

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 19, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

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 POSSIBLE UPDATES.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-43](#)

MOTION FOR COMPENSATION FOR LEONARD K WELSH, DEBTORS ATTORNEY(S)
9-21-2022 [[1178](#)]

LEONARD WELSH/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.

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

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$7,525.00 and reimbursement for expenses in the amount of \$269.40 for services rendered from August 1, 2022 through August 31, 2022. Doc. #1178. This is Movant's seventeenth fee application in this case. The court has previously approved a total of \$200,467.89 in interim fees and expenses, of which \$167,402.20 have been paid to Movant. Doc. #1178.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing various documents for chapter 11 status conference; (3) preparing and prosecuting motion for order reducing price for purchase of real property and adjusting distribution of proceeds received from sale; (4) preparing and prosecuting second motion for order authorizing debtor to borrow money secured by deed of trust against real property; (5) preparing for court appearances; (6) communicating with lender about payments needed to

fund a plan of reorganization; (7) conducting various conferences between parties; and (8) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #1181; Ex. B, Doc. #1180. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$7,525.00 and reimbursement of expenses in the amount of \$269.40. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[LKW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR
LEONARD K. WELSH, DEBTORS ATTORNEY(S)
9-21-2022 [\[484\]](#)

LEONARD WELSH/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.

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

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Bhajan Singh and Balvinder Kaur ("Debtors"), requests allowance of interim compensation and reimbursement for expenses for services rendered from July 1, 2022 through August 31, 2022. Doc. #484. Movant provided legal services valued at \$2,007.50, and requests compensation for that amount. Doc. #484. Movant incurred expenses in the amount of \$98.08 and requests reimbursement for that amount. Doc. #484. Debtor reviewed the application and has no objection. Decl. of Bhajan Singh, Doc. #486. This is Movant's second fee application in this case. The court has previously approved a total of

\$5,590.88 in interim fees and expenses, of which \$5,590.88 have been paid to Movant. Doc. #484. Movant requests fees and expenses be paid by Debtors from income generated from the operation of their business. Doc. #484; Decl. of Leonard K. Welsh, Doc. #487; Decl. of Bhajan Singh, Doc. #486.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #449. 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) communicating with the chapter 12 trustee and creditors; (2) preparing an agriculture lease between debtors and Harpreet Kloy; (3) advising Debtors regarding an adversary proceeding; (4) reviewing and approving a joint status statement in an adversary proceeding; (5) preparing and filing fee application; and (6) general case administration. Ex. B, Doc. #488. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$2,007.50 and reimbursement for expenses in the amount of \$98.80, for a total combined payment of \$2,106.30 to be paid in a manner consistent with the terms of the confirmed plan. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held.

3. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

4. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[FW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR
ADEQUATE PROTECTION
7-13-2022 [[58](#)]

DAKOTA NOTE, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[NCK-8](#)

CONTINUED AMENDED MOTION TO INCUR DEBT
8-3-2022 [[115](#)]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The court will call this matter as scheduled to address a few issues the court has with the proposed form of order (Doc. #239), including the following:

- (1) The phrase “, each as may be amended hereafter from time to time without further order of this court” in paragraph 4 (page 6, lines 8-9) appears to permit the Final DIP Order to be amended without further order of the court.
- (2) The court knows of no legal basis for authorizing the waiver of recordation fees as requested in renumbered paragraph 11 (page 9, lines 23-25) and renumbered paragraph 27 (page 16, line 23). The only statutory basis that permits this court to waive such fees is 11 U.S.C. § 1146(a), and that section only applies to transfers made pursuant to a confirmed chapter 11 plan, which is not the case here. See Fla. Dept. of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 52-53 (2008).

11:00 AM

1. [22-11302](#)-A-7 **IN RE: FELIX RAMIREZ**

PRO SE REAFFIRMATION AGREEMENT WITH PACIFIC SERVICE CREDIT UNION
9-22-2022 [[17](#)]

NO RULING.

2. [22-11302](#)-A-7 **IN RE: FELIX RAMIREZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
9-29-2022 [[20](#)]

NO RULING.

