UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 11, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (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 or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at https://www.caeb.uscourts.gov/Calendar/CourtAppearances. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information.

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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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.

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.

9:30 AM

1. 24-12501-A-11 **IN RE: US JET TRANS INC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
8-27-2024 [1]

DAVID JOHNSTON/ATTY. FOR DBT.

NO RULING.

2. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
BRL-2

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR ADEQUATE PROTECTION
11-5-2024 [519]

FORGE TRUST CO. FBO PAUL FRANCIS ACCINELLI IRA451782/MV
D. GARDNER/ATTY. FOR DBT.
BENJAMIN LEVINSON/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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed a declaration in opposition to the motion on November 27, 2024. Doc. #531. 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). Therefore, the defaults of the non-responding parties in interest are entered.

Secured creditor Forge Trust Co. FBO Paul Francis Accinelli IRA 451782 ("Movant") moves for relief from stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) to enforce its lien upon real property commonly known as 12101 Wildhorse Avenue, Bakersfield, California 92590, APN# 386-600-18-00-0 (the "Property"). Doc. #519.

PROCEDURAL MATTERS

Federal Rules of Bankruptcy Procedure ("Rule") 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Service of the motion on Future Value Construction, Inc. ("Debtor") does not satisfy Rule 7004. Rule 7004(b)(3) provides that service upon a domestic unincorporated association be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The

certificate of service filed in connection with this motion does not show that Debtor, which is a corporation, was served to the attention of anyone. Doc. #525. However, Debtor filed a timely declaration in response to the motion and has not objected to improper service. Because Debtor received notice of the motion and timely filed a declaration in opposition to the motion, the court waives improper service of the motion.

As an informative matter, Movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #525. However, as noted above, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay be made pursuant to Rule 7004. In Section 6, the declarant should have checked the appropriate box under Section 6A for Rule 7004 Service in addition to Section 6B for Rule 5 Service.

EVIDENTIARY OBJECTIONS

Movant filed several evidentiary objections to the Declaration of Chuck R. Thomason (Doc. #531) filed in opposition to the motion and supporting exhibit (Doc. #532). Doc. #535. The court is inclined to make the following rulings on Movant's evidentiary objections:

Declaration of Chuck R. Thomason, Doc. #531

Statement Location	Basis for Objection	Ruling
2:2-10 (Paragraph 2)	Improper hearsay (FRE 801, 802); speculation, lack of foundation, legal conclusion, and impermissible expert testimony (FRE 701, 702)	**Sustained in part and overruled in part.** The first and third sentences of this paragraph are not hearsay, and the objection to these sentences is overruled. The second sentence is hearsay, and the objection to that sentence is sustained. The objection to the last sentence is sustained because the testimony lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor or his knowledge of Debtor's assets.
2:11-22 (Paragraph 3)	Improper hearsay (FRE 801, 802); speculation, lack of foundation, legal conclusion, and impermissible expert testimony (FRE 701, 702); refers to a non-existent exhibit	**Sustained.** The appraisal attached as Exhibit 1 needs to be supported by a declaration of the appraiser, which is not done, so the objection to admission of the appraisal is sustained. The objection to Mr. Thomason's remaining testimony is sustained because the testimony is speculative and lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor or his knowledge regarding the National Association of Home Builders.

