



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

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

Hearing Date: Tuesday, August 1, 2023

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

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
7-13-2023 [\[114\]](#)

GFRS EQUIPMENT LEASING FUND II, LLC/MV
PETER FEAR/ATTY. FOR DBT.
AMANDA FERNS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted provided Trustee waives service defect.

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

GFRS Equipment Leasing Fund II, LLC ("Claimant"), assignee of Global Financial & Leasing Services, LLC ("GFLS"), requests an order allowing its late-filed proof of claim pursuant to 11 U.S.C. §§ 105 and 502(b)(9) and Fed. R. Bankr. P. ("Rule") 3002. Doc. #114; *cf.* Proof of Claim No. 20-1 ("Claim 20").

Chapter 11 subchapter V trustee Lisa A. Holder ("Trustee") was not properly served notice of this motion. Doc. #118. Since the motion will affect the administration of the bankruptcy estate, Trustee must be served. The court will inquire at the hearing whether Trustee will waive the service defect. If so, the court may overlook this procedural deficiency pursuant to Local Rule of Practice ("LBR") 1001-1(f) to avoid unduly delaying the administration of this case given that this is Claimant's second attempt at filing this motion. ANF-1.

On July 26, 2023, Debtor and Claimant filed a stipulation to allow Claimant's late-filed claim and to withdraw Claimant's objection to plan confirmation. Doc. #133.

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, this motion may be GRANTED provided that Trustee waives the service defect.

This motion was filed and served pursuant to 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. 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.

Rule 3003(c)(1) allows any creditor in a chapter 11 case to file a proof of claim or interest within the time prescribed by subdivision (c)(3). Rule 3003(c)(3) requires the court to fix the time by which proofs of claim or interest may be filed; however, the court may extend the deadline for cause shown.

Pursuant to Rule 3003(c)(3), the local rules by default establish the following deadlines in this district for filing a proof of claim or interest in a subchapter V, chapter 11 small business debtor reorganization case: (i) 70 days after the order for relief for non-governmental unit claimants, or (ii) 180 days after the order for relief for relief for governmental unit claimants. LBR 3003-2.

If the time period to file a claim has expired, the court may extend the deadline under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6). Rule 3003(c)(3). Under Rule 3002(c)(6), on motion filed by a creditor before or after expiration of the deadline to file a claim, the court may extend the time to file a proof of claim by not more than 60 days from the date of the order granting the motion if the court finds that notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Here, debtor in possession William Jacob Miller ("Debtor") filed chapter 11 subchapter V bankruptcy on February 7, 2023. Doc. #1. Under LBR 3003-2, the deadline to file a proof of claim or interest for non-governmental unit claimants was April 18, 2023.

Shortly after this case was filed, the court entered a *Notice of Chapter 11 Bankruptcy Case* ("Bankruptcy Case Notice") and an *Order Setting Subchapter V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines* ("Deadline Order"), which both reaffirmed that the deadline for filing proofs of claim is April 18, 2023 for non-governmental unit claimants. Docs. #6, #8. The Notice of Bankruptcy Case was sent to all creditors and parties in interest by the Bankruptcy Noticing Center ("BNC") and was served by Debtor on a small number of creditors in February 2023. Docs. #6, #11, #15. Meanwhile, the Deadline Order was sent by the BNC to all creditors and parties in interest in this case on February 16, 2023. Doc. #10.

Early on in this case, Debtor did not list Claimant or GFLS in the original schedules or the original and amended master address lists. Docs. #1, #3, #12. As a result, BNC did not send the Deadline Order and notice to Claimant or GFLS, and neither Claimant nor GFLS received notice of this bankruptcy case. Doc. #117.

Claimant received notice of the bankruptcy case on May 3, 2023 and promptly filed Claim 20 on June 21, 2023 in the amount of \$174,811.75. Claim 20. GFLS was added to the schedules and amended master address list on June 29, 2023. Doc. #84. On that same date, Debtor served GFLS with the Deadline Order, Notice of Bankruptcy Case, and other important documents. Doc. #85. By then, the April 18, 2023 deadline to file a proof of claim had long passed.

