



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

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

Hearing Date: Tuesday, June 27, 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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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. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[CAE-1](#)

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

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped from calendar.

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

The court is in receipt of the debtor's *Sixth Chapter 11 Sub V Status Conference Statement* dated June 20, 2023. Doc. #541. The court intends to dismiss this case in matter #2 below. WJH-24. If the case is dismissed, this status conference will be dropped and taken off calendar pursuant to the dismissal.

2. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-24](#)

MOTION TO DISMISS CASE
6-15-2023 [[518](#)]

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
OST 6/13/23

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 subchapter V debtor in possession Valley Transportation, Inc. ("Debtor") moves to voluntarily dismiss this case under 11 U.S.C. § 1112(b). Doc. #518.

Subchapter V Trustee Lisa A. Holder does not oppose. Docket generally.

Unsecured creditors Falcon Private Security and Kelly Freight Services, Inc. and secured creditor Banc of America Leasing & Capital, LLC filed statements of consent to dismissal. Docs. ##543-44.

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.

This motion was filed with an order shortening time ("OST") to reduce the period of notice to permit the hearing to take place on June 27, 2023. Doc. #507. Debtor was required to give notice to all creditors, Debtor, the Subchapter V Trustee, and the U.S. Trustee's Office via ECF or email, if known, and first-class mail by June 15, 2023. Debtor appears to have complied with the OST by serving notice on all requisite parties on June 15, 2023. Doc. #521.

Debtor filed chapter 11 subchapter V bankruptcy on September 1, 2022. Doc. #1. The sole reason for filing bankruptcy was due to a "hotly and bitterly disputed claim by Andrew Mendoza." Simpson Decl. ¶ 3, Doc. #520. On or about May 1, 2023, the parties resolved and settled their dispute through the offices of the Honorable Justice Steven K. Kane (Ret.). *Id.* ¶ 4. Under the settlement, Debtor's shareholder will pay a sum to Mr. Mendoza in exchange for releasing Debtor and the shareholder and assigning claims to the shareholder. *Id.* Debtor will be released from all claims and will not make any payment.

11 U.S.C. § 1112(b) allows the court to dismiss a chapter 11 case. Absent "unusual circumstances," § 1112(b)(1) provides that the court shall convert or dismiss a case under this chapter for "cause," whichever is in the best interests of creditors and the estate.¹ unless the court determines that appointment of a trustee or an examiner under § 1104(a) is in the best interests of creditors and the estate. Section 1112(b)(4) includes a non-exhaustive list of "causes." Cause exists where there is "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." § 1112(b)(4)(A). Cause exists where creditors will not benefit from estate administration. *In re Brogdon Inv. Co.*, 22 B.R. 546 (Bankr. N.D. Ga. 1982) ("There is simply nothing to reorganize, no creditors to benefit from the administration of the estate in this court, and no reason to continue reorganization."). Cause also exists if reorganization is no longer necessary, or a debtor's circumstances have materially changed since the filing of the case. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283-84 (Bankr. D. Colo. 2006). The court should "consider other factors as they arise and use its equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd* 264 F.3d

803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

Here, Debtor contends that cause for dismissal exists because it has settled the Mendoza claim, and therefore, Debtor no longer requires the protections of the court. Doc. #520. After the case is dismissed, Debtor will be able to pay its creditors in the ordinary course of business without the costs of a chapter 11. *Id.* Debtor acknowledges that there will be subchapter V fees and legal fees to be paid as a condition of dismissal. Therefore, the court should reserve jurisdiction over the fees and require applications to be filed within 15 days of the dismissal, unless heard earlier. *Id.*

Therefore, cause exists to dismiss this case. Dismissal appears to be in the best interests of creditors and the estate because Debtor will be able to pay all creditors in the ordinary course without bankruptcy administrative expenses.

This matter will be called as scheduled to inquire whether any parties in interest oppose dismissal. In the absence of opposition, the court is inclined to GRANT this motion and dismiss this case without prejudice under § 1112(b)(1). The court retains jurisdiction over fees to professionals. Applications for compensation in this case shall be filed within 15 days of entry of the order dismissing this case. The court may inquire if any parties wish to approve the order as to form.

¹ Section 1112(b)(1)'s provision on appointment of a trustee or an examiner under § 1104 is inapplicable in subchapter V. § 1181(a).

3. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-25](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSLEY FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
6-15-2023 [\[527\]](#)

RILEY WALTER/ATTY. FOR DBT.
OST 6/13/23

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.

Wanger Jones Helsley, P.C. ("Applicant"), general bankruptcy counsel to chapter 11 subchapter V debtor in possession Valley Transportation, Inc. ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the sum of \$23,682.66. Doc. #527. This amount consists of \$21,935.50 in fees and \$1,747.16 in expenses from March 16, 2023 through June 15, 2023. *Id.* Applicant also requests final approval of the \$184,311.40 in compensation previously awarded on an interim basis under § 331 for services and expenses from November 1, 2022 through March 15, 2023. *Id.*

Deborah Simpson-Debtor's President, CEO, and representative-filed a client approval statement with declaration indicating that she has reviewed the application and has no objection to the proposed payment. Doc. #531.

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 an order shortening time ("OST") 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.

The OST reduced the period of notice to permit the hearing to take place on June 27, 2023. Doc. #506. Debtor was required to give notice to all creditors, Debtor, the Subchapter V Trustee, and the U.S. Trustee's Office via ECF or email, if known, and first-class mail by June 15, 2023. Debtor appears to have complied with the OST by serving notice on all requisite parties on June 15, 2023. Doc. #534.

Applicant's retention as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on September 22, 2022, effective on the petition date. Doc. #53. This is Applicant's third and final fee application. Doc. #527. Applicant was previously awarded the following interim compensation under 11 U.S.C. § 331:

Period	Fees	Expenses	Total
11/01/22-11/16/22	\$101,035.00	\$1,093.98	\$102,128.98
11/16/22-03/15/23	\$77,876.00	\$4,306.42	\$82,182.42
Total fees awarded			= \$184,311.40
Pre-petition retainer			- \$118,270.00
Total fees paid or to be paid by Debtor			= \$66,041.40

Docs. #168, #170, #461, #474. Applicant now requests fees for 63.2 billable hours of legal services at the following rates, totaling **\$21,935.50** in fees:

Professional	Rate	Hours	Amount
Riley C. Walter, Attorney	\$550.00	26.8	\$14,740.00
Steven K. Vote, Attorney	\$375.00	2.10	\$787.50
Danielle J. Bethel, Attorney	\$325.00	7.40	\$2,405.00
Nicole Medina, Paralegal	\$170.00	21.20	\$3,604.00
April Summers, Paralegal	\$70.00	5.70	\$399.00
Total Fees & Expenses		63.20	\$21,935.50

Doc. #527, *Ex. B*, Docs. ##529-30. Applicant also incurred **\$1,747.16** in expenses:

Postage	\$409.56
Reproduction	\$1,070.10
Electronic Research	\$245.00
Telephone Charges	\$22.50
Total Expenses	\$1,747.16

Ex. C, id. These combined fees and expenses total **\$23,682.66**.

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) preparing and filing the second interim fee application (WJH-22); (2) securing employment of an appraiser (WJH-21); (3) preparing and filing the March and April monthly operating reports; (4) working on matters pertaining to the disputed claim of Andrew Mendoza and resolving that claim (WJH-7, WJH-9, WJH-15, WJH-16); (5) preparing and filing a motion to dismiss this case (WJH-24); (6) seeking and obtaining approval to finance Debtor's insurance premiums (WJH-23); and (7) preparing and filing this final fee application (WJH-25). *Exs. A-B*, Docs. ##529-30. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses. Doc. #531.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. Applicant will be awarded \$21,935.50 in fees as reasonable compensation for services rendered and \$1,747.16 in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. Debtor will be authorized to pay Applicant a total of \$23,682.66 for fees and expenses from March 16, 2023 through June 15, 2023.

Additionally, the court will approve on a final basis under 11 U.S.C. § 330 the \$184,311.40 in compensation previously awarded on an interim basis under § 331 for services and expenses from November 1, 2022 through March 15, 2023. The total compensation paid to Applicant in this case will be \$207,994.06. Of this amount, \$118,270.00 has been paid through Applicant's pre-petition retainer, which leaves \$89,724.06 to be paid directly by the Debtor.

4. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-7](#)

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

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 25, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was continued to July 25, 2023 at 9:30 a.m. as a status conference pursuant to the parties' stipulation. Doc. #535.

5. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-8](#)

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

RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 7/25/23 PER ECF ORDER #523

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

DISPOSITION: Continued to July 25, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was continued to July 25, 2023 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #523. The debtor shall inform the court of the status of this matter and whether the status hearing will go forward on or before July 18, 2023. *Id.*

6. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-9](#)

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

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 7/25/23 PER ECF ORDER #524

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

DISPOSITION: Continued to July 25, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was continued to July 25, 2023 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #524.

7. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-15](#)

CONTINUED STATUS CONFERENCE RE: MOTION FOR ESTIMATION OF
DISPUTED CLAIM
12-16-2022 [\[174\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING
CONT'D TO 7/25/23 PER ECF ORDER #525

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

DISPOSITION: Continued to July 25, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was continued to July 25, 2023 at 9:30 a.m. as a status
conference pursuant to the parties' stipulation. Doc. #525.

8. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-16](#)

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

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING
CONT'D TO 7/25/23 PER ECF ORDER #526

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

DISPOSITION: Continued to July 25, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was continued to July 25, 2023 at 9:30 a.m. as a status
conference pursuant to the parties' stipulation. Doc. #526.

9. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[HLG-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HATMAKER LAW
GROUP FOR SUSAN K. HATMAKER, SPECIAL COUNSEL(S)
6-6-2023 [\[491\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Susan K. Hatmaker of Hatmaker Law Group ("Applicant"), special counsel to chapter 11 subchapter V debtor in possession Valley Transportation, Inc. ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the sum of \$37,275.38. Doc. #491. This amount consists of \$33,202.00 in fees and \$4,073.38 in reimbursement of expenses from April 1, 2023 through May 31, 2023. *Id.* Applicant also requests final approval of the \$354,669.70 in compensation previously awarded on an interim basis under § 331 for services and expenses from August 30, 2022 through March 31, 2023. *Id.*

Deborah Simpson-Debtor's President, CEO, and representative-filed a client approval statement with declaration indicating that she has reviewed the application, determined that the application accurately reflects services rendered and costs incurred, and has no objection to the proposed payment. Doc. #493.

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

Applicant's retention as special counsel was authorized on October 21, 2022, effective August 30, 2022, for services related to the following: (a) serving as general counsel for Debtor and providing consultation regarding general business and employment matters; (b) representing Debtor in and addressing issues arising from any further

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

This is Applicant's fifth and final fee application. Doc. #491. Applicant was previously awarded the following interim compensation under 11 U.S.C. § 331:

Period	Fees	Expenses	Total
08/30/22-11/30/22	\$136,142.00	\$3,892.56	\$140,034.56
12/01/22-01/31/23	\$112,706.00	\$29,000.26	\$141,706.26
01/01/23-02/28/23 ²	\$35,916.25	\$3,875.47	\$39,791.72
03/01/23-03/31/23	\$31,594.50	\$1,542.66	\$33,137.16
Total fees awarded			= \$354,669.70
Pre-petition retainer			- \$144,117.52
Total fees paid or to be paid by Debtor			= \$210,552.18

Docs. #320, #355, #440, #482. Applicant now requests fees for 124.0 billable hours of legal services at the following rates, totaling **\$33,202.00** in fees:

Professional	Rate	Hours	Fees
Susan K. Hatmaker, Attorney	\$325	48.5	\$15,762.50
Robert W. Branch, Attorney	\$305	37.1	\$11,315.50
Aimee E. Rainwater, Attorney	\$290	2.6	\$754.00
Melanie Salas, Paralegal	\$150	22.4	\$3,360.00
Kathy Giambalvo, Paralegal	\$150	5.0	\$750.00
Melanie Grandalski, Paralegal	\$150	8.4	\$1,260.00
Total Hours & Fees		124.0	\$33,202.00

Doc. #491; *Exs. B-E*, Docs. ##494-95. These fees can be further delineated as (a) 4.0 billable hours totaling \$1,209.00 in fees for the Debtor's general business operations; (b) 89.7 billable hours totaling \$25,963.50 in fees for the VTI Action; (c) 2.2 billable hours totaling \$516.00 in fees for the Simpson Action; and (d) 28.1 billable hours totaling \$5,513.50 in fees for this bankruptcy case. *Id.*

Applicant also incurred **\$4,073.38** in expenses:

General Business	
Reproduction	\$0.18
Total General Business Expenses	\$0.18
VTI Action	
Reproduction	\$528.68
Postage	\$1.20
Electronic Research	\$28.77
Mediator	\$2,000.00
Subpoenaed Records	\$1,352.75
Total VTI Action Expenses	\$3,911.40
Simpson Action	
Filing Fees	\$25.38
Photocopies	\$10.26
Legal Research	\$4.36
Total Simpson Action Expenses	\$40.00
Bankruptcy Action	
Telephonic Appearance	\$22.50
Reproduction	\$45.36
Postage	\$53.94
Total Bankruptcy Action Expenses	\$121.80
Total Expenses	\$4,073.38

Exs. F-I, id. These combined fees and expenses total **\$37,275.38**.

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant’s services here included, without limitation: (1) litigating the VTI Action and Mendoza Action; (2) providing legal advice to Debtor regarding employment matters; (3) appearing for and finalizing the third interim fee application (HLG-3); (4) preparing, filing, appearing for, and finalizing the fourth interim fee application (HLG-4); (5) addressing ongoing discovery and discovery issues in the VTI Action; (6) arranging and participating in mediation for the VTI Action, Mendoza Action, and Mendoza Proof of Claim, which resulted in a settlement agreement, and filing a notice of conditional settlement in the VTI and Mendoza Actions; (7) in the Mendoza Action, reviewing an objection filed to a supplemental declaration in support of Deborah Simpson’s pending demurrer and motion to strike; (8) reviewing and

analyzing the tentative ruling sustaining the demurrer in part and overruling it in part and granting the motion to strike in part and denying it in part; and (9) drafting certain documentation for Debtor regarding employment matters. *Ex. A*, Docs. ##494-95. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses. Doc. #493.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. Applicant will be awarded \$33,202.00 in fees as reasonable compensation for services rendered and \$4,073.38 in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. Debtor will be authorized to pay Applicant a total of \$37,275.38 for fees and expenses from April 1, 2023 through May 31, 2023.

Additionally, the court will approve on a final basis under 11 U.S.C. § 330 the \$354,669.70 in compensation previously awarded on an interim basis under § 331 for services and expenses from August 30, 2022 through March 31, 2023. The total compensation paid to Applicant in this case will be \$391,945.08. Of this amount, \$144,117.52 has been paid through Applicant's pre-petition retainer, which leaves \$247,827.56 to be paid directly by the Debtor.

² This fee application covered January 1-February 28, 2023 for general matters, and February 1-28, 2023 for all other matters. See Docs. #433; #440.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-15](#)

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

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

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted.

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

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

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

- (1) a non-residential, real property *Lease and Operating Agreement* dated May 15, 2007, as amended July 1, 2013, September 6, 2017, and July 1, 2022 ("Lease Agreement") between Debtor and Chowchilla Memorial Hospital District ("CMHD");
- (2) a related *Rural Health Care Management Agreement* dated May 15, 2007 ("Management Agreement") between Debtor and CMHD; and
- (3) a related *Sublease Agreement* commencing July 1, 2013 ("Sublease Agreement") between Debtor and Brenda Neer Physical Therapy, Inc., a California corporation dba Chowchilla Physical Therapy ("CPT").

Doc. #173. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.³ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##175-77.

At Debtor's request, the motion was continued, first, to May 9, 2023, then to June 13, 2023, and finally, to June 27, 2023. Docs. #251, #263, #364, #391, #561, #565. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor operated a rural health clinic located at 285 Hospital Drive in Chowchilla (the "Clinic"), which is leased to Debtor by CMHD under the Lease Agreement. Doc. #175. The management of the Clinic is governed by the Management Agreement between Debtor and CMHD. *Id.* A portion of the Clinic was subleased by Debtor to CPT under the Sublease Agreement, which is subordinate to the Lease Agreement. *Id.*; see also, *Exs. A-B*, Doc. #176.

Debtor ceased providing patient care services and shut down the operations of its hospital and rural healthcare clinics. Doc. #175. As a result, Debtor, in its business judgment, has determined the Agreements are no longer needed or of any benefit to Debtor, and therefore should be rejected. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

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

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

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

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

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Granted.

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

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

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject a non-residential, real property *Office Lease Agreement* dated July 25, 2019 ("Agreement"), between Debtor and Alliance for Medical Outreach and Relief⁴ ("Alliance"), as subsequently assigned by Alliance to, and assumed by, AMOR Wellness Center, Inc. ("AMOR"). Doc. #179. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.⁵ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and a copy of the Agreement. Docs. ##181-83.

At Debtor's request, the motion was continued, first, to May 9, 2023, then to June 13, 2023, and finally, to June 27, 2023. Docs. #252, #264, #377, #396, #562, #566. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased providing services at the Clinic, 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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

⁴ The motion says that the Agreement was executed by and between Debtor and AMOR before it was assigned to AMOR. This appears to be a clerical error in that the Agreement was initially executed by and between Debtor and Alliance, and then Alliance assigned it to AMOR. Doc. #179; *cf. Ex. A*, Doc. #183.

⁵ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving officers of and registered agents for service of process for AMOR via first class mail on April 4, 2023. Doc. #189.

12. [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.

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 9, 2023. Doc. #367.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject (1) a *Lease Agreement* dated July 28, 2021 between Debtor and Cisco Systems Capital Corporation ("Cisco"), and (2) an *Installment Payment Agreement (Support Only)* allegedly signed⁶ and dated on or about June 22, 2021 (collectively, "Agreements") between Debtor and Cisco. Doc. #198. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.⁷ 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. ##200-02.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #367, #389, #494, #497. The continued hearing will proceed as scheduled 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 Agreements to lease phone server equipment from Cisco and receive related software and technical support. Doc. #201; *Exs. A-B*, Doc. #202. Debtor acknowledges that the Agreements may not constitute an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. *Id.* at 2 n.1.