Statement Location	Basis for Objection	Ruling
2:23 – 3:8 (Paragraph 4)	Lack of foundation, legal conclusion, and impermissible expert testimony (FRE 702)	**Sustained.** The objection to Mr. Thomason's testimony is sustained because the testimony lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor, his knowledge of Debtor's assets or his knowledge of real estate development.
3:9 – 4:2 (Paragraph 5)	Improper testimony and impermissible expert testimony (FRE 701, 702)	**Sustained in part and overruled in part.** The objection to the first seven sentences of Mr. Thomason's testimony analyzing the comparable sale at 12601 Cattle Kings Drive is overruled. The testimony is not expert testimony and is admissible lay testimony. The objection to the last three sentences of Mr. Thomason's testimony is sustained because the testimony is impermissible expert testimony. There is nothing in Mr. Thomason's declaration establishing him as an expert, and reliance on information from Zillow is not appropriate for lay testimony.
4:3-8 (Paragraph 6)	Improper testimony and impermissible expert testimony (FRE 701, 702)	**Sustained.** The objection to Mr. Thomason's testimony is sustained because the testimony is impermissible expert testimony. There is nothing in Mr. Thomason's declaration establishing him as an expert.
4:9-16 (Paragraph 7)	Speculation, lack of foundation, legal conclusion, and impermissible expert testimony (FRE 701, 702)	**Sustained.** The NAHB study referred to in the testimony but not included as an exhibit needs to be supported by a declaration of someone other than Mr. Thomason, which is not done, so the objection to NAHB study is sustained. The objection to Mr. Thomason's remaining testimony is sustained because the testimony lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor, his knowledge of Debtor's assets or his knowledge of real estate development.
4:17-19 (Paragraph 8)	Speculation, lack of foundation, legal conclusion, and impermissible expert testimony (FRE 701, 702)	**Sustained.** The objection to Mr. Thomason's testimony is sustained because the testimony lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor, his knowledge of Debtor's assets or his knowledge of real estate development.

Statement Location	Basis for Objection	Ruling
4:20-21 (Paragraph 9)	Speculation, lack of foundation, legal conclusion, and impermissible expert testimony (FRE 701, 702)	**Sustained.** The objection to Mr. Thomason's testimony is sustained because the testimony lacks foundation. There is nothing in Mr. Thomason's declaration establishing his relationship to Debtor or his knowledge of Debtor's assets.

Exhibits in support of Declaration of Chuck R. Thomason, Doc. #532

Exhibit	Basis for Objection	Ruling
Exhibit 1 (Appraisal)	Improper hearsay (FRE 802)	**Sustained.** The appraisal attached as Exhibit 1 needs to be supported by a declaration of the appraiser, which was not done.

RELEVANT FACTUAL BACKGROUND

The Property is a vacant lot in the tract called Lakeview at Rio Bravo. Decl. of Paul Accinelli, Doc. #521. On or about September 21, 2021, Debtor obtained a loan from the Paul Francis Accinelli IRA 451782 in the original amount of $70,000.00 that was secured by a first deed of trust on the Property (the "Loan"). Id. The Loan provides for interest at the annual rate of 12.0% from the date of funding, payable in monthly interest-only installments of $700.00 beginning on November 1, 2021. Accinelli Decl., Doc. #521; Ex. D, Doc. #523. The Loan matured on October 1, 2024. Id.

Debtor defaulted on the Loan by failing to make the monthly payment due on November 1, 2022. Accinelli Decl., Doc. #521. As of November 1, 2024, Movant asserts it was owed at least $95,109.89. Id. Debtor filed its chapter 11 bankruptcy petition on November 28, 2022, and no post-petition payments have been made on the Loan. Doc. #1; Accinelli Decl., Doc. #521. No foreclosure proceedings were started prior to Debtor filing this bankruptcy case. Accinelli Decl., Doc. #521.

According to an appraisal submitted by Movant, the Property was worth $95,000.00 as of October 17, 2024. Decl. of Michael C. Burger, Doc. #522; Ex. C, Doc. #523. According to Movant, the Property is encumbered by unpaid real property taxes in excess of $1,589.00, exclusive of the upcoming installments due in December 2024 and April 2025. Accinelli Decl., Doc. #521.

During the bankruptcy case, Debtor twice sought to enter into construction loans for the purpose of constructing a house on the Property so that the Property could be sold. Doc. ##351, 435. In each instance, Debtor sought to permit the new lender to have a deed of trust that was senior to Movant's deed of trust on the Property. Id. Debtor withdrew the first motion based on the receipt of a different post-petition loan proposal. Doc. #376. Movant objected to the second motion, and the court denied the motion on the merits. Doc. ##445, 474, 479, 481.

