetter ("Trustee") 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 Trustee, 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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtors' discharge was entered on March 27, 2023. Doc. #15. Therefore, the automatic stay terminated with respect to Debtors on March 27, 2023. This motion will be DENIED AS MOOT IN PART as to Debtor's interest.

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 with respect to Trustee because Debtors have failed to make one pre-petition payment of \$309.62 and two post-petition payments totaling \$619.24. Movant has produced evidence that Debtors owe \$14,136.02 to Movant. Docs. #19, #21. Additionally, Debtors have failed to maintain insurance coverage.

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 \$23,150.00 and Debtors owe \$24,157.07. *Id.*

Accordingly, the motion will be GRANTED IN PART as to the Trustee's interest and DENIED AS MOOT IN PART as to Debtors' interest under § 362(c)(2)(C). No other relief is awarded.

13. [21-10096](#)-B-7 **IN RE: BHUPINDER SINGH AND NAVNEET KAUR**
[ADJ-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO
JOHNSTON & CHARTRAND FOR ANTHONY D. JOHNSTON, TRUSTEES
ATTORNEY(S)
4-5-2023 [[91](#)]

PETER FEAR/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.

Anthony D. Johnston of Fores▪Macko▪Johnston, Inc. ("Applicant"), counsel for chapter 7 trustee Irma C. Edmonds ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the amount of \$2,097.75. Doc. #91. This amount consists of \$1,912.50 in fees and \$185.25 in reimbursement for expenses from October 19, 2022 through April 5, 2023. *Id.*

Trustee has read and reviewed the application and has no objections. Doc. #94. The estate has funds on deposit in the amount of \$19,012.12, 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 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.

Bhupinder Singh and Navneet Kaur (collectively "Debtors") filed chapter 11 bankruptcy on January 15, 2021. Doc. #1. The case was converted to chapter 7 on February 11, 2021. Doc. #25. Walter R. Dahl was appointed as chapter 7 trustee February 16, 2021 and he entered a report of no distribution on April 5, 2021. Doc. #29. Debtors' chapter 7 discharge was entered on January 15, 2021 and the case was closed by final decree on May 24, 2021. Docs. #66, #68.

On March 22, 2022, the case was reopened. Doc. #71. Trustee was appointed as successor trustee. Doc. #73. Trustee sought and obtained approval to employ Applicant as general bankruptcy counsel on October 21, 2022, effective October 19, 2022. Doc. #90. 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 5.10 billable hours at an hourly rate of \$375.00 per hour, totaling **\$1,912.50** in fees. Docs. #91, #93; Exs. A-B, Doc. #95. Applicant also incurred **\$185.25** in expenses:

Copies (768 @ \$0.10/page)	\$76.80
Postage	\$108.45
Total Expenses	\$185.25

Ex. C, id. These combined fees and expenses total **\$2,097.75**.

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) confirming the propriety of and correctness of the Debtors' exemption in insurance proceeds resulting from the destruction of their personal property in a home fire; (2) preparing and filing the employment application (ADJ-1); and (3) preparing and filing this fee application (AJD-2). Doc. #93. 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 \$19,012.12. Doc. #94.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,912.50 in fees as reasonable compensation for services rendered and \$185.25 in reimbursement for actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$2,097.75 on the terms outlined above for services rendered and costs incurred from October 19, 2022 through April 5, 2023.