Debtor ceased all patient care and shut down the operations of its hospital and healthcare clinics, and therefore, Debtor no longer needs the phone server equipment and related support for which it contracted under the Agreements. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing phone server equipment and related support, so the Agreements are no longer beneficial to Debtor or the estate.

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 is inclined to GRANT this motion.

The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

⁶ The Support Agreement is neither signed nor dated. *Ex. B*, Doc. #202.

⁷ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Cisco's CEO on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #203, #237.

13. [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.

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 9, 2023. Doc. #368.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject a *Lease Agreement* dated June 7, 2022 between Debtor and Americorp Financial, LLC ("Americorp"), which was subsequently assigned to LEAF Capital Funding, LLC ("LEAF") pursuant to a *Service Agreement* dated June 9, 2022 and an *Assignment of Equipment Lease Without Recourse* dated June 9, 2022 (collectively, "Agreements"). Doc. #204. Debtor also requested the court to fix a bar date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.⁸ 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. ##206-08.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #368, #390, #495, #499. The continued hearing will proceed as scheduled 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 Agreements to lease two Integrity 207 Sterilizers from LEAF. Doc. #206; *Exs. A-C*, Doc. #208. Since Debtor ceased all patient care and shut down operations of its healthcare clinics, Debtor has determined that it no longer needs the equipment.

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for

claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

⁸ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving the registered agent of Americorp and the managing member and CEO of LEAF on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #209, #238.

14. [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.

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 9, 2023. Doc. #369.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject a *Lease Agreement Number MA022812* dated February 28, 2012 between Debtor and Winthrop Resources Corporation ("Winthrop"), as subsequently assigned to Huntington Technology Finance, Inc. ("Huntington"); and a related *Lease Schedule No. 003*, as amended by *Lease Schedule No. 003R* dated November 17, 2020 (collectively, "Agreements") between Debtor, Winthrop, and TCF National Bank ("TCF"). Doc. #212. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.⁹ 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. ##214-16.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #369, #392, #496, #506. The continued hearing will proceed as scheduled 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 Agreements to lease a Voalte Secure Text Messaging System from Huntington. *Ex. A*, Doc. #215; Doc. #214. Debtor acknowledges that the Agreements may not constitute an executory contract within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. *Id.* at 2 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the mobile text messaging system contracted for under the Agreements. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

⁹ Debtor complied with Rules 6006(a), 7004(b)(3), (h), and 9014(b) by serving Huntington's CEO & President, Winthrop's CEO, and TCF's CEO & President via certified mail on April 6, 2023, and the creditor's committee on April 10, 2023. Docs. #217, #239.

15. [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.

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 9, 2023. Doc. #370.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject the following agreements (collectively "Agreements") between Debtor and Siemens Financial Services, Inc. ("Siemens"):

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

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

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁰ 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. ##220-22.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #370, #393, #498, #508. The continued hearing will proceed as scheduled 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 leased the following imaging equipment (collectively "Imaging Equipment") from Siemens under the Agreements:

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

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

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

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

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

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. v. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as

executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. Debtor shall file a certificate of service for notice to the other contracting parties that conspicuously sets forth the bar date within seven (7) days of entry of the order granting this motion.

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

16. [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.

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 9, 2023. Doc. #371.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject a *Master Lease Agreement Number 2017676* dated December 29, 2017 and related *Equipment Schedule No. 1* dated December 29, 2017, as amended by *Amended and Restated Equipment Schedule No. 1* dated September 13, 2018 (collectively the "Agreements") between Debtor and First American Commercial Bancorp, Inc. ("First American"). Doc. #230. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹¹ 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. ##232-34.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #371, #395, #500, #510. The continued hearing will proceed as scheduled 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 leased bedside monitoring equipment from First American under the Agreements. *Ex. A*, Doc. #233; #232. Since Debtor ceased all patient care and shut down operations of its healthcare clinics, Debtor no longer needs the bedside monitoring equipment for which it contracted under the Agreements.

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

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

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

other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹¹ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving First American's CEO via certified mail on April 7, 2023, and the creditors committee. Doc. #235.

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

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

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 June 1, 2023. Doc. #501.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject (1) a *Hospital Services Agreement* dated November 1, 2021 between Debtor and ARYA Medical Group, a California professional corporation ("ARYA") by which ARYA provides Debtor with Emergency Room Department and Inpatient Care Coverage (the "HSA"); and (2) an *Intensivist Medical Service Coverage Agreement and Medical Direction* dated October 1, 2020, as amended, providing for automatic renewals between Debtor and ARYA to provide medical services to patients at Debtor's hospital (the "ICA" or collectively, the "Agreements").¹² Doc. #373. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹³ 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. ##379-81.

At Debtor's request, this motion was continued to June 27, 2023. Docs. #501, #511. The continued hearing will proceed as scheduled 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 entered into the Agreements with ARYA to procure physician services for its hospital. *Exs. A-B*, Doc. ##380-81. Since Debtor ceased all patient care and shut down operations of its hospital and healthcare clinics, Debtor no longer needs the physician services for which it contracted under the Agreements. *Id.*

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

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

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

other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹² The most recent amendment reflects a termination date of January 1, 2023, and therefore, it is Debtor's position that the ICA has expired. Out of an abundance of caution, Debtor is including the ICA in this motion. Doc. #373.

¹³ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving ARYA's CEO and Registered Agent via regular U.S. mail on May 9 and 10, 2023. Docs. #382, #386.

18. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-39](#)

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

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 June 1, 2023. Doc. #501.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject the following agreements (collectively "Agreements") pursuant to a *Master Services Agreement ID No. CA-4071612-LCard* ("MSA"):

- (1) a *Sales Order ID No. CA-4071612-LCard-19249864* dated on or about July 6, 2021 between Debtor and Comcast Cable Communications Management, LLC ("Comcast") by which Comcast is to provide phone and internet services to Debtor's rural healthcare clinic located at 285 Hospital Drive in Chowchilla, California; and
- (2) a *Sales Order ID No. CA-4071612-LCard-20905843* dated December 17, 2021 between Debtor and Comcast by which Comcast is to provide phone and internet services to Debtor's rural healthcare clinic located at 121 Belmont Avenue in Mendota, California.

Doc. #358. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁴ 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. ##359-62.

At Debtor's request, this motion was continued to June 27, 2023. Docs. #502, #512. The continued hearing will proceed as scheduled 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 entered into the Agreements with Comcast to procure internet and phone services for its rural healthcare clinics. *Exs. A-B*, Doc. ##360-61. Since Debtor ceased all patient care and shut down operations of its hospital and healthcare clinics, Debtor no longer needs the phone and internet services for which it contracted under the Agreements. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁴ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Comcast's Vice President, Managing Member, and Registered Agent via regular U.S. mail on May 9 and 10, 2023. Docs. #365, ##387-88.

19. [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.

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. Doc. #445.

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

- (1) *Quote No. 2016-197567650* ("2016 Agreement"): a five-year agreement dated September 12, 2016, by which Beckman leases to Debtor two (2) Unicel DXH 600 lab analyzers to Debtor, and which was extended for two years and requires (i) Beckman to warrant the equipment and (ii) Debtor to purchase annually from Beckman a minimum amount of equipment-related consumable products; and
- (2) *Quote No. 2018-814436939* ("2019 Agreement"): a five-year agreement dated January 28, 2019, by which Beckman leases to Debtor: one (1) Remisol Advance Tower; two (2) Unicel Dx600(i), and one (1) iQ1500 Workcell US, and which requires (i) Beckman to warrant the equipment and (ii) Debtor to purchase annually from Beckman a minimum amount of equipment-related consumable products.

Doc. #301. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁵ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##301-04. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by Beckman. Doc. #303.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #445, #453, #509, #518. The continued hearing will proceed as scheduled 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 Agreements to lease various lab equipment from Beckman and receive related products and services for Debtor's hospital. Doc. #303. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. Doc. #301 at 3 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the lab equipment and related products and services for the hospital for which it contracted under the Agreements. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing lab equipment and related products and services due to closure of its hospital and health clinics, so the Agreements are no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁵ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a Beckman's CEO and the creditor's committee via first class mail on April 26, 2023. Doc. #305.

20. [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.

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. Doc. #446.

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

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁶ 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. ##318-21; #324.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #446, #454, #513, #520. The

continued hearing will proceed as scheduled 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 lease thirty-one copiers for its hospital and rural health clinics. Doc. #320; *Ex. A*, Doc. #321. Debtor acknowledges that the Agreement may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreement out of an abundance of caution and to avoid any doubt. Doc. #318 at 2 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the copiers for the hospital and rural health clinics for which it contracted under the Agreement. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁶ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Canon's CEO and the creditor's committee via first class mail on May 1, 2023. Doc. #325.

21. [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.

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. Doc. #447.

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

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

Doc. #334. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁷ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##334-37. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by CareFusion. Doc. #337.

At Debtor's request, this motion was continued, first, to June 1, 2023, and then to June 27, 2023. Docs. #447, #455, #514, #521. The continued hearing will proceed as scheduled 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 Agreements to lease the medication dispensing equipment for its hospital and rural health clinics. Doc. #337. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreement out of an abundance of caution and to avoid any doubt. Doc. #334 at 2 n.1.