1. [21-12014](#)-A-7 **IN RE: YADWINDER SINGH**
[ADJ-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO JOHNSTON, INC.
FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)
9-16-2022 [\[45\]](#)

JERRY LOWE/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Anthony D. Johnston, ("Movant"), attorney for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation for expenses for services rendered from October 28, 2021 through September 15, 2022. Doc. #45. Movant provided legal services valued at \$1,800.00, and requests compensation for that amount. Doc. #45. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee during adversary action for fraudulent transfers against Debtor's son and Focus Trucking, Inc. by reviewing voluntary petition and statement of financial affairs to prepare complaint to avoid fraudulent transfers; (2) working with defendant's attorney to obtain appraisal for vehicles and records related to vehicles, such as repair receipts; and (3) preparing and filing employment and fee applications. Decl. of Anthony D. Johnston, Doc. #48; Exs. A & B, Doc. #49. The court finds the compensation sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,800.00. Trustee is authorized to make a payment of \$1,800.00, representing compensation, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [22-11019](#)-A-7 **IN RE: CATHRYN SMITH**
[AP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2022 [\[30\]](#)

WILMINGTON TRUST, NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and set for hearing on September 14, 2022. Doc. #31. On September 13, 2022, the debtor filed a request for a 30-day continuance of the motion. Doc. #39. At the hearing held on September 14, 2022, the court continued the hearing to October 19, 2022. Doc. #41. The failure of creditors, the U.S. Trustee, or any other party in interest, other than the debtor, to oppose the motion at the September 14 hearing may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

On October 5, 2022, the debtor filed a statement of non-opposition to the granting of the motion. Doc. #51. Because no party opposes the motion and 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). The matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Wilmington Trust, National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 34201 Natoma Road, Auberry, CA ("Property"). Doc. #30.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor failed to make at least 29 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$52,108.10. Decl. of Roberto Umanzor, Doc. #36. Moreover, the debtor does not oppose granting relief from stay. Doc. #51.

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization. A review of the motion shows that the debtor has equity in the Property, so relief from stay is not granted under 11 U.S.C. § 362(d)(2). Doc. #30.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 29 payments, both pre- and post-petition to Movant.

3. [22-11134](#)-A-7 **IN RE: TERESA CAZARES AND CHALLO MUNOZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2022 [\[25\]](#)

CAB WEST, LLC/MV
MARIO LANGONE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISCHARGED 10/11/22

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.

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on October 11, 2022. Doc. #34. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Cab West, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Ford Ranger ("Vehicle"). Doc. #25.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,020.50 in addition to late fees of \$26.86. Decl. of Pamela Rucker, Doc. #30.

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 the debtors are in chapter 7. The debtors' possession of the Vehicle stems from a lease agreement with Movant that matured on September 28, 2022, according to which the debtors do not own the Vehicle. Ex. A, Doc. #29.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

4. [22-11461](#)-A-7 **IN RE: ROBERT/CORY CROSSLEY**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-2022 [\[15\]](#)

EXETER FINANCE LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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 creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Ford Fusion ("Vehicle"). Doc. #15. The debtors do not oppose the motion. Doc. #23. The court notes that the statement of non-opposition was not served on counsel for Movant. Doc. #24.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,973.80 plus late fees of \$74.01. Decl. of Nancy Wafer, Doc. #18.

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 the debtors are in chapter 7. The Vehicle is valued at \$13,200.00 and the debtors owe \$21,743.69. Wafer Decl., Doc. #18, Ex. D, Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least four pre-petition payments to Movant and the Vehicle is a depreciating asset.

CONTINUED MOTION TO SELL
8-10-2022 [\[422\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Kings County Development Limited ("KCDL") filed an opposition on August 30, 2022, and a supplemental opposition on October 11, 2022. Doc. ##433, 461. Inproinvest, LLC ("Inproinvest") filed a conditional opposition on August 31, 2022. Doc. #438. The failure of other 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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Temblor Petroleum Company LLC ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property commonly known as Debtor's Oil and Gas Working Interest, Witter Field, aka West Five Points ("Working Interest") to Petro Lud ("Buyer") for the purchase price of \$25,000.00, subject to higher and better bids at the hearing. Doc. #422. Based on the supplemental declaration filed by Trustee on September 7, 2022, Trustee received no overbids by the September 4 deadline. Doc. #447. The sale of the Working Interest is "as-is" and subject to any and all liens, encumbrances, charges, taxes, fees, and delinquencies attributed to Debtor's share of joint interest liabilities. Doc. #422. Trustee also seeks authorization to pay a commission for the sale to Energy Advisors Group ("Broker"). Doc. #416.