On March 27, 2023, Debtor filed a plan of reorganization and supporting disclosure statement. Doc. ##136, 137. On May 26, 2023, Debtor filed a first amended plan of reorganization and supporting disclosure statement. Doc. ##239, 240. On September 29, 2023, Debtor filed a second amended plan of reorganization and supporting disclosure statement. Doc. ##378, 379. On November 29, 2023, Debtor withdrew its second amended plan of reorganization.

Doc. #402. A review of the court's docket shows that Debtor has not filed another plan of reorganization.

Analysis under section 11 U.S.C. § 362(d)(1)

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).

As an initial matter, the court has sustained Movant's evidentiary objection to Debtor's appraisal dated December 5, 2023, which is not the appropriate date for valuing the Property for purposes of this motion. Pursuant to Paccom Leasing Corp. v. Dieco Elecs., Inc. (In re Dieco Elecs., Inc.), 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992), the valuation of the Property for adequate protection purposes is around the date on which Movant filed its motion for relief from stay, not nearly one year earlier.

The only admissible evidence with respect to the current value of the Property is the appraisal submitted by Movant with the motion valuing the Property at $95,000.00 as of October 17, 2024. Moreover, Debtor does not dispute that: (a) the Property is encumbered by unpaid real property taxes in excess of $1,589.00, exclusive of the upcoming installments due in December 2024 and April 2025; (b) Debtor defaulted on the Loan by failing to make the monthly payment due on November 1, 2022; (c) no post-petition payments have been made on the Loan since Debtor filed its chapter 11 bankruptcy petition on November 28, 2022; (d) the Loan matured on October 1, 2024; (e) Movant is owed at least $95,109.89 as of November 1, 2024; and (f) no foreclosure proceedings have commenced as to the Property.

After review of the admissible evidence, the court finds that "cause" exists to lift the stay under 11 U.S.C. § 362(d)(1) because there is insufficient equity in the Property to support Movant's lien, and Movant's position in the Property will decrease further when the real property taxes due on the Property in December 2024 are not paid.

Analysis under section 11 U.S.C. § 362(d)(2)

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.

With respect to relief from stay under 11 U.S.C. § 362(d)(2), relief from stay is granted only if both: Debtor has no equity in the real property and the real property is not necessary for a reorganization. Based on Movant's admissible evidence, there is insufficient equity in the Property to support Movant's lien and, therefore, Debtor has no equity in the Property. There is no proposed plan of reorganization currently on file, and Debtor does not dispute Movant's contention that the Property is not necessary for Debtor's reorganization. Accordingly, relief from stay under 11 U.S.C. § 362(d)(2) is appropriate.

CONCLUSION

For the reasons set forth above, 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, including taking all steps to evict Debtor as permitted under applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because there is insufficient equity in the Property to support Movant's lien, Movant's position in the Property will decrease further when the real property taxes due on the Property in December 2024 are not paid, and Movant has not yet started foreclosure proceedings under state law.

3. 24-11545-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
6-4-2024 [1]

NO RULING.

4. 24-11545-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**
MRT-1

MOTION TO DISMISS CASE
11-27-2024 [184]

RIDGELINE CAPITAL INVESTMENTS, LLC/MV
RIDGELINE CAPITAL INVESTMENTS, LLC/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Local Rule of Practice ("LBR") 9014-1(f)(2) allows a moving party to file and serve a motion on at least 14 days' notice "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

For a motion to dismiss a chapter 11 case under 11 U.S.C. § 1112(b), Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail to all creditors of the hearing on a motion to dismiss a chapter 11 case "unless the hearing is under § 707(a)(3) or § 707(b) or is on a motion to dismiss the case for failure to pay the filing fee." Rule 2002(a)(4).

Notice by mail of this motion was sent to all creditors on November 27, 2024, with a hearing date set for December 11, 2024. Because this motion to dismiss a chapter 11 case under 11 U.S.C. § 1112(b) was set for hearing on less than 21 days' notice, this motion is DENIED WITHOUT PREJUDICE for improper notice under Rule 2002(a)(4).