Debtor ceased all patient care and shut down the operations of its healthcare clinics, and therefore, Debtor no longer needs the copiers for the hospital and rural health clinics for which it contracted under the Agreement. *Id.*

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

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

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing medication dispensing equipment for its hospital and rural health clinics, so the Agreements are no longer beneficial to Debtor or the estate.

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁷ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a CareFusion's managing member and the creditor's committee via first class mail on May 2, 2023. Doc. #349.

22. [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.

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") moved for an order authorizing Debtor to reject the following agreements (collectively, the "Agreements") with Leasing Associates of Barrington, Inc. ("Barrington") and Becton Dickenson and Company ("BDC"):

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

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

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁸ 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. ##338-342.

At the Debtor's request, the court continued this motion, first, to June 1, 2023, and then to June 27, 2023. Docs. #448, #456, #515, #522. The continued hearing will proceed as scheduled 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 Agreements to procure clinical testing equipment and related software, service, and products for use in Debtor's hospital and rural health clinics. Doc. #341; *Exs. A-B*, Doc. #342. Debtor acknowledges that the Agreements may not constitute as executory contracts within the meaning of § 365, but Debtor wishes to reject the Agreements out of an abundance of caution and to avoid any doubt. Doc. #341 at 2 n.1.

Debtor ceased all patient care and shut down the operations of its hospital and healthcare clinics, and therefore, Debtor no longer needs the clinical testing equipment and related software, service, and products for the hospital and rural health clinics for which it contracted under the Agreements. *Id.*

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

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

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. v.*

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

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased needing clinic testing equipment and related software, service, and products for its hospital and rural health clinics, so the Agreements are no longer beneficial to Debtor or the estate.

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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁸ Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Barrington's President & CEO, BDC's President & CEO, and the creditor's committee via first class mail on May 2, 2023. Doc. #351.

23. [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 *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.*

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.¹⁹ 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, first, to June 1, 2023, and then to June 27, 2023. Docs. #449, #457, #516, #541. The continued hearing will proceed as scheduled 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 is inclined to GRANT this motion. The court will set September 30, 2023 as the claims bar date for claims based on this motion because that date coincides with the extended bar date for certain non-governmental proofs of claim. 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.

¹⁹ 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.

24. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-47](#)

CONTINUED 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.

This motion was originally heard on June 1, 2023. Doc. #517.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") asked 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 was supported by a copy of the parties' leasing agreement, a verified statement of connections, and the declaration of Phil Souza. Docs. ##475-76.

At the Debtor's request, the court continued this motion to June 27, 2023. The continued hearing will proceed as scheduled 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. 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."

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. Absent opposition, the court may find that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person," and this motion will be GRANTED.

25. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 19, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this matter to September 19, 2023 at 9:30 a.m.
pursuant to the parties' stipulation. Doc. #2583. The debtor's counsel
shall file a status report no later than seven days prior to the
continued hearing.

26. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 19, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this matter to September 19, 2023 at 9:30 a.m.
pursuant to the parties' stipulation. Doc. #2584. The debtor's counsel
shall file a status report no later than seven days prior to the
continued hearing.

27. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [\[1834\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 19, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this matter to September 19, 2023 at 9:30 a.m.
pursuant to the parties' stipulation. Doc. #2585. The debtor's counsel
shall file a status report no later than seven days prior to the
continued hearing.

11:00 AM

1. [23-10610](#)-B-7 **IN RE: STEPHANIE ACEVEDO**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
6-6-2023 [[14](#)]

NO RULING.

1:30 PM

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

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
5-18-2023 [[1104](#)]

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

Salvador Pacheco Maya ("Movant") seeks retroactive annulment of the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a state court action in Fresno County Superior Court, Case No. 20CECG01835 ("State Court Action"). Doc. #1104.

Chapter 7 trustee Jeffrey M. Vetter, through his attorney D. Max Gardner, stipulated to retroactive annulment of the automatic stay as of the petition date. Doc. #1109.

Freon Logistics ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima*

facie showing that they are entitled to the relief sought, which the movant has done here.

Under the terms of the stipulation, Movant and Trustee agreed to annul the automatic stay retroactively to the bankruptcy petition date. Doc. #1109. Movant's post-petition acts in the State Court Action shall not constitute a violation of the stay and Movant is permitted to continue with its ongoing personal injury suit against the debtor. *Id.* Additionally, the stipulation recites that Movant has agreed to seek recovery only from Debtor's liability insurance through Progressive National Continental Insurance, which covers both defendants to the State Court Action. *Id.*

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections. Trustee is party to the agreement and Debtor did not oppose.

Accordingly, this motion will be GRANTED, and the stipulation approved. The proposed order shall attach the stipulation as an exhibit.

2. [23-11109](#)-B-7 **IN RE: MARVIN CEJA VILLEGAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2023 [\[12\]](#)

TRAVIS POTEAT/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 6/7/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$338.00 filing fee was paid on June 7, 2023. Accordingly, this order to show cause will be VACATED.

3. [23-10730](#)-B-7 **IN RE: ELENES AGUSTINA**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-23-2023 [\[13\]](#)

SPECIALIZED LOAN SERVICING LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
DANE EXNOWSKI/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.

Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 222221 Masters Drive, Friant, California 93626 ("Property"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Elenes Agustina ("Debtor") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtor, the 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.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least 40 complete pre-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$106,057.06 and the entire balance of \$505,592.35 is due. Doc. #18.

The court also finds that the Debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because debtor is in chapter 7. The Property is valued at \$417,000.00 and Debtor owes \$505,592.35. Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the Debtor has failed to make at least 40 pre-petition payments to Movant.

4. [23-10738](#)-B-7 **IN RE: MIGUEL ORTIZ**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-19-2023 [\[14\]](#)

CAPITAL ONE AUTO FINANCE/MV
BENNY BARCO/ATTY. FOR DBT.
CHERYL SKIGIN/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.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Ram 1500 Quad Cab ("Vehicle"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Miguel A. Ortiz ("Debtor") did not oppose

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

creditors, the Debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least six complete post-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$4,005.48. Docs. ##16, 17.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$33,350.00 and debtor owes \$33,578.84. Doc. #17.

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. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make at least six post-petition payments to Movant and the Vehicle is a depreciating asset.

5. 22-11948-B-7 IN RE: EFRAIN ROSALES AGUIRRE AND LILIANA RAYA
JES-1 TORRES

MOTION TO SELL
5-26-2023 [21]

JAMES SALVEN/MV
MARK ZIMMERMAN/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 2019 Chevrolet Silverado ("Vehicle") to Efrain Rosales Aguirre and Liliana Raya Torres (collectively "Debtors") for \$11,125.00 under 11 U.S.C. § 363, subject to higher and better bids. Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED and the matter will be called and proceed as scheduled 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 Fed. R. Bankr. P. ("Rule") 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). 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 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 22, 2022. Doc. #6; docket generally. Among the assets of the estate is the Vehicle, which Trustee now seeks to sell to Debtors 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, 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 Debtors.

The Vehicle has 45,000 miles and is listed with a value of \$20,053.00. *Sched. A/B*, Doc. #1. Trustee believes Vehicle has a fair market value between \$28,000-\$30,000. *Id.* The Vehicle is encumbered by a purchase money security interest in favor of GM Financial in the amount of \$17,998; however, the motion says that GM Financial's interest is \$17,999. *Id.*; *Sched. D*, Doc. #1. The sale is subject to all liens and encumbrances of record. After subtracting the lien in favor of GM Financial, the value of the estate's interest in the Vehicle ranges from \$10,001 to \$12,002. Trustee is selling this interest to Debtors for \$11,125.00.

Debtors claimed a \$2,125.00 exemption in the Vehicle pursuant to Cal. Code Civ. Proc. § 704.010 and will receive credit towards the sale in this amount. *Sched. C*, *id.* Therefore, if the Vehicle is sold to Debtors at the proposed sale price, the estate will receive a net of \$9,000.00. Doc. #23. Debtors have already tendered \$3,000.00 to Trustee and will pay remaining \$6,000.00 prior to the sale hearing. *Id.* Trustee believes the sale price is fair when considering the fair market value of the Vehicle and Debtors' exemption. *Id.* Trustee has not agreed to pay commissions to any party in connection with the proposed sale. *Id.*

The sale of the Vehicle at public auction 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 proposed in good faith. The sale of the Vehicle subject to higher and better bids will maximize estate recovery and yield the best possible sale price.

Accordingly, the court intends to GRANT this motion. 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 (1) subject to all liens and encumbrances of record and (2) "as-is, where-is," with no representations or warranties, express, implied, or otherwise from the bankruptcy estate, the Debtors, or their representatives.

6. [14-12051](#)-B-7 **IN RE: JOSE REYNA**
[TMO-2](#)

MOTION TO AVOID LIEN OF WESTERN UNION FINANCIAL SERVICES, INC.
6-9-2023 [\[48\]](#)

JOSE REYNA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose De Jesus Baez Reyna ("Debtor") moves to avoid a judicial lien encumbering residential real property located at 759 ½ Prusso Street, Livingston, California ("Property") in favor of Western Union Financial Services, Inc.²⁰ ("Creditor") in the sum of \$10,324.16 pursuant to 11 U.S.C. § 522(f).²¹ Doc. #48.

