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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SANTA ANA DIVISION**

11  
12 In re  
13 FREMONT GENERAL CORPORATION, a  
Nevada Corporation  
14 Debtor.  
15  
16 Tax I.D. 95-2815260

Case No. 8:08-13421-ES

Chapter 11

**MOTION FOR ORDER PURSUANT TO  
LOCAL BANKRUPTCY RULE 9075-1  
SHORTENING TIME ON MOTION OF  
OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR  
ORDER TERMINATING THE  
EXCLUSIVE PERIODS IN WHICH  
ONLY THE DEBTOR MAY FILE A  
PLAN AND SOLICIT ACCEPTANCES  
THERE TO; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[Declaration of Hugh Steven Wilson in  
support thereof filed concurrently herewith  
under separate cover]

**No Hearing Required**



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1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY**  
2 **JUDGE:**

3 The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) appointed  
4 in the chapter 11 case Fremont General Corporation, debtor and debtor-in-possession in the  
5 above captioned case (the “Debtor”), respectfully submits this motion (the “OST Motion”)  
6 requesting that the Court: (i) schedule a hearing on its *Motion for Order Terminating the*  
7 *Exclusive Periods in Which Only the Debtor May File a Plan and Solicit Acceptances Thereto*  
8 (the “Motion”) on shortened notice for June 18, 2009 at 10:30 a.m. or such other time as is  
9 convenient for the Court, and fix deadlines for the filing and service of papers related thereto, (ii)  
10 fix June 15, 2009 at 4:00 p.m., or such earlier date and time as the Court deems appropriate, as  
11 the deadline for filing and serving any objection or opposition to the Motion, so that it is actually  
12 received by counsel for the Creditors’ Committee and chambers at such date and time; and (iii)  
13 permit the Creditors’ Committee to submit its reply to any such objection or opposition at any  
14 time prior to the hearing on the Motion, or such earlier time as the Court deems appropriate.

15 This OST Motion is supported by the Declaration of Hugh Steven Wilson submitted  
16 concurrently herewith under separate cover (the “Wilson Declaration,” and together with the  
17 OST Motion, “OST Moving Papers”) and the Motion (including the Memorandum of Points and  
18 Authorities in Support Thereof and the Declarations of Hugh Steven Wilson, Deborah Hicks  
19 Midanek and Jonathan Shenson (the “Shenson Declaration”) in Support Thereof, in each case,  
20 collectively, the “Motion Moving Papers”), filed concurrently herewith and incorporated herein  
21 by reference.

22 **I.**

23 **THE NEED FOR AN EXPEDITED HEARING**

24 When it last requested an extension of exclusivity, the Debtor represented that it would  
25 take certain steps during “the next 45 days to change the plan process such that an exclusivity  
26 extension [was] appropriate.”<sup>1</sup> Among other things, the Debtor represented that it would “timely  
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28 <sup>1</sup> *Fremont General Corporation’s Reply Brief In Further Support Of Its Third Motion For Order Extending  
The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto*  
[Docket No. 620], pp. 14-15.

1 circulate a draft ‘standalone’ plan to both committees, and would work to make that plan strong  
2 – and, we hope, consensual – based upon committee input.”<sup>2</sup> The Debtor also assured that it  
3 would “file a plan and disclosure statement setting forth a proposal which complies with all  
4 aspects of the Bankruptcy Code and [would] pursue confirmation of that plan.”<sup>3</sup>

5 As set forth in the Wilson Declaration and Motion (and as further documented in the  
6 Shenson Declaration), none of this has occurred. Rather than working with the Creditors’  
7 Committee to develop a standalone plan, the Debtor spent the last seven months and millions of  
8 dollars in an unsuccessful search for a plan proponent to the exclusion of any alternative.  
9 During this period of time, the Debtor made no good faith effort to discuss the terms of a  
10 standalone plan with the Creditors’ Committee, let alone extend any real effort to solicit creditor  
11 input regarding such a plan.<sup>4</sup> Instead, the Debtor waited until the last date of its exclusive period  
12 to file a plan (the “Plan”) that is not the result of any negotiations among the constituencies in  
13 this case, does not reflect the views of the Creditors’ Committee, is already is opposed by the  
14 Creditors’ Committee and its members (who hold a substantial amount of the Debtor’s  
15 unsecured debt), and is patently unconfirmable.<sup>5</sup> The Motion shows that the Plan the Debtor  
16 is illusory and a prescription for endless litigation. The Plan and accompanying disclosure  
17 statement are so far removed from anything that could possibly evidence a good faith effort  
18 to conclude this case and be approved by the Court and unsecured creditors, as to be beyond  
19 repair.

20 At a full meeting of the Creditors’ Committee held on June 5, 2009, the Creditors’  
21 Committee voted unanimously to move the Court on shortened notice to terminate the Debtor’s  
22 exclusivity. In light of the Debtor’s decision to unilaterally file a plan as a last-ditch effort to  
23 maintain an undeserved monopoly over the plan process, and given the patently  
24 unconfirmable terms contained in the Plan as shown in detail in the Motion, the Creditors’  
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26 <sup>2</sup> *Id.* at p. 15.

27 <sup>3</sup> *Id.*

28 <sup>4</sup> *See* Wilson Declaration at ¶ 5.

<sup>5</sup> *Id.* at ¶¶ 5-7.