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRulesAndGeneralOrders.

5. 24-11967-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
FW-7

MOTION TO SELL
11-18-2024 [375]

LA HACIENDA MOBILE ESTATES, LLC/MV
GREGORY TAYLOR/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to sell on December 3, 2024. Doc. #400.

6. 24-12873-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
WJH-5

MOTION TO BORROW
12-2-2024 [75]

GRIFFIN RESOURCES, LLC/MV
RILEY WALTER/ATTY. FOR DBT.
OST 12/2/24

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis if record adequately supplemented.

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.

Griffin Resources, LLC ("DIP" or "Debtor"), debtor and debtor-in-possession herein, filed this Subchapter V Chapter 11 bankruptcy case on October 2, 2024. Doc. #1. On December 2, 2024, the court granted Debtor's ex parte application for an order shortening time for service of the notice of hearing on Debtor's motion for authority to enter into an insurance premium finance agreement. Doc. #74. Notice is proper pursuant to the Order Shortening Time. Doc. #79.

Due to the short notice period, opposition to DIP's motion for authority to enter into an insurance premium finance agreement ("Motion") may be presented at the hearing on the Motion. Because the Motion was set for hearing on less than 14-days' notice, this is a preliminary hearing pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 4001(c)(2)(A). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on an interim basis. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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RELEVANT BACKGROUND

Debtor owns and operates numerous stripper oil wells in Kern and Kings Counties, California. Decl. of Stephen Griffin, Doc. #77. As part of its operations, Debtor is required to maintain adequate insurance coverage. Id. Without such coverage, Debtor would be forced to cease its operations. Id.

Post-petition, DIP has obtained insurance coverage that will require DIP to finance part of the insurance premium. Griffin Decl., Doc. #77. The total premium for the one-year period starting December 1, 2024 is $21,275.75 plus a finance charge of $812.99. Ex. A, Doc. #78. DIP moves the court for an order authorizing DIP to enter into an insurance premium finance agreement ("Agreement") with Ameris Bank ("Lender") similar to the agreement filed as Ex. A, Doc. #78. Id.; Doc. #75. Under the Agreement, DIP will pay a down payment of $7,268.94, with ten monthly payments of $1,481.98 each beginning January 1, 2025. Id. The annual percentage rate for the financing is 12.47%. Id.

In order for Lender to provide the proposed financing, Lender requires that DIP assign to Lender all of DIP's "right, title and interest in the insurance policies listed in the Agreement, and all rights therein including all dividends, payments on claims, unearned premiums and unearned commissions." Agreement, ¶1, Ex. A, Doc. #78. The property to be secured is hereafter referred to as the "Insurance-Related Future Assets." DIP further "authorizes Lender to file a UCC financing statement to perfect Lender's security interest." Agreement, ¶2, Ex. A, Doc. #78.

APPLICABLE LAW

In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a).

With respect to obtaining credit on a secured basis, 11 U.S.C. § 364(c) provides:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
>
> . . .
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien[.]; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Section 364(d) of the Bankruptcy Code permits the court to authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

> (A) the chapter 11 debtor in possession is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior lien is proposed to be granted.

11 U.S.C. § 364(d)(1). The debtor bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2). "The determination of adequate protection is a fact-specific inquiry." In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). The purpose of § 364(d) is to "facilitate a plan that will inure to the benefit of all creditors and the estate." In re Stoney Creek Techs., LLC, 364 B.R. 882, 895 (Bankr. E.D. Pa. 2007).

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

When, as here, the motion requests a hearing before 14 days after service of the motion, Rule 4001(c)(2)(A) permits the court to "authorize obtaining credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing."

LEGAL ANALYSIS

Based on the evidence before this court, DIP requires insurance to operate its business. Because DIP needs insurance coverage to maintain its operations, immediate approval of the Agreement is necessary to prevent immediate and irreparable harm to Debtor pending a final hearing for approval of the Agreement.