This motion will be DENIED WITHOUT PREJUDICE.

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 individually and dba Beverly Gift Shop and non-debtor Irma Baez, individually and dba Beverly Gift Shop, in favor of Creditor in the amount of \$10,324.16 on December 6, 2013. *Ex. A*, Doc. #52. The abstract of judgment was issued on January 8, 2014 and was recorded in Merced County on January 22,

2014. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #50.

Debtor claims that Property had an approximate fair market value of \$154,855.00 as of the petition date. *Id.* Debtor's original schedules list Property as a "Single Family Home" with that same value. *Sched. A*, Doc. #14. However, Debtor's amended schedules list Property as a "Duplex on One Parcel" consisting of 759 and 759 ½ Prusso Street, which is valued at \$130,000.00. *Am. Sched. A*, Doc. #18. It appears that the amendment is changing Property's designation from a single-family home to a duplex and correcting its scheduled value. Is Property a single-family home or is it a duplex?

Debtor says that Property was encumbered by a deed of trust in favor of Fidelity Bank in the amount of \$178,811.00. Doc. #50. Debtor's original schedules list Fidelity Bank as having a security interest in an unidentified single-family home—presumably Property—in the amount of \$113,811.00. *Sched. D*, Doc. #14. But again, Debtor's amended schedules result in confusion because Fidelity Bank is listed with a deed of trust in the amount of \$75,000.00 encumbering a "Duplex on One Parcel" at 759 & 759 ½ Prusso Street. *Am. Sched. D*, Doc. #18. Fidelity Bank did not file a proof of claim in this case, so the court is unable to decipher the amount of Fidelity Bank's security interest on the petition date.

Lastly, the motion says that Debtor exempted Property in *Schedule C*, citing to Debtor's declaration. Doc. #48. The declaration references a homestead exemption without specifying the amount of such exemption. Doc. #50. Debtor's original *Schedule C* used exemptions under Cal. Code Civ. Proc. ("CCP") § 703.140(b) (2014) and did not include an exemption in Property. *Sched. C*, Doc. #14. Debtor's *First Amended Schedule C* dated June 23, 2014 claimed a \$75,000.00 exemption in Debtor's "Duplex on One Parcel/759 & 759 ½ Prusso Street" pursuant to CCP § 704.730(a)(1) (2014). *Am. Sched. C*, Doc. #18. In filing this amendment, Debtor appears to be relinquishing his exemptions under CCP § 703.140(b) and instead claiming the exemptions under CCP § 704.

Upon reopening the case, Debtor filed a *Second Amended Schedule C* on June 9, 2023, which is the original *Schedule C* with the addition of a \$10,325.00 exemption in Property pursuant to CCP § "730.140(b)(5) [*sic*]". Doc. #54. Debtor has a general right to amend the schedules as a matter of course at any time before the case is closed. Rule 1009(a). The case was originally closed on July 20, 2015. Doc. #41. Debtor's right to further amend the exemptions was extinguished on that date. Accordingly, Debtor's *Second Amended Schedule C* (Doc. #54) will be ordered STRICKEN. This would leave Debtor with a \$75,000.00 in exemption in the duplex under CCP § 704.730(a)(1) (2014).

This motion will be DENIED WITHOUT PREJUDICE because Debtor has failed to meet his burden of proof that Creditor's lien impairs his exemption. Given the ambiguities in the record, Debtor will need to provide evidence of the Fidelity Bank deed of trust before the court

can calculate the unencumbered equity of the Property and determine whether Creditor's lien can attach to such equity. A copy of the deed of trust is further necessary to determine whether Property is co-owned with Debtor's former spouse.

²⁰ The caption of the motion says this is a motion to avoid the lien of Sequoia Concepts, Inc. Doc. #48. This appears to be a typographical error because the moving papers discuss only Creditor's lien. Sequoia Concepts, Inc. is not mentioned and was not served.

²¹ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's officer and registered agent for service of process via regular U.S. mail on June 9, 2023. Doc. #53.

7. [22-11967](#)-B-7 **IN RE: IRMA MEDRANO AND MARCO RODRIGUEZ LARA**
[JES-1](#)

MOTION TO SELL
5-19-2023 [\[16\]](#)

JAMES SALVEN/MV
TRAVIS POTEAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 two vehicles (collectively "Vehicles") to Irma Medrano and Marco Antonio Rodriguez Lara (collectively "Debtors") for a combined \$7,225.00 under 11 U.S.C. § 363, subject to higher and better bids. Doc. #16.

Debtors timely objected to the sale being open for higher and better bids at the hearing. Doc. #120. However, Debtors have not provided any evidence or legal authority in support of their contention that the Vehicles should be sold by private sale instead of public auction.

No other parties in interest timely filed written opposition. This motion will be GRANTED and the matter will be called and proceed as scheduled 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 Fed. R. Bankr. P. ("Rule") 2002(a)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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 Debtors 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 7 bankruptcy on November 17, 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 22, 2022. Doc. #5; docket generally. Among the assets of the estate are the Vehicles, which Trustee now seeks to sell to Debtors 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, 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 Debtors. The Vehicles consist of a 50% interest in a 2016 Chevrolet Equinox ("Equinox") and a 100% interest in a 2011 Chevrolet Suburban ("Suburban").

The Equinox has 53,200 miles and is listed with a total value of \$9,525.00, of which Debtors' interest is valued at \$4,762.50. *Sched. A/B*, Doc. #1. The remaining 50% interest in the Equinox is owned by Debtors' son, Ismael Rodrigues. *Id.*; *cf. Sched. H, id.* Trustee believes that the Equinox has a total fair market value of \$10,450.00, and therefore, Debtors' 50% interest to be worth \$5,225.00. Docs. #16,

#18. Debtors claimed a \$3,625.00 exemption in the Equinox pursuant to Cal. Code Civ. Proc. § 704.010 and will receive credit towards the sale in this amount. *Sched. C*, Doc. #1. As a result, the estate will receive a net of \$1,600.00 from the sale of the Equinox.

The Suburban, meanwhile, has 150,000 miles and is listed in the schedules with a value of \$4,659.00. *Sched. A/B*, *id.* Trustee believes the Suburban has a fair market value of \$7,248.00. Docs. #16, #18. The Suburban is encumbered by a security interest in the amount of \$5,248.00 in favor of Wells Fargo Dealer Services ("Wells Fargo"). *Sched. D*, Doc. #1. The sale is subject to all liens and encumbrances of record. Debtors did not claim an exemption in the Suburban. *Sched. C*, *id.* After subtracting the \$5,248.00 lien in favor of Wells Fargo, the estate's interest in the Suburban is \$2,000.00. *Id.*

Trustee received an offer from Debtors to purchase the estate's interest in the Vehicles for a total of \$7,225.00 subject to higher and better bids at the hearing. *Id.* After application of their \$3,625.00 exemption credit, they will pay a total of \$3,600.00 to the estate for its interest in the Vehicles. Trustee has received a down payment of \$1,400.00 for the sale of the Vehicles and Debtors will make monthly payments of \$400.00 per month until the remaining \$2,200.00 has been paid. Trustee believes the sale price is fair when considering the fair market value of the Vehicles and Debtors' exemption. *Id.* Trustee has not agreed to pay commissions to any party in connection with the proposed sale. *Id.*

Debtors object to the sale being subject to higher and better bids at the hearing. Doc. #20. Debtors claim that they have paid \$1,400.00 to Trustee, leaving a balance of \$1,200.00. However, it appears that their remaining balance is \$2,200.00 if \$1,400.00 total has been paid. Debtors intend to pay the remaining balance owed to Trustee under their agreement to make monthly payments. *Id.* Debtors claim that the Vehicles are vital to retention of their employment. It is unclear why the Vehicles are necessary for their employment given that Debtors have six vehicles listed in their schedules. *Sched. A/B*, Doc. #1. However, the schedules do indicate that all vehicles except the Suburban belong to Debtors' children, rather than the Debtors themselves.

Debtors have not presented any evidence or legal authority in support of their contention that the Vehicles should be sold via private sale, rather than public auction. The court is inclined to **OVERRULE** Debtors' objection.

When determining whether to confirm a sale under § 363, the court is required to take the following factors into consideration: (1) the integrity of the trustee's sale; (2) the § 363(i) rights of co-owners of property; and (3) the preservation of the interests of the estate. *In re Fehl*, 19 B.R. 310, 311-12 (Bankr. N.D. Cal. 1982). First, Trustee served notice of the auction and its terms on all parties in interest in accordance with Rules 2002(a) and 6004(a). Doc. #19.

Second, the § 363(i) rights of Debtors' son, Ismael Rodrigues, are implicated in the sale of the Equinox because he is a 50% owner. Ismael Rodrigues has the right to purchase the Equinox at the price at which the sale is to be consummated. Third, the estate's interest in the Vehicles is preserved if the Vehicles are sold for their optimal value under the circumstances, which can be accomplished via public auction. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282 (B.A.P. 9th Cir. 2005) ("The price achieved by an auction is ordinarily assumed to approximate market value when there is competition by an appropriate number of bidders. When competition is constrained, however, the price is less likely to be reliable and should be examined more carefully.").