Claimant now moves for an order allowing its late-filed Claim 20 pursuant to 11 U.S.C. §§ 105 and 502(b)(9) and Rules 3003(c)(3) and 3002(c)(6). Doc. #114. Claimant and GFLS were not timely notified that this bankruptcy was filed until after the April 18, 2023 deadline had expired. Therefore, it appears that notice to Claimant was insufficient under the circumstances to give Claimant a reasonable time to timely file a proof of claim.

This matter will be called and proceed as scheduled to inquire whether any parties in interest oppose and whether Trustee will agree to waive the service defect. If so, this motion may be GRANTED.

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

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[FW-2](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS
PLAN
5-8-2023 [[41](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[RPM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
6-29-2023 [\[87\]](#)

ACAR LEASING LTD/MV
PETER FEAR/ATTY. FOR DBT.
RANDALL MROCZYNSKI/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.

ACAR Leasing Ltd dba GM Financial Leasing ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Chevrolet Suburban ("Vehicle"). Doc. #87. William Jacob Miller ("Debtor") did not oppose.

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

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

This motion relates to an executory contract or lease of personal property. Under 11 U.S.C. § 365(d)(2), the trustee or debtor in possession may assume or reject an executory contract or unexpired lease of personal property of the debtor at any time before confirmation of a plan. Here, the plan confirmation hearing is the subject of matter #3 above. *See* FW-2. If the plan is confirmed, the lease will be deemed rejected and the automatic stay will terminate by operation of law.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least two post-petition payments in the combined amount of \$3,100.20. Docs. ##89-90. Movant has produced evidence that the lease matured on May 1, 2023 and Debtor has not returned the Vehicle or exercised the purchase option. Debtor has also failed to provide Movant with proof of insurance. *Id.*

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization. Movant has valued the Vehicle at \$41,776.00. Since this is a lease, Debtor does not have any equity in the Vehicle.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least two post-petition payments, the lease has matured, and the Vehicle is a depreciating asset.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-3](#)

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

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

NO RULING.

The 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.

6. [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 9014.¹ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##206-08.

This motion has been continued on multiple occasions and is presently set for August 1, 2023. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the

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

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. 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.

¹ 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.

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

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

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

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 9014.² 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.

This motion has been continued on multiple occasions and is presently set for August 1, 2023. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. 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.

² 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.

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

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

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

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 9014.³ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##232-34.

This motion has been continued on multiple occasions and is presently set for August 1, 2023. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. 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.

³ 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.

9. [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 9014.⁴ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##301-04. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by Beckman. Doc. #303.

This motion has been continued on multiple occasions and is presently set for August 1, 2023. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. 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.

⁴ 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.

10. [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 9014.⁵ The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities. Docs. ##334-37. Copies of the Agreements are not attached as exhibits because the Agreements are designated as confidential by CareFusion. Doc. #337.

This motion has been continued on multiple occasions and is presently set for August 1, 2023. The continued hearing will proceed as scheduled under Local Rule of Practice ("LBR") 9014-1(f)(2). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. 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.

⁵ 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.

11:00 AM

1. [23-10873](#)-B-7 **IN RE: CHRISTOPHER CAIN**

PRO SE REAFFIRMATION AGREEMENT WITH TOWER FEDERAL CREDIT
UNION
7-10-2023 [[11](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

A Reaffirmation between debtor Alfredo Corpus and First Tech Federal Credit Union for a 2020 Dodge Ram was filed on November 23, 2022. Doc. #16.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he 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. [22-10005](#)-B-7 **IN RE: PATRICIA TESSENDORE**
[ADJ-4](#)

CONTINUED ORDER TO SHOW CAUSE
3-1-2023 [[112](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

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

DISPOSITION: Vacated.

ORDER: The court will issue an order.

The court advanced the hearing on this order to show cause to July 31, 2023. Doc. #119. On that date, the debtor attended the advanced hearing and attended and completed the \$ 341 meeting of creditors. Doc. #120. Thereafter, the court issued an order purging the debtor's contempt, vacating the writ of body attachment, and releasing the debtor from the custody of the U.S. Marshals Service. Doc. #121. Accordingly, this order to show cause will be VACATED.