However, neither the Motion nor the supporting declaration address whether DIP is unable to obtain the necessary credit to obtain insurance coverage without granting Lender a first-priority security interest in the Insurance-Related Future Assets. The Motion and the supporting declaration also do not address whether the security interest to be granted to Lender in the Insurance-Related Future Assets is (i) a lien on property of the estate that is not otherwise subject to a lien or is a junior lien on property of the estate that is subject to a lien and thus subject to analysis under 11 U.S.C. §364(c), or (ii) a senior or equal lien on property of the estate that is subject to a lien and thus subject to analysis under 11 U.S.C. §364(d). If there is a senior or equal lien on the Insurance-Related Future Assets, the Motion and the supporting declaration also do not address whether such creditors are adequately protected for the placement of a priority lien by the purchase of insurance for Debtor's operations as required by 11 U.S.C. §364(d).

CONCLUSION

Accordingly, pending opposition being raised at the hearing, DIP's request for authority to enter into a commercial insurance premium finance and security agreement with Lender consistent with Ex. A, Doc. #78 will be GRANTED on an interim basis only if DIP supplements the record and makes the appropriate showing under either 11 U.S.C. §364(c) or 11 U.S.C. §364(d) for the granting of a post-petition security interest. If the court grants the Motion on an interim basis, the court will set a final hearing to approve the Agreement on January 9, 2025 at 10:30 a.m. with notice to be filed and served no later than December 26, 2024.

11:00 AM

1. 24-13076-A-7 **IN RE: VIRGIL BROCCHINI**

PRO SE REAFFIRMATION AGREEMENT WITH ELEMENTS FINANCIAL FEDERAL CREDIT UNION
11-21-2024 [14]

NO RULING.

2. 24-12985-A-7 **IN RE: TAYLOR WOODS**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA, INC.
11-22-2024 [20]

NO RULING.

1:30 PM

1. 24-12400-A-7 **IN RE: WILLIAM SETTY**
JWC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-14-2024 [19]

VOLVO FINANCIAL SERVICES/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JENNIFER CRASTZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 14 days' notice prior to the hearing date 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.

The movant, Volvo Financial Services, a division of VFS US LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Volvo VNL64T860, VIN: 4V4NC9EJ6KN201964 ("Vehicle 1") and 2020 Great Dane Trailer Composite Van, VIN: 1GR1P0624LT154549 ("Vehicle 2" and, together with Vehicle 1, the "Vehicles"). Doc. #19.

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 defaulted under the terms of the agreements by failing to make the monthly payments before the bankruptcy case was filed. Decl. of Bettye Carr, Doc. #21. Movant repossessed the Vehicles pre-petition. Id.

Accordingly, pending opposition being raised at the hearing 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 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make monthly installments pre-petition, Movant repossessed the Vehicles pre-petition, and the Vehicles are depreciating assets.

2. 24-12400-A-7 **IN RE: WILLIAM SETTY**
UST-1

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B) AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
11-22-2024 [25]

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
MICHAEL FLETCHER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 14 days' notice prior to the hearing date 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.

Tracy Hope Davis ("UST"), the United States Trustee in the chapter 7 bankruptcy case of William Setty ("Debtor"), moves the court for an order extending to January 31, 2025 the time for filing a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 and/or a motion to dismiss under § 707(b). Doc. ##25, 29.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(b)(1) provides that, "[o]n a party in interest's motion and after notice and a hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired." The last day to oppose Debtor's discharge was November 22, 2024. Doc. #2. This motion was filed on November 22, 2024. Doc. #25.

Similarly, Rule 1017(e)(2) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b) if the motion is filed within sixty days after the first date set for the meeting of creditors. UST's motion was filed within sixty days of the first date set for the meeting of creditors and is timely.

After review of the included evidence, the court finds that "cause" exists to extend the filing deadlines because Debtor's 341 meeting of creditors has been continued to December 12, 2024, UST has attempted, unsuccessfully, to contact Debtor's attorney to obtain additional information and to stipulate to an extension of deadlines. Decl. of Cecilia Jimenez, Doc. #27. UST needs additional time to conduct a 2004 examination. Jimenez Decl., Doc. #27.