The sale of the Vehicles at public auction 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 proposed in good faith. The sale of the Vehicles subject to higher and better bids will maximize estate recovery and yield the best possible sale price.

Accordingly, the court intends to GRANT this motion. The sale will proceed for higher and better bids only. Trustee will be authorized to sell the Vehicles to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing, acknowledge that the sale is (1) subject to all liens and encumbrances of record and (2) "as-is, where-is," with no representations or warranties, express, implied, or otherwise from the bankruptcy estate, the Debtors, or their representatives.

8. [22-10974](#)-B-7 **IN RE: FRANCISCO SAMANIEGO**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
5-26-2023 [[89](#)]

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,772.66. Doc. #89.

This amount consists of \$1,624.00 in fees and \$148.66 in expenses from April 15, 2023 through May 16, 2023. *Id.*; *Ex. A*, Doc. #93.

Trustee has received and reviewed the application and supporting documents, indicates that the fees and expenses were reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #92.

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 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.

Francisco Samaniego ("Debtor") filed chapter 13 bankruptcy on June 10, 2022. Doc. #1. The case was converted to chapter 7 on August 31, 2022. Doc. #32. Trustee was appointed as the interim chapter 7 trustee on that same day and became permanent trustee at the first chapter 7 meeting of creditors on September 29, 2022. Doc. #33; docket generally. The court approved Applicant's employment as the estate's accountant on April 25, 2023, effective April 1, 2023. Doc. #87. 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. #89. Applicant's firm provided 5.8 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$1,624.00** in fees. Doc. #91; *Ex. A*, Doc. #93. Applicant also incurred **\$148.66** in expenses as follows:

Copies (193 @ \$0.20)	\$38.60
Envelopes (5 @ \$0.20)	\$1.00
Lacerte Tax Proc.	\$91.00
Service fees (14 @ \$1.29)	\$18.06
Total Costs	\$148.66

Ex. B, id. These combined fees and expenses total **\$1,772.66**.

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 here included, without limitation: (1) conflict review; (2) preparing and filing employment application; (3) reviewing Passport to determine acquisition date and tax basis; (4) reviewing and inputting data from closing statement, including tax withholding; (5) finalizing and processing tax returns and preparing prompt determination letters; and (6) preparing and filing this fee application. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #92.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,624.00 in fees as reasonable compensation for services rendered and \$148.66 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$1,772.66 for services rendered and costs incurred from April 15, 2023 through May 16, 2023.

9. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-1](#)

MOTION TO AVOID LIEN OF DONALD HORN AND JUDITH LINDA
5-20-2023 [13](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as a scheduling
conference.

DISPOSITION: Continued to a date determined at hearing.

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

Lisa Mary Reardon Anderson ("Debtor") moves to avoid a judicial lien in favor of Donald Horn and Judith Linda (collectively, "Horn & Linda") in the sum of \$41,650.00 and encumbering residential real property located at 33352 Cascadel Heights Drive, North Fork, CA 93643 ("Property") pursuant to 11 U.S.C. § 522(f). Doc. #13.

Horn & Linda oppose and request the court take judicial notice of certain documents. Docs. ##31-34.

Debtor replied. Docs. ##36-38.

This matter will be called and proceed as a scheduling conference.

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 except Horn & Linda 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 Horn & Linda 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).

Horn & Linda request the court take judicial notice of records relating to the Creek and Fork Fires from the California Department of Forestry and Fire Protection ("Cal Fire"), documents recorded with the Madera County Clerk-Recorder, and Proof of Claim No. 92045 ("Claim 92045") from Bankruptcy Case No. 19-30088 (N.D. Cal. Bankr.) for PG&E Corporation and Pacific Gas and Electric Company (the "PG&E Bankruptcy"). Doc. #34. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings

in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

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 Horn & Linda in the amount of \$41,650.00 on September 7, 2021. *Ex. A*, Doc. #16. The abstract of judgment was issued on October 1, 2021 and was recorded in Madera County on that same day. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #15. Debtor estimates that the current amount owing as of the petition date was \$48,462.34. *Id.*

As of the petition date, Debtor claims that Property had an approximate value of \$400,000.00. *Id.*; *Am. Sched. A/B*, Doc. #23. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *id.*

Property is encumbered by a first deed of trust in favor of Select Portfolio Servicing ("SLS") in the approximate sum of \$296,855.00 as of the petition date. *Sched. D*, Doc. #1. Property is also encumbered by two or three judgment liens. The senior-most lien appears to be the lien in favor of Horn & Linda that was recorded on October 1, 2021. Second, there is a judgment lien in favor of Chris & Stephen Thorns (collectively, the "Thorns") in the amount of \$32,454.00, which was recorded on January 5, 2022 and is the subject of matter #10 below. *Sched. D*, *id.*; *Ex. A*, Doc. #21; FW-2. Lastly, there may be a \$15,879.91 lien in favor of Rick & Kristin Hamilton (collectively, the "Hamiltons"). *Sched. D*, Doc. #1. The debt owed to the Hamiltons was incurred on or about February 14, 2023 according to the schedules, but it is unclear whether it was ever recorded. *Id.* The court will inquire whether the Hamiltons' claim encumbers Property at the hearing.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SLS	\$296,855.00	05/16/07	Unavoidable
2. Horn & Linda	\$48,462.34	10/01/21	Avoidable; matter #9 (FW-1)
3. The Thorns	\$37,762.23	01/05/22	Avoidable; matter #10 (FW-2)
4. The Hamiltons	\$15,879.91	Unknown	Unclear if secured

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"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).

If the Hamiltons' claim is unsecured and the Thorns' lien is avoided in matter #10 below, the Horn & Linda lien would be the most junior lien subject to avoidance and there would not be any equity to support their judicial lien. Strict application of the § 522(f)(2) formula with respect to Horn's & Linda's lien would be illustrated as follows:

Amount of judgment lien	\$48,462.34
Total amount of unavoidable liens	+ \$296,855.00
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$645,317.34
Debtor's claimed value of interest absent liens	- \$400,000.00
Extent lien impairs exemption	= \$245,317.34

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		\$400,000.00
Total amount of unavoidable liens	-	\$296,855.00
Homestead exemption	-	\$300,000.00
Remaining equity for judicial liens	=	(\$196,855.00)
Horn's & Linda's judicial lien	-	\$48,462.34
Extent Debtor's exemption impaired	=	(\$245,317.34)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be insufficient equity to support any judicial liens if Debtor's valuations are correct.

Horn & Linda oppose for two reasons. Doc. #31. First, Horn & Linda contend that Property is worth more than Debtor estimates because it was not subject to fire damage and Debtor has failed to meet her burden of proof on the issue of value. *Id.* As evidence, Horn & Linda include records obtained from Cal Fire and a declaration from Judith Linda, Debtor's neighbor. *Exs. B-C*, Docs. ##32-33. Second, Horn & Linda note Debtor executed two quitclaim deeds. The first transferred Property from Debtor to Norma Cerpa and the second transferred Property from Ms. Cerpa to Debtor. *Exs. D-E*, *id.* Horn & Linda contend that Debtor uses Property as a rental property, so she has not met her burden of proof that she is eligible to claim the homestead exemption. Doc. #31. Horn & Linda support this assertion with a copy of Claim 92045 from the PG&E Bankruptcy filed by Jessica Seymour purportedly on behalf of Debtor, which includes a copy of a *Residential Lease Agreement* dated January 15, 2018 ("Lease Agreement"). *Ex. F*, Doc. #32.

In reply, first, Debtor acknowledges that Property was not in the direct path of either the Creek or Fork Fires, but Property was degraded by both fires because they got very close to Property and the extreme heat and smoke caused catastrophic damages to the improvements on Property. Docs. ##36-37. Specifically:

- Debtor's roof was seriously damaged after the shingles were rendered brittle from heat, which result in a leak and a collapse of a portion of the outside roof and inside ceilings in Debtor's laundry room, living room, and one bedroom. The interior ceilings have been partially fixed and work on the exterior roof is in progress.
- Debtor's air conditioning and heating units, which were on the roof, were destroyed. Debtor has been living with no heat or air conditioning since that time.
- Debtor's outside patio had a ceiling designed to let light in, which was made from a corrugated material that melted as a result of heat from the Creek Fire. Later snows and rain caused the porch roof to collapse, which led to structural damage on the supporting beams.
- Debtor's outside awning melted.
- The interior and exterior of Property suffered significant damage from smoke, which has not been repaired.

- Smoke and water damage led to the growth of black mold, which has not been remedied.
- The heat broke up the driveway. The cracking was compounded by snow and cold, so it needs to be entirely redone.
- Debtor's electrical system trips breakers on a daily basis while doing regularly required tasks. The electrical system was damaged by the Mission Fire, repaired, and was recently damaged by the Creek Fire.

Debtor contends Property has a value of \$285,000 after damages caused by the Creek and Fork Fires. Doc. #37. Debtor is seeking insurance proceeds to fix those damages and believes Property will be worth \$400,000 if she is successful. *Id.* Additionally, Debtor argues that the opposition fails to address that Property's value would have to exceed \$600,000 before there would be any equity for the lien to attach. Doc. #36. Debtor asserts the ability to claim an exemption of up to \$413,292 based on the median home sales price of existing single-family homes in Madera County for the previous calendar year, which would require Property to be worth more than \$700,000 before there would be equity to which the liens could attach. Doc. #37.