KCDL opposes the motion on two grounds. First, KCDL asserts that the Working Interest is subject to the Oil, Gas and Mineral Lease between Debtor and KCDL ("KCDL Lease"), Ex. A, Doc. #435, and the KCDL Lease is not an asset of Debtor's bankruptcy estate because the KCDL Lease terminated pre-petition. Doc. #433. Second, KCDL asserts that Trustee cannot comply with 11 U.S.C. § 365. Doc. #461.

Turning first to KCDL's second objection, under Ninth Circuit authority, courts look to state law to determine what is a lease for purposes of 11 U.S.C. § 365. In re Harris Pine Mills, 862 F.2d 217,221 (9th Cir. 1988).

Under settled California case law, an oil and gas lease with undetermined termination dates, such as the lease between Debtor and KCDL, is a freehold or determinable fee interest rather than a leasehold. See Montana-Fresno Oil

Company v. Powell, 219 Cal. App. 2d 653, 662 (1963); Atlantic Oil Co. v. County of Los Angeles, 69 Cal. 2d 585, 593-94 (1968) ("The nature of the rights created by such instruments is settled in California."). As the California Supreme Court stated in Atlantic Oil, "[t]he right [to drill for and produce oil] when granted is a *profit à prendre*, a right to remove a part of the substance of the land. A *profit à prendre* is an interest in real property in the nature of an incorporeal hereditament. . . . the *profit à prendre*, whether it is unlimited as to duration or limited to a term of years, is an estate in real property. . . . Where it is unlimited in duration, it is a freehold interest, an estate in fee, and real property or real estate." Atlantic Oil, 69 Cal. 2d at 594 (citations omitted).

In analyzing whether an oil and gas lease is subject to 11 U.S.C. § 365, the Fifth Circuit has held that oil and gas leases that constitute a determinable fee interest under state law are not subject to 11 U.S.C. § 365. In re Topco, Inc., 894 F.2d 727, 739 n.17 (5th Cir. 1990). As the Fifth Circuit explained:

The term "oil and gas lease" is a misnomer because the interest created by an oil and gas lease is not the same as an interest created by a lease governed by landlord and tenant law. . . . [T]he so-called leaseholds at issue in this case actually constitute determinable fee interests.

Other states also construe oil and gas "leases" this way. In Oklahoma, such leases are base or qualified fees. They constitute present grants of oil and gas to be captured in the lands and resemble a *profit a prendre*. In Louisiana, the mineral lease is a real right, an incorporeal immovable.

. . .

To determine whether Section 365 governs the oil and gas leases in this case we must determine what interest the leases create.

The district court found that the so-called leases in this case actually constitute determinable fee interests under Texas law but did not decide whether the Trustee had to request the court's permission before assuming and assigning the "leases." Such determinable fee interests constitute freehold rather than leasehold estates. Freeholds differ substantively from leaseholds. As a result, we cannot consider these oil and gas "lease" to be leasehold interests just because of the terminology used.

These leases do not grant title to the oil and gas itself but grant the right to enter the land and reduce the oil and gas to the lessee's possession. This grant in effect constitutes a sale of part of the land. Therefore, under Texas law, Section 365 does not govern their disposition. Instead of seeking the court's permission, the Trustee could have assumed the lease so long as he validly exercised his business judgment in the matter.

Most courts considering the issue have adopted this approach. Several have concluded that oil and gas leases considered to be freehold estates by the governing state law do not constitute "unexpired leases" under the Bankruptcy Code and therefore Section 365 does not govern their assumption or rejection. In Oklahoma, oil and gas leases are not unexpired leases of real property subject to assumption or rejection.

However, in states where oil and gas leases constitute leasehold interests rather than freehold interests, Section 365 does govern their disposition.

Id. (citations omitted). California law treats the type of lease between Debtor and KCDL as a freehold or determinable fee interest and, as such, under the analysis of Topco, 11 U.S.C. § 365 does not govern the disposition of the Working Interest that Trustee seeks to sell in this motion. KCDL's opposition on the basis that Trustee must meet the standards of 11 U.S.C. § 365 is overruled.

