



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

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

**Hearing Date: Tuesday, July 25, 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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## **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. [23-10219](#)-B-11     **IN RE: WPI WATER RESOURCES, INC.**  
[LKW-6](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
6-30-2023    [[113](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

The Law Offices of Leonard K. Welsh ("Applicant"), general bankruptcy counsel for chapter 11, subchapter V debtor in possession WPI Water Resources, Inc. ("Debtor"), request interim compensation under 11 U.S.C. § 331 in the sum of \$16,253.90, subject to final review pursuant to 11 U.S.C. § 330. Doc. #113. This amount consists of \$15,890.00 in fees and \$363.90 in expenses from April 1, 2023 through June 30, 2023. *Id.*

Amanda Jensen, Debtor's Chief Executive Officer and authorized representative, has received and reviewed the fee application and has no objections. Doc. #116.

After posting the pre-hearing dispositions, Debtor filed a response. Doc. #119.

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

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

Debtor filed chapter 11, subchapter V bankruptcy on February 6, 2023. Doc. #1. Applicant was employed as Debtor's general bankruptcy counsel

pursuant to 11 U.S.C. §§ 327 and 329-31 effective as of the February 6, 2023 petition date. Docs. #34, #37. This is Applicant's second interim fee application. Doc. #113. Applicant was previously awarded the following interim compensation under § 331:

Period	Fees	Expenses	Total
02/07/23-03/31/23	\$9,850.00	\$128.93	\$9,978.93
<b>Total compensation previously awarded</b>			<b>= \$9,978.93</b>
Retainer remaining on petition date			- \$11,032.00
<b>Remaining retainer for future applications</b>			<b>= (\$1,053.07)</b>
Compensation requested in this application			+ \$16,253.90
Compensation to be paid by Debtor			= \$15,200.83

Docs. #82, #89, #113. Applicant now requests fees for 48.10 billable hours of legal services at the following rates, totaling **\$15,890.00** fees:

Professional	Rate	Billed	Total
Leonard K. Welsh	\$400	34.70	\$13,880.00
Trinette M. Lidgett	\$150	13.40	\$2,010.00
<b>Total Hours &amp; Fees</b>		<b>48.10</b>	<b>\$15,890.00</b>

*Id.*; *Ex. B*, Docs. #115, #117. Applicant also incurred **\$363.90** in expenses:

Postage	\$274.80
WebPACER Charges	\$89.10
<b>Total Expenses</b>	<b>\$363.90</b>

*Id.* These combined fees and expenses total **\$16,253.90**.

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) advising Debtor about the administration of a chapter 11 case and its duties as a debtor in possession, including filing monthly operating reports; (2) assisting Debtor in preparing, amending, and filing monthly operating reports; (3) preparing for and appearing at status conferences, the initial debtor interview, and meeting of creditors; (4) preparing and turning over required documents to the U.S. Trustee; (5) communicating with Debtor and a creditor regarding copy machines

leased by Debtor; (6) preparing and prosecuting Debtor's first interim fee application (LKW-4); (7) obtaining authorization to use cash collateral and providing adequate protection to secured creditors (LKW-2); (8) communicating with the Internal Revenue Service regarding tax issues; (9) reviewing filed claims and communicating with Debtor regarding the same; (10) preparing, filing, and confirming a subchapter V plan (LKW-5); and (11) advising Debtor about the *Pacific States Pipe v. WPI Water Resources, Inc.* lawsuit and options available to the parties concerning the lawsuit. Doc. #113. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses. Doc. #116.

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 \$15,890.00 in fees as reasonable compensation for services rendered and \$363.90 in actual, necessary expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be awarded \$16,253.90 for services and expenses from April 1, 2023 through June 30, 2023. Applicant will be authorized to draw down the \$1,053.07 retainer remaining on the terms outlined above and Debtor will be authorized to pay Applicant \$15,200.83.

2. [17-10327](#)-B-12     **IN RE: EDWARD/LISA UMADA**  
[FW-20](#)

MOTION FOR ENTRY OF DISCHARGE  
6-12-2023    [[380](#)]

LISA UMADA/MV  
PETER SAUER/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Lisa Umada ("Debtor") moves for entry of chapter 12 discharge for herself and Edward Umada (deceased) (collectively "Debtors") pursuant to 11 U.S.C. § 1228(f). Doc. #380.

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). The failure of the creditors, the chapter 12 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. § 1228(a) states "as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant a discharge of all debts provided for by the plan."

The court finds that Debtors have made all payments under the confirmed chapter 12 plan and no opposition has been filed to this motion. Pursuant to § 1228(a), Debtors' discharge shall be entered.

The court finds that there is no reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the Debtors and there is pending any proceeding in which the Debtors may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B).

Accordingly, this motion will be GRANTED.

3. [23-11332](#)-B-11      **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**  
[WJH-12](#)

MOTION TO COMPEL  
7-11-2023    [\[88\]](#)

TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION/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 subchapter V debtor in possession Twilight Haven ("Debtor") moves for an order compelling Wolf Point, LLC ("Wolf Point") to comply with 11 U.S.C. § 543. Doc. #88.

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

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

Prior to filing bankruptcy, Debtor contacted the California Department of Public Health ("CDPH") on April 12, 2023 to advise it of its various financial setbacks affecting Debtor's ability to make payroll. Williams Decl., Doc. #90. CDPH indicated that it would assign a temporary manager—Wolf Point—to "close down" the skilled nursing facility component of Debtor's business. On April 14, 2023, a representative from Wolf Point arrived at Debtor's facilities and advised that Wolf Point would be (a) taking over control of Debtor's business operations, (b) taking Debtor's receivables and paying Debtor's bills on a go-forward basis, including payroll, and (c) closing Debtor's skilled nursing facility. *Id.* A copy of Wolf Point's *Standard Agreement* with CDPH is included with this motion as an exhibit. See *Ex. A*, Doc. #91.