Accordingly, pending opposition being raised at the hearing this motion will be GRANTED. The time for UST to file a complaint objecting to Debtor's discharge is extended to January 31, 2025, and the time for UST to file a motion to dismiss Debtor's case for abuse under § 707(b) is extended to January 31, 2025.

3. 24-12913-A-7 **IN RE: RAUL DIAZ SALDANA**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-23-2024 [12]

KINECTA FEDERAL CREDIT UNION/MV
SCOTT LYONS/ATTY. FOR DBT.
SHERYL ITH/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Kinecta Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Kia K5, VIN: 5XXG64J21PG202293 ("Vehicle"). Doc. #12.

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 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 debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,257.66, including late fees of $72.82. Decl. of Silvia Mendez, Doc. #18. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at $28,125.00 and the debtor owes $36,785.65. Decl. of John Eng, Doc. #16; Mendez Decl., Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant 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 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least three pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

4. 13-14214-A-7 **IN RE: MARTIN/SANDRA MANNING**
FW-2

MOTION TO EMPLOY SETH S. WEBB AS SPECIAL COUNSEL
11-5-2024 [46]

PETER FEAR/MV
BENNY BARCO/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Martin A. Manning and Sandra R. Manning (together, "Debtors"), moves the court for an order authorizing the employment of Brown & Crouppen ("Special Purpose Counsel") to serve as special purpose counsel in this chapter 7 case pursuant to 11 U.S.C. §§ 327 and 328. Tr.'s Mot., Doc. #46. Special Purpose Counsel was retained by Debtors regarding a prepetition claim against manufacturer of Roundup alleging harm caused by the use of Roundup staring in 2001 ("Claim"). Decl. of Seth S. Webb, Doc. #49. Under the proposed terms of employment, proposed Special Purpose Counsel will pursue the Claim against defendants and, if successful (whether by settlement, verdict, or other judgment), seek its fees and costs from Roundup as provided by California law. Accordingly, Trustee seeks authority to employ Special Purpose Counsel pursuant to 11 U.S.C. § 328(a) with compensation to be paid pursuant to the legal services agreement, i.e., that Special Purpose Counsel attorneys' fees and costs incurred in pursuing the Claim will be sought from Roundup as provided for by statute. Tr.'s Mot., Doc. #46.

Section 327(a) of the Bankruptcy Code permits Trustee to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 327(e) of the Bankruptcy Code permits Trustee to employ, with court approval, for a specified special purpose, other than to represent Trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney "does not represent or hold any interest adverse to the debtor or to the estate with respect to matter on which such attorney is to be employed." 11 U.S.C. § 327(e). The trustee may, with the court's approval, employ a professional on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Trustee contends the Claim arose pre-petition, is a pre-petition asset of the estate, and seeks to bring into the estate any proceeds related to the Claim for administration. Decl. of Peter L. Fear, Doc. #48. Trustee requires Special Purpose Counsel's services to assist with: (1) pursuing the Claim on behalf of the bankruptcy estate; (2) performing the necessary terms to complete the settlement; and (3) obtaining bankruptcy court approval of any settlement offered or continuing litigation. Tr.'s Mot., Doc. #46. Trustee proposes to employ Special Purpose Counsel pursuant to 11 U.S.C. § 328(a), with Special Purpose Counsel attorneys' fees and costs incurred in pursuing the Claim to be sought from Roundup as provided for by statute. Id.

Except for the retention by Debtors as set forth above, Special Purpose Counsel has verified that it has no connection with the creditors, professionals, or any other party in interest. Webb Decl., Doc. #49. The court finds that Special Purpose Counsel is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate.

Accordingly, this motion is GRANTED. The arrangement between Trustee and Special Purpose Counsel is reasonable in this instance. Trustee shall submit a form of order specifically stating that employment of Special Purpose Counsel has been approved pursuant to 11 U.S.C. § 328.

5. 22-12133-A-7 **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**
FW-3

MOTION TO PAY
11-4-2024 [60]

IRMA EDMONDS/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.

