

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: JANUARY 23, 2018
CALENDAR: 1:30 P.M. CHAPTERS 11 AND 9 CASES

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. 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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.

1. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**

[FW-23](#)

MOTION TO PAY
12-29-2017 [[379](#)]

PIONEER NURSERY, LLC/MV
PETER FEAR
NON-OPPOSITION

Tentative Ruling

Motion: Authorizing Payment of Vacation Pay Accrued Pre-Petition

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

PRIORITY OF CLAIMS FOR ACCRUED VACATION PAY

The debtor in possession (DIP) requests authorization to pay accrued vacation pay to its employees in the total amount of \$5,578.30. This vacation pay accrued to each employee entitled to it during the 180 days before the filing of the petition.

In the DIP's motion, the grounds for such relief are §§ 105, 363(b)(1), 507(a)(4), and Fed. R. Bankr. P. 6004. The debtor also represents that no individual employee will receive an amount above \$12,850, which is the maximum amount entitled to priority under § 507(a)(4).

The court previously issued an order authorizing the debtor to pay prepetition wages in the amounts set forth on the exhibit attached to the order. Order Authorizing (1) Debtor to Pay Pre-Petition Wages and (2) Directing WestAmerica Bank to Honor Post-Petition Checks, Aug. 16, 2017, ECF No. 9. The court has reviewed this order. No individual employee received more than \$1838.65. Because this motion does not seek more than \$1,000 for any employee's vacation pay, no individual employee will receive more than the statutory cap of \$12,850. As a result, these amounts are entitled to priority in this case under § 507(a)(4).

PAYMENT OF CLAIMS FOR VACATION PAY

The motion requests authority to pay the claims for vacation pay now rather than through a confirmed plan.

The court notes that any plan proposed would be required to pay such claims cash no later than the effective date of the plan. 11 U.S.C. § 1129(a)(9)(B)(ii), unless this class of claims accepted the plan,

in which case payment could be in deferred cash payments of a present value equal to the amount of the claim.

The cash used to pay such claims, moreover, is not cash collateral for any secured debt. The court will authorize payment of these priority claims for vacation pay.

ORDER INSTRUCTIONS

The debtor in possession will prepare an order authorizing payment of vacation pay that accrued prepetition. The order shall identify each individual employee entitled to such pay and the amount to be paid to such individual, and this may be accomplished by incorporating Exhibit B by reference and attaching it to the order.

2. [11-13270](#)-A-11 **IN RE: SARJIT/MANJIT SANGHERA**
[FW-9](#)

MOTION FOR ENTRY OF DISCHARGE
12-19-2017 [[138](#)]

SARJIT SANGHERA/MV
PETER FEAR

Final Ruling

Motion: Entry of Discharge [Chapter 11 individual debtor]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion requests entry of discharge for an individual debtor under § 1141(d)(5) of the Bankruptcy Code. The court finds that the debtor has completed all payments under the plan in this case. See 11 U.S.C. § 1141(d)(5)(A), (C). And § 522(q)(1) does not apply to the debtor.

A chapter 11 discharge order must be entered not later than 10 days after the date of this hearing. See *id.* § 1141(d)(5)(C). To ensure this statutory deadline is met, the movant shall submit a proposed discharge order no later than 3 calendar days after this hearing.

3. [17-12389](#)-A-11 **IN RE: DON ROSE OIL CO., INC.**
[RBS-3](#)

AMENDED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
POL SINELLI LLP FOR RANDYE B. SOREF, CREDITOR COMM. ATY(S)
12-20-2017 [[645](#)]

RILEY WALTER
RANDYE SOREF/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The motion duplicative of item #3 below, the matter is dropped.

4. [17-12389](#)-A-11 **IN RE: DON ROSE OIL CO., INC.**
[RBS-3](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
POL SINELLI LLP FOR RANDYE B. SOREF, CREDITOR COMM. ATY(S)
11-15-2017 [[558](#)]

RILEY WALTER

Final Ruling

Application: Allowance of First and Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. Moreover, the Chapter 11 trustee has filed a notice of non-opposition as to the amount of the fees. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 11 case, Polsinelli LLP, counsel for the Official Committee of Unsecured Committee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$96,272.50 and reimbursement of expenses in the amount of \$1,176.36.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for

the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Polsinelli LP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$96,272.50 and reimbursement of expenses in the amount of \$1,176.36.

IT IS FURTHER ORDERED that the debtor in possession 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.