Thereafter, Wolf Point secured \$160,000 in funds from the State to fund payroll and took over \$241,000 in receivables owed to Debtor by Healthnet. Doc. #90. Debtor was advised that it would be expected to repay the \$160,000 in advanced funds from future receivables by setoffs. These funds were to be put into a separate account controlled by Wolf Point and used to pay Debtor's bills going forward. *Id.* A copy of the reconciliation report for Wolf Point's separate account it maintained for Debtor is attached as an exhibit, which indicates that the ending balance as of April 30, 2023 is \$189,400.49. *Ex. B*, Doc. #91. In total, Debtor estimates that Wolf Point seized approximately \$577,232 in receivables owed to Debtor. Doc. #90.

Wolf Point was physically on-site at Debtor's facilities from April 14 to May 31, 2023 during which Wolf Point had access to Debtor's skilled nursing facility patients, staff, medical records, and more. Wolf Point worked to discharge all skilled nursing facility patients and the last patient exited the facility on May 30, 2023. *Id.*

Debtor filed bankruptcy on June 22, 2023. Doc. #1. That same day, Debtor issued a Section 543 letter to Wolf Point advising it of the automatic stay and demanding delivery of all property of Debtor in Wolf Point's control, as well as an accounting of all property that came into its possession, custody, or control. A copy of the letter is attached as an exhibit. *Ex. C*, Doc. #91. Debtor has neither received a response to the letter nor any further reconciliation reports or accounting. Doc. #90.

11 U.S.C. § 543 requires a custodian with knowledge of the commencement of a bankruptcy to (1) refrain from making any disbursement of, or otherwise administering, any property of the debtor except as is necessary to preserve such property; (2) deliver to the bankruptcy trustee any property of the debtor that is in the custodian's possession at the time the custodian learned of the bankruptcy; and (3) promptly file an accounting of any property that was ever in the custodian's control. 11 U.S.C. § 543(a), (b)(1), (b)(2).

Here, Wolf Point was appointed by CDPH pursuant to a contract to manage Debtor's assets and discharge skilled nursing facility patients. Since Wolf Point contracted with the State of California to manage Debtor's business, it is a "custodian" within the definition of 11 U.S.C. § 101(11)(a) and (c). As a custodian, Wolf Point is required to comply with 11 U.S.C. § 543, which requires it to cease making disbursements, turnover property to the estate, and provide an accounting of all property within its control.

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 and order Wolf Point to comply with 11 U.S.C. § 543, including (i) providing an accounting for all funds belonging to Debtor under Wolf Point's possession and control for the period of April 14, 2023 to present, and (ii) turnover any such excess funds to the Debtor.

4. [23-11332](#)-B-11      **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**  
[WJH-2](#)

CONTINUED INTERIM HEARING RE: MOTION TO USE CASH COLLATERAL  
6-23-2023    [\[18\]](#)

TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

5. [23-11332](#)-B-11      **IN RE: TWILIGHT HAVEN, A CALIFORNIA CORPORATION**  
[WJH-3](#)

CONTINUED MOTION FOR ORDER AUTHORIZING MAINTENANCE OF  
EXISTING BANK ACCOUNT  
6-23-2023    [\[24\]](#)

TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of the debtor's *Notice of Establishment of DIP Account* dated July 14, 2023. Doc. #98. This matter will be called and proceed as scheduled.

6. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA CORPORATION**  
[WJH-5](#)

CONTINUED MOTION FOR ORDER LIMITING SCOPE OF NOTICE FOR  
CHAPTER 11 CASE  
6-23-2023    [[35](#)]

TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of Twilight Haven's ("Debtor") response to the U.S. Trustee's omnibus objection. Doc. #101. The court notes that the response is untimely because it was filed on July 18, 2023 rather than July 11, 2023. *Cf.* Doc. #56.

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.  
DISMISSED 6/28/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on June 28, 2023. Doc. #559. Accordingly, this status conference will be concluded and taken off calendar and the motion will be DENIED AS MOOT.

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

CONTINUED STATUS 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.  
DISMISSED 6/28/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on June 28, 2023.  
Doc. #559. Accordingly, this status conference will be concluded and  
taken off calendar and the motion will be DENIED AS MOOT.

9. [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.  
DISMISSED 6/28/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on June 28, 2023.  
Doc. #559. Accordingly, this status conference will be concluded and  
taken off calendar and the motion will be DENIED AS MOOT.

10. [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.  
DISMISSED 6/28/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on June 28, 2023.  
Doc. #559. Accordingly, the subchapter V plan's confirmation will be  
DENIED AS MOOT.

11. [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.  
DISMISSED 6/28/23

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

The court entered an order dismissing this case on June 28, 2023.  
Doc. #559. Accordingly, this status conference will be concluded and  
taken off calendar and the motion will be DENIED AS MOOT.

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

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-16-2023    [\[581\]](#)

JON SAENZ/MV  
RILEY WALTER/ATTY. FOR DBT.  
CRAIG WALKON/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

Plaintiff Jon Saenz ("Movant") asks the court for an order modifying the automatic stay to permit the prosecution of his action for medical negligence against Madera Community Hospital ("Debtor") and another defendant pending as action #MCV088347 in the Madera County Superior Court ("State Court Action"). Doc. #581. The relief requested is for Movant to proceed to final judgment in the State Court Action. However, Movant seeks an order only permitting recovery against Debtor to the extent of Debtor's insurance coverage or liability contract covering the claim. The claim relates to medical negligence which allegedly occurred during Movant's surgery at Debtor in May 2022. *Id.*

After this motion was filed, Debtor and Movant signed a stipulation which, if approved, would modify the stay to permit Movant to prosecute the State Court Action to final judgment but Movant could not enforce the judgment as to Debtor's property or property of the bankruptcy estate. Doc. #675. What's more, the stipulation provides that if Movant recovers on his claim, he will waive the first \$10,000.00 of recovery representing Debtor's deductible and waive any claim against the bankruptcy estate. *Id.*

Because of numerous procedural deficiencies, the motion will be DENIED WITHOUT PREJUDICE.