2. [23-10824](#)-B-7 **IN RE: JOSE RODRIGUEZ MORA**
[EPE-1](#)

MOTION TO EXTEND DEADLINE TO FILE A REAFFIRMATION AGREEMENT,
AND/OR MOTION TO DELAY DISCHARGE
7-14-2023 [[17](#)]

JOSE RODRIGUEZ MORA/MV
ERIC ESCAMILLA/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.

Jose Salvador Rodriguez Mora ("Debtor") moves for an order to extend the deadline to file a reaffirmation agreement and defer entry of discharge.⁶ Doc. #17.

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.

Fed. R. Bankr. P. ("Rule") 4008(a) requires a reaffirmation agreement to be filed no later than 60 days after the first date set for the meeting of creditors. The court is permitted to enlarge the time for filing a reaffirmation agreement "at any time." However, 11 U.S.C. § 524(c)(1) requires the agreement to be made prior to entry of discharge. *See In re Golladay*, 391 B.R. 417, 422 at n.1 (Bankr. C.D. Ill. 2008) ("[W]here it can be shown that the reaffirmation agreement was 'made,' i.e. signed before the granting of the discharge, then the reaffirmation agreement may be 'filed' after the granting of the discharge.") (emphasis in original), quoting *In re Davis*, 273 B.R. 152, 153 (Bankr. S.D. Ohio 2001); *In re Lucious*, 2012 Bankr. LEXIS 3572 (Bankr. N.D. Ohio Aug. 1, 2012).

Rule 4004(c)(2) allows the court to defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may further defer entry of the order.

Here, Debtor filed chapter 7 bankruptcy on April 24, 2023. Doc. #1. The first date set for the meeting of creditors was May 22, 2023, docket generally, and therefore, the deadline to file a reaffirmation agreement was July 21, 2023.⁷

Debtor seeks to enter into a reaffirmation agreement with LoanCare, LLC with respect to the mortgage on Debtor's residence. Doc. #19. Debtor has been advised that LoanCare is waiting for loan collateral documents to finalize and complete the reaffirmation agreement. Since the reaffirmation agreement cannot be negotiated, prepared, and executed prior to the July 21, 2023 deadline, Debtor filed this motion to extend the deadline and defer entry of discharge by 30 days to give Debtor sufficient time to negotiate, execute, and file the reaffirmation agreement. The 30th day after the original July 21, 2023 deadline is Sunday, August 20, 2023. Therefore, under Rule 9006(a)(3)(A), the deadline is further extended to August 21, 2023.

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 deadline for Debtor to file a reaffirmation with LoanCare, LLC will be extended to August 21, 2023 under Rule 4008(a). Further, entry of discharge will be deferred to August 21, 2023 under Rule 4004(c)(2).

⁶ The first sentence of the motion asks to extend the automatic stay. Doc. #17. This appears to be a typographical error because the motion does not discuss extension of the automatic stay. The motion will be DENIED AS MOOT as to the request to extend the automatic stay.

⁷ The court notes that the motion and declaration say that the 60-day deadline to file a reaffirmation agreement was July 22, 2023. This appears to be a typographical error because 60 days after the May 22, 2023 meeting of creditors is July 21, 2023.

3. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[RWR-8](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INFINITY, MARIO GUERRA, AND DANIEL CANCHOLA
7-11-2023 [[143](#)]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order with the settlement agreement attached as an exhibit and shall separately file and docket it as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Infinity Insurance Company and Infinity Property and Casualty Corporation (collectively "Infinity") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #143.

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 on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Rule 2002(a)(3) 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.

Background

Prior to filing bankruptcy, Daniel M. Canchola ("Debtor") rear-ended a vehicle carrying Marsha LeDuc, Tori Abby, and Miley Abby in June 2013 while driving a vehicle owned by Mario Guerra ("Guerra") that was insured by Infinity. Docs. #146, #148. As a result of the accident, Marsha LeDuc was fatally injured. Tori and Miley Abby sustained non-fatal injuries. Infinity opened a claim for the accident.

