

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**  
**DATE: FEBRUARY 24, 2016**  
**CALENDAR: 1:30 P.M. CHAPTER 11 AND 9 CASES**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-12827](#)-A-11 BLUEGREENPISTA CONTINUED STATUS CONFERENCE RE:  
ENTERPRISES, INC. CHAPTER 11 VOLUNTARY PETITION  
7-18-15 [[1](#)]  
DAVID JENKINS/Atty. for dbt.

**Final Ruling**

At the suggestion of Chapter 11 trustee Randell Parker and counsel, the status conference is continued to March 9, 2016, at 1:30 p.m. Not later than March 2, 2016, trustee Parker shall, and any other party in interest or the U.S. Trustee may, file a status report.

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, MOTION TO DISMISS CASE  
UST-1 LLC 1-22-16 [[446](#)]  
TRACY DAVIS/MV  
ELAINE NGUYEN/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.  
RESPONSIVE PLEADING

**TENTATIVE RULING**

Motion to Dismiss

In light of the debtor-in-possession filing two Monthly Operating Reports after the U.S. Trustee's motion to dismiss and the representations as to new sources of business income, see Hiramatsu decl. ¶¶ 13(c), (d), filed February 10, 2016, ECF # 466, and as to the willingness of friends to provide financial assistance, see Singh decl. ¶¶ 2, filed February 10, 2016, ECF # 464, the court is inclined to continue the matter to allow the parties to augment the record and will issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that this motion is continued to April 13, 2016, at 1:30 p.m.

IT IS FURTHER ORDERED that Bhavika's Properties, LLC shall file all Monthly Operating Reports in a timely fashion and, if it fails to do so, the U.S. Trustee may file an ex parte application to dismiss the case, which the court will act on without further notice or hearing.

IT IS FURTHER ORDERED that not later than March 30, 2016, the U.S. Trustee is requested to augment the record with the following items: (1) a brief (A) describing which of the allegations of cause, see motion to dismiss, page 1, lines 24, through page 2, line 9, filed January 22, 2016, ECF # 446, remain as of that date; (B) if the court finds cause, whether creditors and the estate are best served by dismissal or conversion, and the reasons therefore; (2) a supplemental declaration of Lisa M. Grootendorst addressing the December 2015, and January 2016 Monthly Operating Reports, as well as the factual issues and representations contained in the opposition to the motion to dismiss and ancillary documents, particularly the allegations of additional income and financial support from Jaswant Singh; (3) an updated Exhibit 4, which addresses these issues and also adds cash flow projections for the debtor in possession for the periods of (A)

the 12 month period from January 1, 2015, through December 31, 2015, and (B) the six month period from September 2015, through February 2016 (each in a form consistent with Exhibit 4, columns 2, 3 & 4); and (4) whether in her opinion the proposed plan is feasible (including new calculations of projected average monthly income for the twelve and six month periods described herein) in light of the changes, if any, in the debtor in possessions net income.

IT IS FURTHER ORDERED that not later than April 6, 2016, the debtor, any creditor or other parties in interest may file a response to the issues addressed in the supplemental filings by the U.S. Trustee only, provided that the aggregate of briefs, declarations and exhibits (exclusive of the certificate of service) do not exceed 8 pages, double spaced, without further order of this court.

IT IS FURTHER ORDERED that no other filings in support of or opposition to the motion are authorized and the record will be deemed closed on April 6, 2016.

Continued Pretrial Conference (Motion to Confirm Chapter 11 Plan)

If the court issues the proposed Civil Minute Order (above), the court will also issue a Civil Minute Order continuing the pretrial conference of debtor in possession's motion to confirm, EVN-15, from March 23, 2016, to April 27, 2016, at 1:30 p.m. and continuing the date for the status report from March 9, 2016, to April 13, 2016. In all other respects, the Scheduling Order, file December 18, 2015, ECF # 426, will remain in full force and effect. The court will does not intend to take further action on confirmation until the U.S. Trustee' motion to dismiss is resolved.

Meet and Confer

Not later than 10:00 a.m. on February 24, 2016, the U.S. Trustee and counsel for the debtor in possession, CNA, and the SBA are invited to meet and confer by telephone. If no party in interest wishes to be heard in opposition or clarification of the proposed Civil Minute Orders the parties may agree that no party will appear and, absent an appearance, by any party the court will issue the Civil Minute Orders described. If any party wishes to be heard, all parties wishing to be heard should appear in person or by telephone.

3. [14-14241](#)-A-11 ARTHUR FONTAINE  
DMG-17  
HALLE PORTER NEWLAND AND  
RICKETT LLP/MV

CONTINUED MOTION FOR  
COMPENSATION FOR HALLE PORTER  
NEWLAND AND RICKETT LLP,  
ACCOUNTANT(S)  
12-15-15 [[242](#)]

D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

**Application:** Allowance of 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. 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, Halle Porter has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$3,257.50 and reimbursement of expenses in the amount of \$24.06. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional 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. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim 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.

Halle Porter'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 \$3,257.50 and reimbursement of expenses in the amount of \$24.06. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

4. [14-14241](#)-A-11 ARTHUR FONTAINE  
DMG-19  
ARTHUR FONTAINE/MV  
D. GARDNER/Atty. for dbt.
- CONTINUED MOTION FOR FINAL  
DECREE AND ORDER CLOSING CASE  
12-28-15 [[252](#)]

**No tentative ruling.**

5. [15-10366](#)-A-11 ELLIOTT MANUFACTURING  
FW-21 COMPANY, INC.  
ELLIOTT MANUFACTURING COMPANY,  
INC./MV  
PETER FEAR/Atty. for dbt.
- MOTION TO SELL FREE AND CLEAR  
OF LIENS  
1-27-16 [[265](#)]

**No tentative ruling.**

6. [15-10498](#)-A-11 KERN FACULTY MEDICAL  
DMG-3 GROUP, INC.
- D. GARDNER/Atty. for dbt.
- DISCLOSURE STATEMENT FILED BY  
DEBTOR KERN FACULTY MEDICAL  
GROUP, INC.  
12-31-15 [[56](#)]

**No tentative ruling.**

7. [15-12827](#)-A-11 BLUEGREENPISTA  
TGM-3 ENTERPRISES, INC.  
RANDELL PARKER/MV  
DAVID JENKINS/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.  
OST
- MOTION FOR AUTHORITY TO USE  
CASH COLLATERAL  
2-22-16 [[145](#)]

**No tentative ruling.**