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.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Community Regional Anesthesia Medical Group, Inc. ("Debtor"), moves the court for an order authorizing the payment of $800.00 for state income tax due for the 2024 tax year plus up to $2,000.00 for income taxes for future years as well as up to an additional $500.00 for fees or penalties that may be assessed by the taxing authorities based on these taxes. Doc. #60.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that current tax was incurred by the estate, the future tax will be incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8). Decl. of Irma Edmonds, Doc. #62.

Accordingly, this motion is GRANTED. The estate is authorized to pay $800.00 for state income tax due for the 2024 tax year plus up to $2,000.00 for income taxes for future years as well as up to an additional $500.00 for fees or penalties that may be assessed by the taxing authorities based on these taxes.

6. 24-11856-A-7 **IN RE: FRANKIE/ERICA SANDOVAL**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2024 [17]

TOYOTA LEASE TRUST/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 10/21/2024

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 at least 28 days' notice prior to the hearing date 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.

As an informative matter, the certificate of service filed in connection with this motion for relief from stay (Doc. #22) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

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 21, 2024. Doc. #15. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Lease Trust as serviced by Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Mazda CX-50, VIN: 7MMVABCMXPN149770 ("Vehicle"). Doc. #17.

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 five complete pre-and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $3,018.65. Decl. of Debra Knight, Doc. #20. The debtors voluntarily surrendered the Vehicle to Movant post-petition, and Movant is in possession of the Vehicle. Id.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The debtors' possession of the Vehicle stems from a lease agreement with Movant that matures on September 22, 2026, according to which the debtors do not own the Vehicle. Ex. A, 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 the Vehicle pursuant to applicable law

and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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 five pre- and post-petition payments to Movant in accordance with the lease agreement and the debtors have voluntarily surrendered the Vehicle to Movant.

7. 23-12163-A-7 **IN RE: THRIVE SPORTS INC.**
FW-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TULE RIVER TRIBE GAMING AUTHORITY
11-8-2024 [20]

PETER FEAR/MV
IRMA EDMONDS/ATTY. FOR DBT.
GABRIEL WADDELL/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Thrive Sports, Inc. ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019 approving the compromise of all claims and disputes with Tule River Tribe Gaming Authority dba Eagle Mountain Casino ("Eagle Mountain"). Doc. #20.

Among the assets of the estate is a claim against Eagle Mountain for the recovery of a preferential and/or fraudulent transfer of $180,017.44 made by Debtor to Eagle Mountain in the year preceding the bankruptcy filing to fund the gambling activities of Debtor's principal. Decl. of Peter L. Fear at ¶5, Doc. #22. Eagle Mountain and Trustee have agreed to a settlement agreement and release of claims. Fear Decl., Doc. #22; Ex. A, Doc. #23; Doc. #24. Eagle Mountain shall pay the Trustee $60,000.00 within ten days of an order entered by the bankruptcy court approving the settlement. Ex. A, Doc. #23; Doc. #24. Within fourteen days of the receipt of this payment, Trustee shall file a

notice of dismissal of the adversary proceeding with prejudice. Id. The settlement agreement is subject to the bankruptcy court's approval. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #20. Although Trustee believes he will ultimately succeed in litigation, Eagle Mountain has raised a variety of defenses that have yet to be resolved, including a number of factual arguments that would take significant discovery to evaluate. Fear Decl., Doc. #22. In addition, Eagle Mountain has demanded, and Trustee believes is entitled to, a jury trial, which would have to be conducted in district court and would entail significant administrative expenses. Id. Given Eagle Mountain's defenses and right to a jury trial, Trustee believes there is significant risk that fully litigating the adversary proceeding would result in little or no net recovery for the creditors of the estate. Id. While Trustee believes that Eagle Mountain has significant assets, Trustee also believes that collecting any judgment after litigation would require additional expense and delay, and there could be procedural roadblocks and delays in Trustee's collection efforts because Eagle Mountain has claimed tribal sovereign immunity. Id. Further, the adversary proceeding with Eagle Mountain presents a significant level of complexity, both factually and legally, that add risk and delay to the ongoing litigation. Id. Ultimately, the proposed settlement provides the estate with recovery without the expenses of further litigation costs or issues in the matter of collection and is in the best interests of the creditors. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Rule 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Eagle Mountain is approved.