First, the motion was not properly served on all necessary parties under Fed. R. Bankr. P. ("Rule") 4001(a)(1).

Second, the certificate of service does not conform to the mandatory form of certificate of service under Local Rule of Practice ("LBR") 7005-1.

Third, the motion did not contain a docket control number required by LBR 9014-1(c)(1).

Fourth, the documents constituting the motion were not filed separately. Here, the motion, the request for judicial notice, the exhibits, and declaration of counsel were filed as one document which is prohibited by LBR 9004-2(c)(1). A combined motion and points and authorities is sometimes permissible. See LBR 9014-1(d)(4). The documents filed here as one document total 27 pages not the allowable six.

There could be other procedural deficiencies as well, however, any of the above is sufficient to deny the motion.

The court notes that the stipulation referenced above was served by Debtor's counsel using the appropriate the certificate of service form. Doc. #676. But the court declines to suspend the application of Rule 4001(d)(1), (2), and (3) as permitted under Rule 4001(d)(4). First, the notice of this motion was insufficient to afford reasonable notice of the material provisions of the agreement. Second, the service of the stipulation did not include a notice providing a procedure for any party to object or that the hearing scheduled for this motion would be the forum to consider the stipulation.

If the parties wish to have the stipulation approved, the appropriate motion in conformance with both the federal rules and the local rules can be filed and served. If there are temporal concerns, the local rules provide options for an expedited hearing.

The motion will be DENIED without prejudice.

13. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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 signed<sup>1</sup> 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.<sup>2</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##200-02.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #367, #389, #494, #497, #605, #620. 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.

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<sup>1</sup> The Support Agreement is neither signed nor dated. *Ex. B*, Doc. #202.

<sup>2</sup> 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.

14. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>3</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##206-08.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #368, #390, #495, #499, #606, #621. 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.

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<sup>3</sup> 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.

15. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>4</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a

memorandum of points and authorities and copies of the Agreements.  
Docs. ##214-16.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #369, #392, #496, #506, #607, #622. 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.

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<sup>4</sup> 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.

16. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>5</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##220-22.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #370, #393, #498, #508, #608, #623. 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.

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<sup>5</sup> 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.

17. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>6</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##232-34.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #371, #395, #500, #510, #609, #624. 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.

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<sup>6</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving First American' CEO via certified mail on April 7, 2023, and the creditors committee. Doc. #235.

18. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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").<sup>7</sup> 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.<sup>8</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a

memorandum of points and authorities and copies of the Agreements. Docs. ##379-81.

At Debtor's request, this motion was continued to June 27, 2023 and then to July 25, 2023. Docs. #501, #511, #610, #625. 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.

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<sup>7</sup> 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.

<sup>8</sup> 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.

19. [23-10457](#)-B-11      **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL, AND/OR MOTION FOR  
ADEQUATE PROTECTION  
3-13-2023    [\[18\]](#)

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

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

20. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>9</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##359-62.

At Debtor's request, this motion was continued to June 27, 2023 and then July 25, 2023. Docs. #502, #512, #611, #626. 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.

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<sup>9</sup> 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.

21. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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 DxC600(i), and one (1) iQ1500 Workcell US, and which requires (i) Beckman to warrant the equipment and (ii) Debtor to purchase annually from Beckman a minimum amount of equipment-related consumable products.

Doc. #301. Debtor also 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.<sup>10</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##301-04. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by Beckman. Doc. #303.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #445, #453, #509, #518, #612 and #628. 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.

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<sup>10</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a Beckman's CEO and the creditor's committee via first class mail on April 26, 2023. Doc. #305.

22. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>11</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##318-21; #324.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #446, #454, #513, #520, #613, #630. 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.

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<sup>11</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Canon's CEO and the creditor's committee via first class mail on May 1, 2023. Doc. #325.

23. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>12</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##334-37. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by CareFusion. Doc. #337.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #447, #455, #514, #521, #614, #631. 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.

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<sup>12</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving a CareFusion's managing member and the creditor's committee via first class mail on May 2, 2023. Doc. #349.

24. [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

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the

court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

This motion was originally heard on May 16, 2023. Docs. #448, #456.

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.<sup>13</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##338-342.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #448, #456, #515, #522, #615, #632. 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.

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<sup>13</sup> 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.

25. [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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade worked on this matter prior to accepting that position and will be screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

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.<sup>14</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##343-47.

At Debtor's request, this motion was continued, first, to June 1, 2023, then to June 27, 2023 and July 25, 2023. Docs. #449, #457, #516, #541, #616, #633. 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.

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<sup>14</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving Stryker's CEO and the creditor's committee via first class mail on May 2, 2023. Doc. #352.

26. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-55](#)

MOTION FOR ENTRY OF AN ADMINISTRATIVE FEE ORDER ESTABLISHING  
PROCEDURES FOR THE ALLOWANCE AND PAYMENT OF INTERIM  
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS  
RETAINED BY ORDER OF THIS COURT  
6-29-2023    [[636](#)]

CO-COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            The hearing will proceed as scheduled.

DISPOSITION:                  Granted with modification.