Second, Debtor acknowledges the quitclaim deeds to and from Norma Cerpa in 2021. *Id.* Although these transfers occurred, Ms. Cerpa never took possession of or lived at Property. *Id.* After receiving Property back, Debtor recorded a *Declaration of Homestead* on the Property on June 24, 2021. *Ex. A*, Doc. #38.

Debtor contends that the Lease Agreement and Claim 92045 are fraudulent. Doc. #37. Debtor declares she had no knowledge of the filing of Claim 92045 in the PG&E Bankruptcy and was not involved in its creation, signing, or filing. Debtor has received no funds from Claim 92045. Debtor also declares she did not sign the Lease Agreement and notes the differences between the purported signature on the Lease Agreement and those on the quitclaim deeds. Debtor declares she does not know anyone named Jessica Seymour and has never entered into a lease with this person. Property is Debtor's residence and Jessica Seymour has never lived there. *Id.*

This matter will be called and proceed as a scheduling conference.

This matter is deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. The value of Property; and
2. Whether Debtor lives at Property.

The legal issues include:

1. Whether Debtor is entitled to claim a homestead exemption under CCP § 704.730, and if so, in what amounts;

2. Whether there is any equity in Property to which Horn's & Linda's judgment lien may attach, and if so, in what amounts.

10. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

MOTION TO AVOID LIEN OF CHRIS THORNS AND STEPHEN THORNS
5-20-2023 [\[18\]](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as a scheduling
 conference.

DISPOSITION: Continued to a date determined at hearing.

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

Lisa Mary Reardon Anderson ("Debtor") moves to avoid a judicial lien in favor of Chris and Stephen Thorns (collectively, the "Thorns") in the sum of \$32,454.00 and encumbering residential real property located at 33352 Cascadel Heights Drive, North Fork, CA 93643 ("Property") pursuant to 11 U.S.C. § 522(f). Doc. #18.

The Thorns oppose and request the court take judicial notice of certain documents. Docs. ##26-30.

Debtor replied. Docs. ##40-42.

This matter will be called and proceed as a scheduling conference.

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 except the Thorns 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 the Thorns 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).

The Thorns request the court take judicial notice of records relating to the Creek and Fork Fires from the California Department of Forestry and Fire Protection ("Cal Fire"), documents recorded with the Madera County Clerk-Recorder, and Proof of Claim No. 92045 ("Claim 92045")

filed in Bankruptcy Case No. 19-30088 (N.D. Cal. Bankr.) of PG&E Corporation and Pacific Gas and Electric Company (the "PG&E Bankruptcy"). Doc. #29. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

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 the Thorns in the amount of \$32,454.00 on September 7, 2021. *Ex. A*, Doc. #21. The abstract of judgment was issued on January 5, 2022 and was recorded in Madera County on that same day. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #20. Debtor estimates that the current amount owing as of the petition date was \$37,762.23. *Id.*

As of the petition date, Property had an approximate value of \$400,000.00. *Id.*; *Am. Sched. A/B*, Doc. #23. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C*, *id.*

Property is encumbered by a first deed of trust in favor of Select Portfolio Servicing ("SLS") in the approximate sum of \$296,855.00 as of the petition date. *Sched. D*, Doc. #1. Property is also encumbered by either two or three judgment liens. The senior-most lien appears to be a lien in favor of Donald Horn and Judith Linda (collectively, "Horn & Linda") in the amount of \$41,650.00, which was recorded on October 1, 2021 and is the subject of matter #9 above. *FW-1*; *Ex. A*, Doc. #16. Debtor estimates that the current amount owing as of the petition date was \$48,462.34. Doc. #20. Next, the Thorns' lien was recorded on January 5, 2022. *Sched. D*, *id.*; *Ex. A*, Doc. #21. Lastly, there may be a \$15,879.91 lien in favor of Rick & Kristin Hamilton (collectively, the "Hamiltons"). *Sched. D*, Doc. #1. The debt owed to the Hamiltons was incurred on or about February 14, 2023 according to the schedules, but it is unclear whether it was ever recorded. *Id.* The court will inquire about whether the Hamiltons' claim encumbers Property at the hearing.

Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. SLS	\$296,855.00	05/16/07	Unavoidable
2. Horn & Linda	\$48,462.34	10/01/21	Avoidable; matter #9 (FW-1)
3. The Thorns	\$37,762.23	01/05/22	Avoidable; matter #10 (FW-2)
4. The Hamiltons	\$15,879.91	Unknown	Unclear if secured

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"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).

If the Hamiltons' claim is unsecured, the Thorns' lien would be the most junior lien subject to avoidance and there would not be any equity to support their judicial lien. Strict application of the § 522(f)(2) formula with respect to the Thorns' lien would be illustrated as follows:

Amount of judgment lien	\$37,762.23
Total amount of unavoidable liens ²²	+ \$345,317.34
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$683,079.57
Debtor's claimed value of interest absent liens	- \$400,000.00
Extent lien impairs exemption	= \$283,079.57

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		\$400,000.00
Total amount of unavoidable liens	-	\$345,317.34
Homestead exemption	-	\$300,000.00
Remaining equity for judicial liens	=	(\$245,317.34)
Horn's & Linda's judicial lien	-	\$37,762.23
Extent Debtor's exemption impaired	=	(\$283,079.57)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be insufficient equity to support any judicial liens if Debtor's valuations are correct.

The Thorns oppose for two reasons. Doc. #26. First, the Thorns contend that Property is worth more than Debtor estimates because it was not subject to fire damage and Debtor has failed to meet her burden of proof on the issue of value. *Id.* As evidence, the Thorns include records obtained from Cal Fire and a declaration from Chris Thorns, Debtor's neighbor. *Exs. B-C*, Docs. #27-28. Second, the Thorns note Debtor executed two quitclaim deeds. The first transferred Property from Debtor to Norma Cerpa and the second transferred Property from Ms. Cerpa to Debtor. *Exs. D-E*, *id.* The Thorns contend that Debtor uses Property as a rental property, so she has not met her burden of proof that she is eligible to claim the homestead exemption. Doc. #26. The Thorns support this assertion with a copy of Claim 92045 from the PG&E Bankruptcy filed by Jessica Seymour purportedly on behalf of Debtor, which includes a copy of a *Residential Lease Agreement* dated January 15, 2018 ("Lease Agreement"). *Ex. F*, Doc. #27.

In reply, first, Debtor acknowledges that Property was not in the direct path of either the Creek or Fork Fires, but Property was degraded by both fires because they got very close to Property and the extreme heat and smoke caused catastrophic damages to the improvements on Property. Docs. #40-41. Specifically:

- Debtor's roof was seriously damaged after the shingles were rendered brittle from heat, which result in a leak and a collapse of a portion of the outside roof and inside ceilings in Debtor's laundry room, living room, and one bedroom. The interior ceilings have been partially fixed and work on the exterior roof is in progress.
- Debtor's air conditioning and heating units, which were on the roof, were destroyed. Debtor has been living with no heat or air conditioning since that time.
- Debtor's outside patio had a ceiling designed to let light in, which was made from a corrugated material that melted as a result of heat from the Creek Fire. Later snows and rain caused the porch roof to collapse, which led to structural damage on the supporting beams.
- Debtor's outside awning melted.
- The interior and exterior of Property suffered significant damage from smoke, which has not been repaired.

- Smoke and water damage led to the growth of black mold, which has not been remedied.
- The heat broke up the driveway. The cracking was compounded by snow and cold, so it needs to be entirely redone.
- Debtor's electrical system trips breakers on a daily basis while doing regularly required tasks. The electrical system was damaged by the Mission Fire, repaired, and was recently damaged by the Creek Fire.

Debtor contends Property has a value of \$285,000 after damages caused by the Creek and Fork Fires. Doc. #41. Debtor is seeking insurance proceeds to fix those damages and believes Property will be worth \$400,000 if she is successful. *Id.* Additionally, Debtor argues that the opposition fails to address that Property's value would have to exceed \$600,000 before there would be any equity for the lien to attach. Doc. #40. Debtor asserts the ability to claim an exemption of up to \$413,292 based on the median home sales price of existing single-family homes in Madera County for the previous calendar year, which would require Property to be worth more than \$700,000 before there would be equity to which the liens could attach. Doc. #41.

Second, Debtor acknowledges the quitclaim deeds to and from Norma Cerpa in 2021. *Id.* Although these transfers occurred, Ms. Cerpa never took possession of or lived at Property. *Id.* After receiving Property back, Debtor recorded a *Declaration of Homestead* on the Property on June 24, 2021. *Ex. A*, Doc. #42.

Debtor contends that the Lease Agreement and Claim 92045 are fraudulent. Doc. #41. Debtor declares she had no knowledge of the filing of Claim 92045 in the PG&E Bankruptcy and was not involved in its creation, signing, or filing. Debtor has received no funds from Claim 92045. Debtor also declares she did not sign the Lease Agreement and notes the differences between the purported signature on the Lease Agreement and those on the quitclaim deeds. Debtor declares she does not know anyone named Jessica Seymour and has never entered into a lease with this person. Property is Debtor's residence and Jessica Seymour has never lived there. *Id.*

This matter will be called and proceed as a scheduling conference.