8. 24-10680-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC**
ADJ-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH XTRA LEASE LLC
10-24-2024 [23]

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

As an informative matter, the notice and amended notice state that any opposition papers needed to be served on the Office of the United States Trustee at its Sacramento office address. Doc. ##24, 30. In the future, when the bankruptcy case is pending in the Fresno division, opposition papers served on the Office of the United States Trustee should be served at its Fresno office address.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Central California Cartage Co, Inc. ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019 approving the compromise of all claims and disputes with XTRA Lease, LLC ("XTRA"). Doc. #23.

Among the assets of the estate is a claim against XTRA for the recovery of a preferential and/or fraudulent transfer of $52,695.14 made by Debtor to XTRA within 90 days of the petition date. Decl. of Irma C. Edmonds at ¶ 4, Doc. #25. XTRA and Trustee have agreed to a settlement agreement and release of claims. Edmonds Decl., Doc. #25; Ex. A, Doc. #26. XTRA shall pay the sum of $26,347.57 to Trustee in exchange for Trustee to release all claims against XTRA. Id. Upon the court's approval of this compromise and the clearing of any check or checks for the settlement payment from XTRA, Trustee will dismiss the adversary proceeding. Ex. A, Doc. #26.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v.

Kane (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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #23. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with XTRA obviates the need to further litigate the estate's claims. Id.; Edmonds Decl., Doc. #25. A transfer was made within 90 days of the petition date by Debtor to XTRA, and Trustee filed her complaint to initiate the adversary proceeding requesting the court to set aside the payment and recover transfer for the benefit of the bankruptcy estate. Id. The settlement provides the estate with money in full satisfaction of any claims without additional expenses of litigation or issues in the matter of collection. Id. Trustee believes that the bankruptcy estate likely would incur legal fees and costs equal to about 50% of the settlement amount to litigate this matter. Id. Further, while Trustee assumes that XTRA is solvent and able to pay a judgment, Trustee would have to pursue enforcement of a judgment against a Delaware entity headquartered in Missouri, adding expense in an action that involves a relatively small claim. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Rule 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and XTRA is approved.

9. 19-10496-A-7 **IN RE: FELIPE HERNANDEZ AND MICAELA SOLORIO HERNANDEZ**
SL-2

MOTION TO AVOID LIEN OF CACV OF COLORADO, LLC
11-8-2024 [28]

MICAELA SOLORIO HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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 movants have done here.

Felipe Hernandez and Micaela Solorio Hernandez (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of CACV of Colorado, LLC ("Creditor") on the residential real property commonly referred to as 409 San Benito Street, Avenal, California 93204 (the "Property"). Doc. #28; Schedule C & D, Doc. #1.

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

Debtors filed their bankruptcy petition on February 13, 2019. Doc. #1. A judgment was entered against Felipe Hernandez in the amount of $4,937.75 in favor of Creditor on May 26, 2006, and renewed with interest on May 26, 2016 in the amount of $9,813.51. Ex. D, Doc. #31. The abstract of judgment was recorded pre-petition in Kings County on March 21, 2017, as document number 1704993. Ex. D, Doc. #31. The lien attached to Debtors' interest in the Property located in Kings County. Doc. #28. The Property also is encumbered by a lien in favor of USDA Rural Development in the amount $44,206.96. Schedule D, Doc. #1. Debtors claimed an exemption of $175,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $130,755.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$9,813.51
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$44,206.96
Amount of Debtors' claim of exemption in the Property	+	$175,000.00
		$229,020.47
Value of Debtors' interest in the Property absent liens	-	$130,755.00
Amount Creditor's lien impairs Debtor's exemption		$98,265.47

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order

shall state that Creditor’s judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.