ORDER:                          The minutes of the hearing will be the court's  
findings and conclusions. The joint moving  
parties shall submit a proposed order after  
hearing unless otherwise ordered.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

Debtor and Debtor-in-Possession Madera Community Hospital ("Debtor") and Official Committee of Unsecured Creditors ("Committee") (together "Movants") ask the court to enter an order establishing procedures for the monthly submission of professional services invoices for fees and expenses and payment of 90% of the fees and 100% of the expenses that are not objectionable. Those professionals subject to the proposed procedures will still be required to file fee applications at four-month intervals for review by the court.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED WITH MODIFICATIONS. If the motion is opposed, the court may change the tentative ruling.

This motion was filed and served under Local of Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(2);(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter non-responding parties' defaults and grant the motion with modification. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper under LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Movants seek to streamline the process for review of fees by parties in interest and payment of a major portion of professional fees and all requested expenses. They propose that the following estate professionals be subject to the procedure: (a) Wanger Jones Helsley, Debtor's bankruptcy counsel, (b) Ward Legal, Inc., Debtor's special counsel, (c) CHW LLP, certified public accountant for the Debtor, (d) McCormick Barstow, Debtor's special counsel, (e) Perkins Coie, LLP and Sills Cummis & Gross, PC, co-counsel for the Committee, (f) FTI Consulting, Inc., Committee's financial advisor and (g) JWT & Associates, LLP, Committee's certified public accountants. Doc. #636.

Compensation awards to professionals are subject to this court's discretion. *In re Fin. Corp. of Am.*, 114 B.R. 221, 223 (B.A.P. 9th Cir. 1990), *aff'd*, 946 F.2d 689 (9th Cir. 1991). Interim compensation awards are always subject to the court's re-examination and adjustment during the course of the case. *In re Stewart*, 157 B.R. 893, 895 (B.A.P. 9th Cir. 1993), citing *Matter of Evangeline Refining Co.*, 890 F.2d 1312, 1321 (5th Cir. 1989).

Movants cite *In re Int'l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) and contend that the factors the court should consider in evaluating this motion are the size of the reorganization, the complexity of the issues involved, the time required by Debtor's counsel to achieve a successful reorganization. But *Int'l Horizons* suggested a procedure for prompt payment of professionals without requiring the professionals to wait 120 days to apply. The court did not have before it an actual proposed procedure other than 11 U.S.C. § 331. *Id.*

Nevertheless, the court will take judicial notice under Fed. R. Evid. 201(b) of factors that suggest the court should consider a potential procedure for professional compensation. This case has been pending since March 2023. Though the hospital is currently closed and has no patients, the legislative and regulatory environment surrounding rural hospitals is complex and fluid. The primary constituencies in the case including the Debtor in Possession, Saint Agnes Medical Center, the Committee, the State of California, Madera County, and others have repeatedly reported to the court the status of various efforts of "suitors" to purchase the hospital facilities. Loans and grants have been considered. There are many claims against the hospital by creditors, employees, and former patients. There are conflicting valuations of the hospital facilities. There is also the very real

concern for the citizens of Madera County who currently have no acute care hospital.

This is not a simple chapter 11 case.

That said, the court is mindful of the extensive professional fees that have been incurred and will be incurred in this case. The constituents most affected by those fees should have a reasonable opportunity to examine, review, and if necessary, object to the fees being incurred by the professionals.

Under 11 U.S.C. § 331, interim fee applications may be entertained once every 120 days "or more often if the court permits." 11 U.S.C. § 105(a) permits the court to issue any order necessary or appropriate to carry out the provisions of Title 11. Considering the facts of this case and its procedural status, the court will authorize the establishment of a procedure to streamline professional payment but provide substantial checks on the acceleration of fees and expenses in this matter.

Movants propose that the above-named professionals present monthly statements for fees and expenses for the immediately preceding month on or before the 25th of the month following the month for which compensation is sought. Those statements will be transmitted electronically to counsel for the Debtor, counsel for the Creditors Committee, counsel for Saint Agnes and counsel for the United States Trustee. If there is no objection within 14 days after service of the monthly statement, 90% of the fees and 100% of the expenses in the statement and not subject to objection can be paid to the professional.

If there is an objection, the professional and Debtor's counsel, Committee counsel, Saint Agnes' counsel and the United States Trustee shall be served with the objection. The objection shall set forth the specific fees that are objectionable and the reasons for the objection.

Thereafter, the parties will attempt to resolve the objection within 14 days after the deadline for submitting the objection. The professional whose fees are subject to objection may file a response with a request for payment or forgo payment of the amounts subject to objection until the next interim fee and expense application is submitted and heard before the court.

The court has reviewed the proposed order. The order should specifically list the professionals that are the subject of the order. If the objection is not resolved by the parties, the professional whose fees are subject to objection may set the matter for hearing on proper notice to counsel for the parties served with the objection. There will be no payment of the fees that are subject to objection until the objection is resolved by the parties or court order. Finally, any interim and final applications for payment of fees shall

include summaries of any objections and the responses thereto as well as evidence of the efforts to resolve the objections, if any.

For the foregoing reasons, the motion will be GRANTED AS MODIFIED.

11:00 AM

1. [23-11024](#)-B-7     **IN RE: FRANCEEN HOLDEN**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
7-6-2023     [[13](#)]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:     The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Franceen Holden ("Debtor") and Noble Credit Union for a 2020 Lexus NX was filed on July 6, 2023. Doc. #13.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [21-10316](#)-B-7     **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
5-30-2023     [[117](#)]

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

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

DISPOSITION:     Granted.

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

The parties are advised that the Judicial Law Clerk for this Department, Garrett Wade, has accepted a position with the McCormick Barstow law firm. Mr. Wade is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Wade.