1 Committee has lost any confidence that the Debtor is capable of negotiating in good faith with  
2 creditors or willing to propose a confirmable plan and move this case towards a resolution.<sup>6</sup>  
3 Unsecured creditors have effectively been financing this case for nearly a year. The Debtor's  
4 marketing efforts have failed, and there are no alternatives that must be pursued at this time, and  
5 certainly not to the exclusion of the filing of a confirmable plan of reorganization. The  
6 staggering cost of this case, combined with the other circumstances described in detail in the  
7 Motion, make it essential that the Court consider the Motion as soon as possible. The  
8 constituencies in this case are well represented and more than capable of timely responding to  
9 the relief requested in the Motion on shortened notice.

10 In contrast to the unproductive and fruitless path pursued by the Debtor, the Creditors'  
11 Committee is prepared to promptly submit a plan that could be confirmed within sixty to seventy  
12 days and, at long last, bring this case to a close. In light of these circumstances, it would be  
13 grossly inappropriate and unfair to require creditors to wait until September 1, 2009 (the  
14 currently scheduled expiration of exclusivity) to file a plan, and unrealistic to expect that  
15 continuing the Debtor's exclusivity will yield a different result than it has produced to date:  
16 delay, frustration and unnecessary expense.

17 Permitting the Debtor to maintain its monopoly over the plan process will subject  
18 creditors to considerable tangible prejudice as the limited resources of the estate continue to  
19 dissipate. The Debtor's plan search process, and the delay in proposing a confirmable plan, has  
20 already imposed significant costs on the estate as substantial professional fees and other costs of  
21 administration have continued to accrue.<sup>7</sup> While the estate currently has approximately only \$26  
22 million in cash (not including cash that is held by the Debtor's subsidiary, as to which the Debtor  
23 proposes no mechanism to make available to satisfy unsecured claims), the Debtor estimates that  
24 unsecured claims will range between approximately \$329 million and \$348 million before  
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28 <sup>6</sup> *Id.* at ¶ 8.

<sup>7</sup> *Id.* at ¶ 9.

1 administrative and priority claims are taken into account.<sup>8</sup> Whether unsecured creditors will  
2 recover payment in full, or even substantial payment, is entirely unclear.

3 One thing is clear: under the Debtor's stewardship, the estate's resources continue to be  
4 depleted. The professional fees and expenses from the petition date of June 18, 2008 through  
5 May 31, 2009 already exceed \$9.2 million, and will continue to mount as the case drags on.<sup>9</sup>  
6 The Debtor's filing of an unconfirmable plan for the sole purpose of extending exclusivity  
7 proves that creditors can expect to continue to bear these significant costs as resolution of the  
8 case is further delayed, perhaps for several months. In contrast, opening up the process to a  
9 competing plan from unsecured creditors offers the realistic prospect of bringing this case to  
10 a prompt resolution, thereby eliminating the continued accrual of substantial administrative  
11 expenses.<sup>10</sup>

12 Accordingly, ample cause exists to shorten notice on the Motion.

13 **II.**  
14 **SERVICE**

15 The Creditors' Committee is serving this OST Moving Papers and the Motion Moving  
16 Papers on the United States Trustee, counsel for the Debtor and counsel for Official Committee  
17 of Equity Holders by overnight delivery. The Creditors' Committee is also serving these  
18 pleadings via first-class mail on those parties entitled to special notice. The Creditors'  
19 Committee respectfully submits that this notice is adequate and appropriate under the  
20 circumstances presented.

21 **III.**  
22 **LEGAL STANDARD**

23 Federal Rule of Bankruptcy Procedure 9007 provides that "the court shall designate, if  
24 not otherwise specified herein, the time within which, the entities to whom, and the form and  
25 manner in which the notice [of matters arising in a bankruptcy case] shall be given." In addition,  
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27 <sup>8</sup> *Id.*

28 <sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶ 10.

1 Federal Rule of Bankruptcy Procedure 9006(c) expressly addresses a court’s authority to shorten  
2 time on such matters, providing that:

3 [W]hen an act is required or allowed to be done at or within a  
4 specified time by these rules or by a notice given thereunder or by  
5 order of court, the court for cause shown may in its discretion, with  
or without motion or notice order the period reduced.

6 Fed. R. Bankr. P. 9006(c).

7 In this district, requests for orders shortening time are governed by Local Bankruptcy  
8 Rule 9075-1(b). The Creditors’ Committee has complied with this rule. Specifically, in  
9 accordance with Local Bankruptcy Rule 9075-1, the Creditors’ Committee has concurrently filed  
10 with these OST Moving Papers, the Motion Moving Papers and lodged a proposed order  
11 shortening time. Although not required, the Creditors’ Committee has also served these  
12 pleadings on the parties set forth in Section II above.

13 As set forth in the Motion, ample cause exists to terminate exclusivity and open the plan  
14 process to parties in interest such as the Creditors’ Committee and to shorten notice on the  
15 Motion. The Debtor has had months and months to finally develop and file a confirmable plan,  
16 and waited until the last moment to file a plan that has no prospect of confirmation. In the  
17 meantime, administrative expenses continue to mount. Pursuant to prior order of the Court, the  
18 Debtor's exclusivity period cannot be extended without the express written consent of the  
19 creditors' Committee, which will *not* be forthcoming. Delaying the hearing on this Motion will  
20 serve only to prolong this chapter 11 case and the Debtor's plan monopoly for an additional  
21 period of time, all to the prejudice of unsecured creditors. The failings of the Plan and the  
22 "cause" presented to terminate the Debtor's exclusivity are overwhelming. Given that the Debtor  
23 has already filed its Plan, and the interests of creditors and equity holders are effectively  
24 represented by their respective official committees, it is hard to imagine how any party could be  
25 prejudiced by shortening the notice on this Motion. On the contrary, the prejudice that would be  
26 suffered by unsecured creditors absent this relief is tangible and mounting. In order to avoid the  
27 immense administrative costs that will continue to accrue in this case because of the Debtor’s  
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