In December 2013, Cal LeDuc, Tori Abby, Miley Abby, Mandy Jobe, Lukas LeDuc, and Jay LeDuc and Cal LeDuc as successors in interest to the estate of Marsha Kay LeDuc (collectively "LeDuc Plaintiffs") filed a lawsuit against Guerra, Debtor, and several other defendants in Fresno County Superior Court. *Id.* The LeDuc Plaintiffs served a Cal. Code Civ. Proc. ("CCP") § 998 demand to settle their claims against Guerra and Debtor for \$750,000. Infinity did not accept the demand and litigation continued.

Debtor filed chapter 7 bankruptcy on April 11, 2017. Doc. #1. Trustee was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting on May 18, 2017. Doc. #2; see docket generally. Debtor received an order of discharge on April 11, 2017. Doc. #27. Guerra filed a chapter 7 bankruptcy case one day after Debtor. Case No. 17-11365 (Bankr. E.D. Cal.).

In October 2017, Infinity entered into a settlement agreement with the LeDuc Plaintiffs requiring them to dismiss with prejudice their original lawsuit prior to entry of judgment and allowing them to pursue direct action against Infinity without obtaining an assignment from Guerra, Debtor, or their respective bankruptcy estates ("Bankruptcy Plaintiffs"). The underlying lawsuit was dismissed with prejudice in 2018.

Thereafter, Trustee retained general and special counsel to join the LeDuc Plaintiffs and Guerra's chapter 7 bankruptcy estate in an action against Infinity in Fresno County Superior Court entitled *Le Duc et al. v. Infinity et al.*, Case No. 19CECG01278 ("State Court Action"), for claims under the Motor Carrier of Property Permit Act ("MCPA") of insurance bad faith and other tortious injury claims arising out of the motor vehicle accident and the handling of the claims arising from that accident. Docs. #146, #148. Infinity provided Commercial Liability Insurance for Guerra, and by reason of additional insured provisions in the policy, Debtor was also covered. *Id.*

Infinity filed a Proof of Claim in both Debtor's and Guerra's bankruptcy cases. *Id.* Infinity also filed a cross-complaint against the LeDuc Plaintiffs in 2022. *Id.*

Settlement Agreement

In an effort to avoid further litigation, Infinity and the Bankruptcy Plaintiffs entered into a settlement agreement for a global resolution

in June of 2023.⁸ *Id.* A copy of the settlement agreement has been filed as an exhibit to the motion. *Ex. A*, Doc. #145. Trustee shall separately file the settlement agreement and docket it as a stipulation or a settlement agreement.

Under the terms of the settlement, the following will take place upon court approval:

1. The Bankruptcy Plaintiffs will request dismissal with prejudice of all claims against Infinity in the State Court Action;
2. Infinity will waive costs against the Bankruptcy Plaintiffs in the State Court Action;
3. Infinity will withdraw with prejudice the proofs of claim filed in Debtor's and Guerra's bankruptcy cases;
4. The Bankruptcy Plaintiffs will waive costs against Infinity in Debtor's and Guerra's bankruptcy cases; and
5. Infinity will release the Bankruptcy Plaintiffs, and the Bankruptcy Plaintiffs will release Infinity, from any present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expert fees, attorney's fees and expenses and compensation related to or arising out of the policy, accident, claim, underlying lawsuit, CCP § 988 demand, the respective bankruptcy cases, the underlying lawsuit, the State Court Action, and the proofs of claim filed in Debtor's and Guerra's bankruptcy cases.

Id. Trustee now seeks approval of the settlement agreement pursuant to Rule 9019(a). Doc. #143.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Here, probability of success in litigation is uncertain. The litigation is complex and a writ taken by Infinity has been set for hearing with the appellate court. Infinity believes that certain trial court rulings may be at material risk of reversal or modification, which creates risk for all plaintiffs. The events leading to the State Court Action date back 10

years, which creates risk for all parties and supports approval of the settlement.

2. Difficulties in collection: Trustee does not believe there would be any difficulty collecting from Infinity if the Bankruptcy Plaintiffs were to prevail at trial.