Ratzlaff, Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee Irma Edmonds("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$2796.80. Doc. #119. This amount consists of \$2,768.00 in fees and \$28.80 in expenses from October 28, 2021 through March 21, 2023. *Id*

Trustee has received and reviewed the application and supporting documents, indicates that the requested fees and expenses are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #121.

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.

As a preliminary matter, the motion does not comply with the local rules. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Applicant filed a motion for compensation on April 14, 2023 Doc. #108. That motion was denied without prejudice on May 17, 2023 because Applicant did not use the mandatory certificate of service form under LBR 7005-1. Docs. ##115-16. The DCN for that motion was RTW-2. On June 1, 2023, Movant filed this motion for compensation. The DCN for this motion is also RTW-2, and therefore, it does not comply with the local rules. Each new motion requires a different, unused DCN.

Typically, this procedural deficiency would result in denial of the motion without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Because this is Applicant's second attempt at this fee application, the amount requested in the application exceeds the \$1,000 limit of Rule 2002(a)(6), and no party opposed this motion or the previous attempt, and because subsequent denial of this application would unduly delay the administration of this case, the court will overlook this procedural deficiency in this instance. Applicant is advised to review the local rules and ensure strict compliance in subsequent matters. Future violations of the local rules may result in the motion being denied without prejudice.

Cable Links Construction Group, Inc. ("Debtor") filed a voluntary Chapter 7 petition on February 9, 2021. Doc. #1. Concurrently, Irma Edmonds was appointed interim Trustee. See docket generally. Her appointment was confirmed at the meeting of creditors March 18, 2021. *Id.*

Applicant's employment was approved by the court on November 15, 2021. Doc. #19. Based on the application and supporting evidence applicant's services included: (1) Reviewing tax matters for the estate; (2) Preparation of tax returns and work papers for tax years ending

December 31, 2021, and December 31, 2022; and (3) Preparation of the fee application. The expenses incurred were for postage.

The hourly rates for the professional employed by applicant follow:

Professional	Rate	Hours	Total
Chris Ratzlaff (2021)	\$240	8.2	\$1,968
Chris Ratzlaff (2022)	\$250	3.2	\$800
<b>Total Hours &amp; Fees</b>		<b>11.4</b>	<b>\$2,768</b>

The court finds the fees and expenses reasonable and necessary under the circumstances of this case. The expenses were incurred for necessary reasons and were reasonable. Accountant Chris Ratzlaff testified by declaration and without contradiction that the fees were consistent with similar services.

In sum, the application is GRANTED. The Trustee may pay the approved compensation at her discretion and in accordance with priorities set forth in the Bankruptcy Code.

2. [22-11224](#)-B-7     **IN RE: PAULETTA SEEBOHM**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
6-1-2023    [\[84\]](#)

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

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

DISPOSITION:     Granted.

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

Ratzlaff, Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,231.96. Doc. #84. This amount consists of \$1,225.00 in fees and \$6.96 in expenses from February 22, 2023 through March 22, 2023. *Id.*; *Ex. A*, Doc. #87.

Trustee has received and reviewed the application and supporting documents, indicates that the requested fees and expenses are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #88.

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.

As a preliminary matter, the motion does not comply with the local rules. LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Applicant filed a motion for compensation on March 28, 2023. Doc. #73. That motion was denied without prejudice for procedural reasons on May 16, 2023. Docs. ##82-83. The DCN for that motion was RTW-2. On June 1, 2023, Movant filed this motion for compensation. The DCN for this motion is also RTW-2, and therefore, it does not comply with the local rules. Each new motion requires a different, unused DCN.

Typically, this procedural deficiency would result in denial of the motion without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Because this is Applicant's second attempt at this fee application, the amount requested in the application exceeds the \$1,000 limit of Rule 2002(a)(6) by a *de minimis* amount and no party opposed this motion or the previous attempt, and because subsequent denial of this application would unduly delay the administration of this case, the court will overlook this procedural deficiency in this instance. Applicant is advised to review the local rules and ensure strict compliance in subsequent matters. Future violations of the local rules may result in the motion being denied without prejudice.

Pauletta Seebohm ("Debtor") filed chapter 7 bankruptcy on July 18, 2022. Doc. #1. Trustee was appointed as the interim trustee on that same day and became permanent trustee at the first 341 meeting on September 8, 2022. Doc. #5; docket generally. On March 14, 2023, the court approved Applicant's employment as the estate's accountant, effective for services rendered on or after January 10, 2023. Doc. #65. 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. #84. Applicant's firm performed 4.9 billable hours of accounting services at a rate of \$250.00 per hour, totaling **\$1,225.00** in fees. *Ex. A*, Docs. ##86-87. Applicant also incurred **\$6.96** in expenses for postage to notice creditors. *Ibid.* These combined fees and expenses total **\$1,231.96**.

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

Applicant's services included, without limitation: (1) reviewing the petition and other information received from Trustee to determine tax attributes of the estate; (2) corresponding with the Trustee regarding tax returns; (3) preparing federal and state fiduciary income tax returns for the period ending March 31, 2023; and (4) preparing and filing this fee application (RTW-2). *Ex. A*, Docs. ##86-87. 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. #88.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,225.00 in fees as reasonable compensation for services rendered and \$6.96 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$1,231.96 for services rendered and costs incurred from February 22, 2023 through March 22, 2023.

3. [01-61942](#)-B-7     **IN RE: RICHARD WARREN**  
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E SALVEN, CHAPTER 7  
TRUSTEE(S)  
6-26-2023    [\[80\]](#)

JAMES SALVEN/MV  
DAVID ADALIAN/ATTY. FOR DBT.  
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of \$11,240.15 under 11 U.S.C. § 326, 330. Doc. #80. This amount consists of \$11,145.71 in fees and \$94.44 in expenses from December 20, 2021 through June 24, 2023. *Id.*

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

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

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. The court entered Debtors' discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. #8-9. The case was reopened on December 17, 2021 and Trustee was reappointed as successor trustee. Docs. #11, #13. Trustee administered the estate, submitted the final report to the UST on or about June 23, 2023. Doc. #80. The final report was approved by the UST on or about June 22, 2023 and was filed

with the court on June 23, 2023. Doc. #73. Trustee now seeks approval of final compensation. Doc. #80.