Turning to KCDL's first objection, at the hearing on September 14, 2022, the court continued the hearing to permit Trustee to supplement the record regarding the extent to which the Working Interest is subject to the KCDL Lease. Doc. #453. On September 30, 2022, Trustee filed a supplemental declaration stating that the KCDL Lease covers a relatively small portion of the leased interests that comprise the Working Interest that is to be sold. Tr.'s Supp Dec., Doc. #456. KCDL continues to assert that Trustee cannot sell any of the Working Interest covered by the KCDL Lease because such interests are not property of Debtor's bankruptcy estate.

Property of the estate includes "all legal or equitable interests of the debtor as of the commencement of the case." 11 U.S.C. § 541(a). Here, KCDL asserts that the KCDL Lease terminated pre-petition. Doc. ##433, 461. However, there has been no adjudication as to the current rights of KCDL and Debtor in the KCDL Lease. Where there is a dispute as to what interests the estate held as of the commencement of the case, such interest can be sold pursuant to 11 U.S.C. § 363 so long as the trustee is only selling whatever interest the estate owns, which is the case here. Kwai v. Wirum (In re Global Reach Inv. Corp.), BAP no. NC-11-1187-SaDH, 2012 Bankr. LEXIS 1205, *10-12 (B.A.P. 9th Cir. Mar. 20, 2012), aff'd, 570 Fed. Appx. 723 (9th Cir. 2014). That is precisely what Trustee is doing here.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Jeffrey M. Vetter, Doc. #424. The sale is "as is" with no warranties or representations of any nature and buyer is subject to any liens, encumbrances, charges, taxes, fees, and delinquencies attributed to Debtor's share of joint interest liabilities. Vetter Decl., Doc. #424. Buyer made an initial deposit of \$2,000. Id. Trustee, over the course of serving as a chapter 7 panel trustee, has developed contacts in the oil and gas industry and circulated the sale opportunity to contacts but did not receive any interest in the Working Interest. Id. If the Working Interest is sold to a higher bidder at the hearing, the higher bidder will take the Working Interest as-is. Id. Trustee

expects to pay a \$5,000 commission to Broker. Id. In the event of an overbid, the commission shall be 25% of any amount exceeding the \$25,000 purchase price. Id.

By its conditional opposition, Inproinvest approves the sale so long as its security interest remains valid and enforceable. Doc. #438. Based on representations made on the record at the September 14 hearing, Trustee does not oppose Inproinvest's conditions, and Trustee will provide for Inproinvest's conditions in the proposed order approving the sale. The court will require counsel for Inproinvest to sign off on the proposed form of order.

For the reasons set forth above, the opposition filed by Kings County Development Limited is overruled. It appears that the conditional opposition filed by Inproinvest will be adequately addressed in the proposed form of order, the sale of the Working Interest to Buyer is in the best interests of the estate, the Working Interest will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, the motion is granted and Trustee is authorized to sell the Working Interest to Buyer pursuant to 11 U.S.C. § 363(b)(1). Trustee also seeks authorization to pay Broker a commission for the sale of the Working Interest. This court authorized the employment of Broker on October 6, 2020. Doc. #175. The court authorized payment to Broker from proceeds received from the sale of the Working Interest, subject to approval under § 330 of the Bankruptcy Code.

Trustee seeks to pay Broker an amount not to exceed \$5,000 from the sale proceeds of the Working Interest for services rendered as the broker for the sale. Vetter Decl., Doc. #424. Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Broker was employed in 2020 and assisted with securing an offer for the sale of the Working Interest. Vetter Decl., Doc. #424. The Order Authorizing Employment stated that compensation to Broker will be paid from sale proceeds in the manner set forth in the Employment Agreement. Order, Doc. #175. The cash price to be paid for the Working Interest is \$25,000, of which \$5,000 will be paid to Broker, so the proposed compensation is 25% of the total value of the transaction to the estate. Vetter Decl., Doc. #424. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Accordingly, Trustee is authorized to pay Broker \$5,000 from the sale of the Working Interests.

6. [20-11367](#)-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[JMV-1](#)

CONTINUED NOTICE OF INTENT TO ABANDON INTEREST IN ESTATE PROPERTY
6-1-2022 [[408](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.