3. Complexity of litigation: The State Court Action has been pending since 2019 and involves complicated issues relating to interpretation of the MCPPA, whether the MCPPA's financial responsibility provisions are read into every insurance policy that is issued to a motor carrier of property or only those policies where an insurance company has certified that the policy complies with MCPPA, and whether Infinity breached the duty to settle. A June 2022 bench trial resolved several issues relating to interpretation of the MCPPA but Infinity filed a petition for writ of mandate to challenge the trial court's interpretation of the MCPPA. As a result, the State Court Action is currently stayed pending the court of appeal's ruling on the writ petition. Depending on the outcome of the writ, the Bankruptcy Plaintiffs could owe costs or have reimbursement obligations that would exceed amounts recovered from other defendants. The complexity, expense, and uncertainty of litigation weigh in favor of settlement.

4. Interests of creditors: If the settlement agreement is approved, all creditors will be paid in full on account of their allowed claims and there will be a surplus of funds available for Debtor and Guerra. If the settlement is not approved, each of the estates could be significantly diminished by litigation costs and expenses. This factor supports approving the settlement.

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

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will conclude the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* The court is inclined to GRANT this motion and approve the settlement agreement.

Trustee shall separately file a copy of the settlement agreement and docket it as a settlement agreement or stipulation. The proposed order shall attach the settlement agreement as an exhibit.

⁸ The settlement agreement does not resolve claims between the LeDuc Plaintiffs and Infinity. However, Trustee indicates that those claims do not impact Debtor, Guerra, or their respective bankruptcy estates. Doc. #147.

4. [14-12051](#)-B-7 **IN RE: JOSE REYNA**
[TMO-3](#)

MOTION TO AVOID LIEN OF WESTERN UNION FINANCIAL SERVICES,
INC.
7-17-2023 [[63](#)]

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify
respondents that they can determine (a) whether the matter has been
resolved without oral argument; (b) whether the court has issued a
tentative ruling that can be viewed by checking the pre-hearing
dispositions on the court's website at <http://www.caeb.uscourts.gov>
after 4:00 p.m. the day before the hearing; and (c) parties appearing
telephonically must view the pre-hearing dispositions prior to the
hearing. Here, the court website and the above disclosures are not
included in the notice of hearing. Doc. #64.

Second, LBR 7005-1(d) requires the certificate of service to include
an Official Matrix downloaded from the Clerk of the Court not more
than seven (7) days prior to the date of serving the pleadings. Here,
the Official Matrix was downloaded on June 5, 2023. Doc. #68.

Third, the exhibits omit a copy of the abstract of judgment. Doc. #67.
Thus, the debtor has not established that the creditor has a valid
lien recorded against the debtor's property because competent evidence
of the recorded abstract of judgment has not been filed.

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

5. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-8](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INFINITY, MARIO GUERRA, AND DANIEL CANCHOLA
7-11-2023 [\[152\]](#)

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order with the settlement agreement attached as an exhibit and shall separately file and docket it as a stipulation.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the estate and Infinity Insurance Company and Infinity Property and Casualty Corporation (collectively "Infinity") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #152.

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 on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Rule 2002(a)(3) 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.

Background

Prior to filing bankruptcy, Daniel M. Canchola ("Canchola") rear-ended a vehicle carrying Marsha LeDuc, Tori Abby, and Miley Abby in June 2013 while driving a vehicle owned by Mario Alberto Guerra ("Debtor") that was insured by Infinity. Docs. #154, #157. As a result of the accident, Marsha LeDuc was fatally injured. Tori and Miley Abby sustained non-fatal injuries. Infinity opened a claim for the accident.

In December 2013, Cal LeDuc, Tori Abby, Miley Abby, Mandy Jobe, Lukas LeDuc, and Jay LeDuc and Cal LeDuc as successor in interest to the estate of Marsha Kay LeDuc (collectively "LeDuc Plaintiffs") filed a

lawsuit against Debtor, Canchola, and several other defendants in Fresno County Superior Court. *Id.* The LeDuc Plaintiffs served a Cal. Code Civ. Proc. ("CCP") § 998 demand to settle their claims against Debtor and Canchola for \$750,000. Infinity did not accept the demand and litigation continued.