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

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

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

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$5,395.71 (5%) of the next \$107,914.26.

*Ex. A*, Doc. #83. These percentages comply with the restrictions imposed by § 326(a) and total **\$11,145.71**. The total disbursements in this case were \$177,439.67. *Id.* Trustee also incurred **\$94.44** in expenses as follows:

Copies (283 @ \$0.20)	\$56.60
Distribution (18 @ \$1.00)	\$18.00
Postage (8 @ \$2.48)	\$19.84
<b>Total Costs</b>	<b>\$94.44</b>

*Exs. A-B*, *id.* These combined fees and expenses total **\$11,240.15**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Trustee's services include, but are not limited to: (1) conducting the meeting of creditors; (2) employing general counsel (FW-1), special counsel (FW-2), and accountant (RTW-1); (3) resolving an objection to Debtor's claim of exemptions (FW-3); (4) settling claims against the

estate and compensating special counsel (FW-5); (5) compensating general counsel (FW-6) and the accountant (RTW-2); (6) administering claims and preparing and filing the final report; and (7) preparing and filing this fee application (JES-1). The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be awarded \$11,145.71 in statutory fees and \$94.44 in actual, necessary expenses for services rendered from December 20, 2021 through June 24, 2023. Trustee will be awarded a total of \$11,240.15 as final compensation pursuant to 11 U.S.C. §§ 326 and 330. The final report will be approved.

4. [23-10842](#)-B-7     **IN RE: DANIEL GONZALEZ**  
[PBB-1](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC  
6-15-2023    [\[13\]](#)

DANIEL GONZALEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Daniel Medina Gonzalez ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Midland Funding, LLC ("Creditor") in the sum of \$5,725.79 and encumbering residential real property located at 1674 San Simeon Dr., Lemoore, CA 93245 ("Property").<sup>15</sup> Doc. #13.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys.*,

*Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$5,725.79 on February 24, 2020. *Ex. D*, Doc. #16. The abstract of judgment was issued on February 4, 2021 and was recorded in Kings County on March 17, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #15. Debtor estimates that the current amount owed on account of this lien is \$7,605.00. *Id.*

As of the petition date, Property had an approximate value of \$355,400.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$340,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, id.*

Property is encumbered by a first deed of trust in favor of Carrington Mortgage Services ("CMS") in the amount of \$113,092.00. *Sched. D, id.* Property is also encumbered by a second judgment lien in favor of TD Bank USA, N.A., as successor in interest to Target National Bank, N.A. ("TD Bank") in the amount of \$1,493.26, which was recorded in Kings County on June 15, 2018 and is the subject of matter #5 below. *Id.*; *Ex. D*, Doc. #22; *see also*, PBB-2. Debtor estimates that the current amount owed on account of that lien is \$2,438.31. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. CMS	\$113,092.00	10/30/09	Unavoidable
2. TD Bank	\$2,438.31	06/15/18	Avoidable; matter #5 (PBB-2)
3. Creditor	\$7,605.00	03/17/21	Avoidable; matter #4 (PBB-1)

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).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$7,605.00
Total amount of unavoidable liens. <sup>16</sup>	+ \$115,530.31
Debtor's claimed exemption in Property	+ \$340,000.00
<i>Sum</i>	= \$463,135.31
Debtor's claimed value of interest absent liens	- \$355,400.00
Extent lien impairs exemption	= \$107,735.31

*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 with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$355,400.00
Total amount of unavoidable liens	- \$115,530.31
Homestead exemption	- \$340,000.00
Remaining equity for judicial liens	= (\$100,130.31)
Creditor's judicial lien	- \$7,605.00
Extent Debtor's exemption impaired	= (\$107,735.31)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the

subject Property only and include a copy of the abstract of judgment as an exhibit.

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<sup>15</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #17.

<sup>16</sup> This amount consists of the \$113,092.00 first deed of trust in favor of CMS and the \$2,438.31 judgment lien in favor of TD Bank because it is the senior-most judgment lien and is unavoidable until all junior liens are avoided.

5. [23-10842](#)-B-7     **IN RE: DANIEL GONZALEZ**  
[PBB-2](#)

MOTION TO AVOID LIEN OF TD BANK USA, N.A.  
6-16-2023    [[19](#)]

DANIEL GONZALEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Daniel Medina Gonzalez ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of TD Bank USA, N.A. ("Creditor") in the sum of \$1,493.26 and encumbering residential real property located at 1674 San Simeon Dr., Lemoore, CA 93245 ("Property").<sup>17</sup> Doc. #19.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$1,493.26 on May 11, 2017. *Ex. D*, Doc. #22. The abstract of judgment was issued on October 24, 2017 and was recorded in Kings County on June 15, 2018. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #21. Debtor estimates that the current amount owed on account of this lien is \$2,438.31. *Id.*

As of the petition date, Property had an approximate value of \$355,400.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$340,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, id.*

Property is encumbered by a first deed of trust in favor of Carrington Mortgage Services ("CMS") in the amount of \$113,092.00. *Sched. D, id.* Property is also encumbered by a second judgment lien in favor of Midland Funding, LLC ("Midland") in the amount of \$5,725.79, which was recorded in Kings County on March 17, 2021 and is the subject of matter #4 above. *Id.*; *Ex. D*, Doc. #16; see also, PBB-1. Debtor estimates that the current amount owed on account of that lien is \$7,605.00. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. CMS	\$113,092.00	10/30/09	Unavoidable
2. Creditor	\$2,438.31	06/15/18	Avoidable; matter #5 (PBB-2)
3. Midland	\$7,605.00	03/17/21	Avoidable; matter #4 (PBB-1)