This matter is deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. The value of Property; and
2. Whether Debtor lives at Property.

The legal issues include:

1. Whether Debtor is entitled to claim a homestead exemption under CCP § 704.730, and if so, in what amounts; and

2. Whether there is any equity in Property to which the Thorns' judgment lien may attach, and if so, in what amounts.

²² This amount consists of the \$296,855 deed of trust in favor of SLS and the \$48,462.34 judgment lien in favor of Horn & Linda because it is the senior-most judgment lien and is unavoidable until all junior liens are avoided.

11. [22-10698](#)-B-7 **IN RE: AGRIGENIX LLC**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEERPOINT GROUP, INC. AND/OR MOTION TO SELL
5-25-2023 [\[35\]](#)

IRMA EDMONDS/MV
STEPHEN LABIAK/ATTY. FOR DBT.
D. GARDNER/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 with the stipulation attached as an exhibit, and separately file and docket it as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement to resolve litigation between the estate of Agrigenix LLC ("Debtor") and Deerpoint Group Inc. ("Deerpoint") and for the sale of the estate's interest in certain personal property (collectively, the "Estate Assets"). Doc. #35.

Sean Mahoney ("Mahoney"), the founder and chief executive officer of Debtor, *pro se*, objects. Doc. #42.

Deerpoint responds, objects to Mahoney's evidence, and requests the court take judicial notice of certain documents. Docs. ##44-47.

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 Mahoney and Deerpoint 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 Mahoney and Deerpoint 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.

Deerpoint asks the court to take judicial notice of the claims register and an order granting stay relief in this case, and a declaration from a federal lawsuit pending in the U.S. District Court under Case No. 18-cv-00536-JLT-BAMT (E.D. Cal.) ("District Court Action") in which Mahoney, Deerpoint, and Debtor are involved as litigants. Doc. #45. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

Debtor filed chapter 7 bankruptcy on April 25, 2022. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on May 31, 2022. Doc. #4; docket generally.

Prior to filing bankruptcy, Debtor and Deerpoint were parties to the District Court Action. Deerpoint obtained relief from the automatic stay on June 6, 2022 to prosecute the District Court Action. Docs. #25-26. Deerpoint was permitted to only liquidate its claim against Debtor's insurance carrier and was not permitted to enforce its claim against Debtor or the bankruptcy estate.

Trustee and Deerpoint entered into a settlement agreement to resolve the District Court Action. A copy of the settlement agreement has been filed as an exhibit to the motion. Ex. A, Doc. #38. Trustee shall separately file the settlement agreement and docket it as a stipulation.

Under the terms of the settlement,

1. Deerpoint will pay \$12,500 to the estate;
2. Trustee will cooperate and assist, to the extent Trustee has access and/or ability to control, in the turnover and release of the estate's interest of the Estate Assets, which consist of the following:
 - a) Fertigation equipment (the "Grow Green Machine") installed by Debtor at Pescadero Ranch.
 - b) Laptop computers and one desktop computer purchased by Debtor and used by Mahoney.

- c) All intellectual property contended to have been misappropriated from Deerpoint and/or allegedly developed by Debtor with respect to fertigation equipment and fertilizer/foliar products.
 - d) A several hundred-page notebook maintained by former employee Graham Towerton.
 - e) Originals and copies of blending instructions prepared by Debtor (Towerton and/or Kwong).
 - f) Customer account information alleged to have been taken from Deerpoint.
 - g) Copies of all photographs of Deerpoint fertigation equipment used by its employee Jason Chow.
3. Within three days of entry of the order approving the agreement, Trustee and Deerpoint shall execute documents necessary to:
- (a) cause Debtor's default to be entered in the District Court Action, (b) dismiss with prejudice of Debtor's counterclaim in its action against Deerpoint, and (c) confirm Trustee's transfer to Deerpoint of ownership over the Estate Assets.

Id.

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).

Mahoney objects to the settlement agreement, first, because it does not contain a mutual general release and instead releases Debtor's claims against Deerpoint only. Doc. #42. If the release covered Deerpoint's claims against Debtor, Mahoney would not object to the settlement. Second, Mahoney objects to the language in the agreement that states, "[w]ithin three (3) days of the entry of an Order Approving this Agreement, Trustee and Deerpoint shall execute on behalf of the parties to this Agreement those documents necessary to cause (i) default to be entered in the Action with respect to claims asserted by Deerpoint against the [Debtor] for misappropriation of trade secrets, false advertising, unfair competition, and patent infringement" *Ex. A*, Doc. #38. Mahoney contends that Debtor's insurance carrier is covering its defense costs and the insurance agreement undercuts its defense in the District Court Action by agreeing to enter Debtor's default. Doc. #42. On this basis, Mahoney argues that the agreement prejudices its primary creditor for "a measly \$12,500."

In reply, Deerpoint contends Mahoney lacks standing to oppose the motion because he did not file a proof of claim, and therefore, he is not a creditor to this case. Doc. #44. Second, Deerpoint objects to Mahoney's declaration and email exhibit in support of the opposition because they are inadmissible hearsay, lack foundation, and are irrelevant. Doc. #46. Specifically, Deerpoint objects to the email attached as Exhibit 1 from Gary K. Brucker Jr. to Trustee in which Brucker claims to be Debtor's insurance-provided defense counsel. Ex. A, Doc. #42. Deerpoint says that Mahoney's declaration in the District Court Action on August 12, 2022 suggests that there was no insurance coverage for Debtor's counterclaims. Doc. #46; cf. Ex. B, Doc. #47. Lastly, Deerpoint notes that Trustee has not retained special counsel in this case under 11 U.S.C. § 327(a) or (e), which would have been necessary if Trustee had intended to mount a defense to Deerpoint's claims and prosecute Debtor's counterclaims in the District Court Action. Doc. #44.

The court rules as follows as to the evidentiary objections:

1. Lack of personal knowledge: Sustained. Mr. Mahoney does not provide any basis for his personal knowledge of the email. In fact, he states it came from counsel.
2. Relevance: Overruled. The evidence directly contradicts the position that no coverage for prosecution of the counter claim is being provided.
3. Lack of Foundation: Sustained. It is not established that the email purports to be what Mr. Mahoney says it may be.
4. Hearsay: Sustained. The email is offered for the truth as to Debtor's representation on the counterclaim and no exception to hearsay exclusion applies.

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: Trustee says that probability of success in litigation is uncertain. Doc. #37. The facts giving rise to the complaint are complicated and span several years in time. If Trustee were to litigate the District Court Action, she would be required to find a qualified attorney willing to take the case on a contingency basis to obtain a monetary judgment. Although insurance coverage exists for claims against Debtor, such coverage does not include prosecution of claims against Deerpoint. Trustee has determined that any offset claim does not result in any proceeds for the estate. This factor makes the probability of success very remote even with competent contingency fee counsel. *Id.*

2. Collection: If Trustee were to prevail in the District Court Action, she does not believe that collection would be very difficult. *Id.*

3. Complexity of litigation: The litigation at issue is very difficult and complicated because it spans several years and involves multiple witnesses, transactions, and documents, all of which would necessitate significant administrative expenses for the estate.

4. Paramount interests of creditors: Trustee believes the settlement serves the interests of creditors and the estate because it obtains a certain recovery without the expenditure of attorneys' fees or other administrative expenses. Through the settlement, Deerpoint waives its claim against the chapter 7 estate, resulting in distribution of the funds to other general unsecured creditors. Trustee does not believe there is any market interest in the Estate Assets being sold. Deerpoint contends that the Estate Assets are its intellectual property, so a sale to a third party would not resolve those claims.

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.*

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset (In re Open Med. Inst.)*, 639 B.R. 169, 181-83 (B.A.P. 9th Cir. 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

The settlement agreement here involves a "one way" release. Thus, the court also needs to review this as a sale of assets. The assets here are a counterclaim asserted by Debtor in the District Court action and the rights of Debtor to certain specified personal property listed above.

The court has set forth the reasons the settlement is fair and equitable above. The only objection to the approval of the settlement is from Mr. Mahoney who is the founder and owner of Debtor. Mr. Mahoney is not a creditor. He has not filed a claim.

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, 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).

Mr. Mahoney characterizes the monetary consideration as "measly." The court does not agree. Mr. Mahoney is understandably concerned about the continued insurance coverage for his defense in the litigation. But those concerns are between Mr. Mahoney and the affected insurance carrier(s). The Trustee of this estate is entitled to deference in her business decision to agree to the settlement.

In addition, no alternative price or value evidence has been presented to the court suggesting that this bankruptcy estate is not optimizing the value of the assets. The Trustee's judgment appears reasonable here. As set forth above, there is a sound business judgment supporting the settlement.

That said, had Mr. Mahoney or any other legitimate entity wish to "purchase" what is being "sold" under the proposed settlement, they have had the opportunity to do so since the motion was filed, and no entity has proposed an alternative.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion. The settlement between the estate and Deerpoint 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 settlement agreement as an exhibit. Trustee shall separately file a copy of the settlement agreement and docket it as a stipulation.