Canchola filed chapter 7 bankruptcy on April 11, 2017. Case No. 17-11346 (Bankr. E.D. Cal.). Doc. #1. Debtor filed a chapter 7 bankruptcy case on April 12, 2017. Doc. #1. Trudi Manfredo was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting of creditors on May 22, 2017. Doc. #2; see docket generally. Doc. #33. Debtor received an order of discharge on September 5, 2017. Doc. #37. Trustee Manfredo resigned from appointment of trustee on December 21, 2018. Doc. #43. Trustee Fear was appointed as successor trustee on December 26, 2018. Doc. #44

Meanwhile, in October 2017, Infinity entered into a settlement agreement with the LeDuc Plaintiffs requiring them to dismiss with prejudice their original lawsuit prior to entry of judgment and allowing them to pursue direct action against Infinity without obtaining an assignment from Debtor, Canchola, or their respective bankruptcy estates ("Bankruptcy Plaintiffs"). Docs. #154, #157. The underlying lawsuit was dismissed with prejudice in 2018.

Thereafter, Trustee Fear retained general and special counsel to join the LeDuc Plaintiffs and Canchola's chapter 7 bankruptcy estate in an action against Infinity in Fresno County Superior Court entitled *Le Duc et al. v. Infinity et al.*, Case No. 19CECG01278 ("State Court Action"), for claims under the Motor Carrier of Property Permit Act ("MCPPA") of insurance bad faith and other tortious injury claims arising out of the motor vehicle accident and the handling of the claims arising from that accident. *Id.* Infinity provided Commercial Liability Insurance for Debtor, and by reason of additional insured provisions in the policy, Canchola was also covered. *Id.*

Infinity filed a Proof of Claim in both Debtor's and Canchola's bankruptcy cases. *Id.* Infinity also filed a cross-complaint against the LeDuc Plaintiffs in 2022. *Id.*

Settlement Agreement

In an effort to avoid further litigation, Infinity and the Bankruptcy Plaintiffs entered into a settlement agreement for a global resolution in June of 2023.⁹ *Id.* A copy of the settlement agreement has been filed as an exhibit to the motion. *Ex. A*, Doc. #156. Trustee shall separately file the settlement agreement and docket it as a stipulation or a settlement agreement.

Under the terms of the settlement, the following will take place upon court approval:

1. The Bankruptcy Plaintiffs will request dismissal with prejudice of all claims against Infinity in the State Court Action;
2. Infinity will waive costs against the Bankruptcy Plaintiffs in the State Court Action;
3. Infinity will withdraw with prejudice the proofs of claim filed in Debtor's and Canchola's bankruptcy cases;
4. The Bankruptcy Plaintiffs will waive costs against Infinity in Debtor's and Canchola's bankruptcy cases; and
5. Infinity will release the Bankruptcy Plaintiffs, and the Bankruptcy Plaintiffs will release Infinity, from any present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expert fees, attorney's fees and expenses and compensation related to or arising out of the policy, accident, claim, underlying lawsuit, CCP § 988 demand, the respective bankruptcy cases, the underlying lawsuit, the State Court Action, and the proofs of claim filed in Debtor's and Canchola's bankruptcy cases.

Id. Trustee now seeks approval of the settlement agreement pursuant to Rule 9019(a). Doc. #152.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Here, probability of success in litigation is uncertain. The litigation is complex and a writ taken by Infinity has been set for hearing with the appellate court. Infinity believes that certain trial court rulings may be at material risk of reversal or modification, which creates risk for all plaintiffs. The events leading to the State Court Action date back 10 years, which creates risk for all parties and supports approval of the settlement.
2. Difficulties in collection: Trustee does not believe there would be any difficulty collecting from Infinity if the Bankruptcy Plaintiffs were to prevail at trial.

3. Complexity of litigation: The State Court Action has been pending since 2019 and involves complicated issues relating to interpretation of the MCPPA, whether the MCPPA's financial responsibility provisions are read into every insurance policy that is issued to a motor carrier of property or only those policies where an insurance company has certified that the policy complies with MCPPA, and whether Infinity breached the duty to settle. A June 2022 bench trial resolved several issues relating to interpretation of the MCPPA but Infinity filed a petition for writ of mandate to challenge the trial court's interpretation of the MCPPA. As a result, the State Court Action is currently stayed pending the court of appeal's ruling on the writ petition. Depending on the outcome of the writ, the Bankruptcy Plaintiffs could owe costs or have reimbursement obligations that would exceed amounts recovered from other defendants. The complexity, expense, and uncertainty of litigation weigh in favor of settlement.