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 Midland's judicial lien is avoided in matter #4 above, then this judicial lien would be the most junior lien subject to avoidance and there would not be any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's senior lien is illustrated as follows:

Amount of judgment lien	\$2,438.31
Total amount of unavoidable liens	+ \$113,092.00
Debtor's claimed exemption in Property	+ \$340,000.00
<i>Sum</i>	= \$455,530.31
Debtor's claimed value of interest absent liens	- \$355,400.00
Extent lien impairs exemption	= \$100,130.31

*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 with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$355,400.00
Total amount of unavoidable liens	- \$113,092.00
Homestead exemption	- \$340,000.00
Remaining equity for judicial liens	= (\$97,692.00)
Creditor's judicial lien	- \$2,438.31
Extent Debtor's exemption impaired	= (\$100,130.31)

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

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

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<sup>17</sup> Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's President and CEO via certified mail on June 15, 2023. Doc. #23.

6. [23-10258](#)-B-7     **IN RE: BRIANA LEARY**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-9-2023    [\[16\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
JOHN ROUNDS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

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

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Toyota Corolla ("Vehicle"). Doc. #16. Briana Danielle Leary ("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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtor's discharge was entered on May 22, 2023. Doc. #14. Therefore, the automatic stay

terminated with respect to Debtor on May 22, 2023. This motion will be DENIED AS MOOT IN PART as to Debtor's interest.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least four complete post-petition payments. Movant has produced evidence that Debtor is delinquent at least \$2,631.85. Doc. #18. Additionally, Debtor has failed to verify the maintenance of insurance coverage. *Id.*

The court also finds that Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. The Vehicle is valued at \$21,8975.00 and Debtor owes \$29,646.34. *Id.*; Doc. #20.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest under 11 U.S.C. § 362(d)(1) and (d)(2) and DENIED AS MOOT IN PART as to Debtor's interest under § 362(c)(2)(C).

7. [23-10961](#)-B-7     **IN RE: GARY FERNANDEZ**  
[TCS-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-7-2023    [\[16\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Gary Anthony Fernandez ("Debtor") moves to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #16.

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

First, this motion was filed on less than 21 days' notice. Rule 2002(a)(4) requires at least 21 days' notice by mail to the trustee

and all creditors of the hearing on the conversion of a chapter 7 case to another chapter. Here, the motion was filed on July 7, 2023 and set for hearing on July 25, 2023. July 7 is eighteen (18) days before July 25, 2023, and therefore, this motion was filed on insufficient notice.

Second, the motion failed to include a declaration or other supporting evidence in support of the request for relief. LBR 9014-1(d) (1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. Here, Debtor filed a motion, notice of hearing, and a certificate of service. Docs. ##16-18. No evidentiary support was offered.

Third, Debtor's monthly net income raises questions as to whether he is eligible to be in a chapter 13. The Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706; a debtor must also be eligible to be a debtor under chapter 13. The Supreme Court stated, "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." The court must find that Debtor is eligible to be a debtor under chapter 13 such that the case would not be converted or dismissed under 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for chapter 13 relief. According to the schedules and summary of assets and liabilities, Debtor falls within the limits for total debts. Doc. #1. The next question is whether Debtor has regular income. *Schedule I* indicates that Debtor is retired and earns \$1,968.80 in social security and retirement income and Debtor has \$1,953.84 in expenses, which results in monthly net income of \$14.96 per month. *Id.* Debtor's monthly net income suggests he may not be able to propose and complete a chapter 13 plan. If Debtor is capable of proposing and completing a chapter 13 plan, he should include evidence reflecting such capability.

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

8. [23-10867](#)-B-7      **IN RE: NARPINDER KAUR**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
6-6-2023    [\[13\]](#)

T. O'TOOLE/ATTY. FOR DBT.  
OPPOSITION

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

DISPOSITION:      Conditionally denied.

ORDER:              The court will issue the order.

Chapter 13 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on June 5, 2023. Doc. #13.

Narpinder Kaur ("Debtor") timely opposed. Doc. #15. Debtor's attorney appeared at the June 5, 2023 meeting of creditors but Debtor forgot about the meeting. Debtor will be present for the continued meeting.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for August 14, 2023 at 3:00 p.m. See Doc. #12. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

9. [23-11067](#)-B-7      **IN RE: LETICIA DELGADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-30-2023    [\[29\]](#)

SCOTT LYONS/ATTY. FOR DBT.  
\$188.00 FILING FEE PAID 6/30/23

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 \$188.00 filing fee was paid on June 30, 2023. Accordingly, this order to show cause will be VACATED.

10. [23-11067](#)-B-7     **IN RE: LETICIA DELGADO**  
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-16-2023    [\[19\]](#)

CAPITAL ONE AUTO FINANCE/MV  
SCOTT LYONS/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 2016 Chevrolet Malibu LT ("Vehicle"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Leticia Adriana Delgado ("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 missed more than two (2.333) pre-petition payments totaling \$948.78 and two post-petition payments totaling \$813.24. Docs. ##21-22.

Since the court intends to grant this motion in part under § 362(d)(1), relief under subsection (d)(2) is moot. The court declines finding that Debtor does not have any equity in the Vehicle. Although the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case, Movant values the Vehicle at \$16,384.00 and Debtor owes \$12,342.86, which leaves Movant over secured. Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. 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 post-petition payments to Movant and the Vehicle is a depreciating asset.