4. Interests of creditors: If the settlement agreement is approved, all creditors will be paid in full on account of their allowed claims and there will be a surplus of funds available for Debtor and Canchola. If the settlement is not approved, each of the estates could be significantly diminished by litigation costs and expenses. This factor supports approving the settlement.

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

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will conclude the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* The court is inclined to GRANT this motion and approve the settlement agreement.

If granted, Trustee shall separately file a copy of the settlement agreement and docket it as a settlement agreement or stipulation. The proposed order shall attach the settlement agreement as an exhibit.

⁹ The settlement agreement does not resolve claims between the LeDuc Plaintiffs and Infinity. However, Trustee indicates that those claims do not impact Debtor, Canchola, or their respective bankruptcy estates. Doc. #155.

6. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[FW-15](#)

MOTION TO AUTHORIZE DISTRIBUTION OF FUNDS IN BLOCKED ACCOUNT
6-29-2023 [\[247\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order 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. McCormick Barstow represents the City of Visalia. The City of Visalia was not a lienholder in the underlying sale and does not appear to be involved in this matter. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter.

Chapter 7 trustee James E. Salven ("Trustee") requests authorization to distribute funds remaining from the sale of real property located at 15013 Ivanhoe Drive, Visalia, CA ("Property"). Doc. #247.

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.

On March 30, 2022, the court authorized the sale of Property for \$660,000 free and clear of the liens of James Putnam ("Putnam"),

Williams, Brodersen, Pritchett & Burke LLP ("WBPB"), and others. Docs. #128, #131. However, the court ordered the proceeds from the sale, after certain deductions and payments, to be held in an impound account pending a determination of the parties' interests. *Id.*

Thereafter, Trustee negotiated with Putnam and WBPB whereby Trustee would distribute \$259,500 to Putnam and \$81,050 to WBPB. Docs. #177, #237. Trustee made those distributions. The balances on their liens were avoided and the remaining proceeds were deposited into a blocked impound account. *Id.*

Trustee subsequently discovered that the bank had made erroneous monthly service fee charges to the impound account in the total amount of \$8,220.89. Doc. #249. After discovering the erroneous charges, the bank reversed those charges. As a result, \$7,666.62 remains in the blocked account. Had these charges not been made, WBPB's original claim would have attached to the funds erroneously taken out by the bank but for the avoidance.

Trustee now requests authority to transfer the remaining proceeds from the estate's blocked account to an unblocked account in the name of the bankruptcy estate pursuant to this court's order approving the sale and the settlement agreement between the estate and WBPB. Doc. #247.

Neither WBPB nor any other party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be authorized to transfer \$7,666.62 of the proceeds from the sale of Property from the estate's blocked account to an unblocked account in the name of the bankruptcy estate.

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

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

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

NO RULING.

8. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

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

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

NO RULING.

9. [23-11192](#)-B-7 **IN RE: RICHARD/HORTENCIA KLINE**
[LEH-1](#)

MOTION TO DISMISS CASE
6-20-2023 [\[11\]](#)

HORTENCIA KLINE/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Richard Kline and Hortencia Kline (collectively "Debtors"), by and through their attorney Layne Hayden, move to voluntarily dismiss this case under 11 U.S.C. § 707(b). Doc. #11.

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

First, Debtors were not served and there is no indication that they have consented to dismissal. Rule 2002(a)(4) requires 21 days' notice by mail to the debtors, trustee, and all creditors of a hearing on the dismissal of a chapter 7 case. Additionally, Rule 7004(b)(9), *incorporated by* Rule 9014(b), requires the debtors to be served at the address shown in the petition or to such other address as the debtors may designate in a filed writing.

Second, Movant failed to use the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").¹⁰ LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form.

Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Third, the motion, notice, and proof of service were all combined into one document. Doc. #11. LBR 9004-2(c)(1) requires motions, notices, and other specified pleadings to be filed as separate documents. LBR 9004-2(e)(1) and (e)(2) require proofs of service to be filed as a separate document and copies of the pleadings served "SHALL NOT be attached to the proof of service filed with the court."

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

¹⁰ The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited July 27, 2023).