11. [21-12873](#)-B-7     **IN RE: CESAR PENA BARRAZA AND OLGA PENA LOPEZ**  
[ADJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH MARINA ALEYDA AVENDANO  
6-14-2023    [\[30\]](#)

IRMA EDMONDS/MV  
SCOTT LYONS/ATTY. FOR DBT.  
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement to resolve allegedly fraudulent transfer litigation between the estate and Marina Aleyda Avendano ("Avendano") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #30.

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.

Debtors filed chapter 7 bankruptcy on December 30, 2021. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on January 24, 2022. Doc. #7; docket generally.

While investigating the assets of the estate, Trustee learned that joint debtor Cesar Omar Pena Barraza ("Barraza") and Avendano purchased real property located at 985 North Patsy Street, Porterville, California ("Property") in or about January 2009 and took title as joint tenants. Doc. #33. On or about November 24, 2021, Barraza executed a deed whereby he transferred his undivided one-half interest in the Property to Avendano for no consideration. *Id.* The transfer occurred within two years of the petition date and Avendano is now the sole owner on record title of the Property. *Id.*

On January 25, 2023, Trustee filed Adv. Proc. No. 23-01006 against Avendano and Barraza to set aside the transfer of Property on grounds that it is an allegedly fraudulent transfer. Trustee's complaint also requested the sale of Property. Trustee has a duty to administer the estate and recover the unrealized value of the estate's interest in the Property. In an effort to avoid litigation, Trustee and Avendano entered into a settlement. *Id.*

Under the terms of the settlement, Trustee will waive any and all claims of the estate to the Property against Avendano and Barraza in

exchange for payment of \$5,500.00. *Id.*; *Ex. A*, Doc. #32. Avendano also affirmed under penalty of perjury that:

Defendant [Avendano] solely made the following payments related to the Real Property: i) down payment for the purchase; ii) all payments for the loan used for the purchase (the mortgage); iii) all property taxes; iv) all insurance premiums; and (v) all repairs and maintenance. It was always each Codefendant's [Avendano and Barraza] intent that Defendant [Avendano] would be the true owner of the Real Property. Codefendant, the Debtor, used his credit to obtain the loan for the purchase of the property (the mortgage), but did not intend to and has not resided in the Real Property. Defendant [Avendano] and her minor child have exclusively resided in the Real Property.

*Id.* Moreover, Debtors reported the transfer to Avendano in their *Statement of Financial Affairs* and described the transfer as a 0% interest in Property because Avendano has been the only one to make payments on the Property, including the down payment. Doc. #1. Trustee has received the \$5,500.00 and will dismiss the adversary proceeding upon approval of the settlement. Doc. #30.

The court notes that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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

1. Probability of success in litigation: Barraza and Avendano contend that Property is the subject of a resulting trust for the benefit of Avendano, rendering Avendano as the sole equitable owner of Property while Barraza held bare legal title to the same with no equitable interest. Although success in litigation is far from assured, the defendants have a strong resulting trust defense under 11 U.S.C.

§ 541(d) and *In re N. Am. Coin & Currency, Ltd.*, 767 F.2d 1573, 1575 (9th Cir. 1985), *cert. den. sub nom.*, 475 U.S. 1083 (1986). Since the estate would bear the burden of proof in that proceeding, it is likely that a sizeable portion of the recovery would go to litigation costs, which would deplete the funds otherwise available for distribution to unsecured creditors. This factor supports approval of the settlement.

2. Collection: If Trustee prevailed at trial, the court would likely order the sale of Property. Therefore, collection would not be very difficult but the estate would incur costs associated with the sale. This factor supports approval of the settlement.

3. Complexity of litigation: The legal issues involved in the litigation are somewhat complicated while the material facts are not in dispute. Litigation would be fact intensive and very expensive while delaying the administration of the estate for a dispute that favors the finding of a resulting trust. Additionally, the estate has no funds to finance litigation. This factor supports approval of the settlement.

4. Paramount interests of creditors: Though no creditors have made their views known, Trustee believes that creditors would support approval of the settlement because it provides a guaranteed recovery for the estate while avoiding the risk and expense of litigation. This factor supports approval of the settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between the estate and Avendano will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

12. [22-10982](#)-B-7     **IN RE: RENE/ADELA GARCIA**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-15-2023    [\[40\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DISCHARGED 9/26/22

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

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

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2014 Chevrolet Impala ("Vehicle"). Doc. #40. Rene Hernandez Garcia and Adela Garcia (collectively "Debtors") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtors, the 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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtors' discharge was entered on September 26, 2022. Doc. #19. Therefore, the automatic stay terminated with respect to the Debtors on September 26, 2022. This motion will be DENIED AS MOOT IN PART as to the Debtors' interest.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the chapter 7 trustee because Debtors have failed to make three post-petition payment of \$721.98. Doc. #42. Movant has produced evidence that Debtors owe \$11,805.08 to Movant. *Id.*

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. Movant values the Vehicle at \$9,475.00 and Debtors owe \$11,805.08, which leaves Movant under secured. Doc. #44.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest under 11 U.S.C. § 362(d)(1) and (d)(2) and DENIED AS MOOT IN PART as to the Debtors' interest under § 362(c)(2)(C).

13. [23-10883](#)-B-7     **IN RE: JOHN LONNON**  
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
6-6-2023    [[13](#)]

JASON VOGELPOHL/ATTY. FOR DBT.  
OPPOSITION

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on June 5, 2023. Doc. #13.

John Anthony Lonnon ("Debtor") timely opposed. Doc. #15. Debtor appeared at the meeting on June 5, 2023 via Zoom but Debtor's case was called late on the calendar. Debtor did not request enough time off and had to return to work before his case was called.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for August 14, 2023 at 3:00 p.m. See Doc. #12. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.