

**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: **WEDNESDAY**
DATE: **JULY 27, 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. 10-12709-A-11 ENNIS COMMERCIAL
LL-2 PROPERTIES, LLC MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LOEB & LOEB LLP
FOR LANCE N. JURICH, SPECIAL
COUNSEL(S)
6-23-16 [[1661](#)]

PETER FEAR/Atty. for dbt.
LANCE JURICH/Atty. for mv.

Final Ruling

Moving party did not file a proof of service or a declaration of David Stapleton supporting this motion. The hearing is continued to August 31, 2016, at 1:30 p.m. Not later than 28 days before the hearing, moving party shall file and properly serve a Notice of Continued Hearing which gives parties in interest notice that opposition must be filed no later than 14 days before the continued hearing. Moving party shall contemporaneously file and serve a declaration of David Stapleton supporting this application and a proof of service evidencing that this instruction has been complied with.

2. 10-12709-A-11 ENNIS COMMERCIAL
LRP-49 PROPERTIES, LLC MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LANG, RICHERT &
PATCH FOR MICHAEL J. GOMEZ,
OTHER PROFESSIONAL(S)
6-29-16 [[1685](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Application: Approval of Interim Compensation and Expense Reimbursement under Confirmed Plan in Chapter 11

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, Lang, Richert & Patch, P.C., the applicant, requests that the court approve interim compensation in the amount of \$613,294.25 and reimbursement of expenses in the amount of \$18,000.60. The applicant further requests that the court approve payment of a holdback in the amount of \$122,658.85.

Here, a plan has been confirmed. Once a plan has been confirmed, its provisions bind the debtor, creditors, equity security holders, and other parties in interest. 11 U.S.C. § 1141(a). An exception to this

rule is made for the discharge provisions of § 1141(d)(2) and (3). *Id.* The plan's terms governing compensation of professionals, therefore, govern the court's decision on this matter. And the content of such provisions "is primarily up to the genius of the drafter." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 560 (B.A.P. 9th Cir. 2002).

The confirmed plan in this case states that compensation for retained professionals is subject to bankruptcy court approval. It also provides that compensation paid for services rendered and expenses incurred must be "reasonable." The plan's reasonableness standard for payment of compensation makes sense in light of § 1129(a)(4).

Section 1129(a)(4) imposes, as a confirmation requirement, a reasonableness standard for compensation for services and for costs and expenses in connection with the case, or in connection with the plan and incident to the case. 11 U.S.C. § 1129(a)(4). This standard applies to the payments made by the plan proponent, by the debtor, or by a person acquiring property under the plan, such as a plan administrator.

Section 330 of the Code contains specific standards for determining the reasonableness of compensation. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering the relevant factors. See *id.* § 330(a)(3). Although this standard is more exacting than the standard applicable in this case, the court may apply all or some of the elements of this standard as a guide to the extent appropriate.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. The court further authorizes the payment of the holdback amount requested.

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.

The application of Lang, Richert & Patch, P.C., for approval of interim 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 an interim basis. The court approves interim compensation in the amount of \$613,294.25 and reimbursement of expenses in the amount of \$18,000.60. The court approves payment of the holdback amount of \$122,658.85 on an interim basis as well. The applicant is authorized to draw on any retainer held.

3. 10-12709-A-11 ENNIS COMMERCIAL
LRP-50 PROPERTIES, LLC
DAVID STAPLETON/MV

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION FOR COMPENSATION FOR
DAVID STAPLETON, OTHER
PROFESSIONAL(S)
6-29-16 [1673]

Final Ruling

Application: Approval of Interim Compensation and Expense Reimbursement under Confirmed Plan in Chapter 11

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, David Stapleton, Plan Administrator, the applicant, requests that the court approve interim compensation in the amount of \$247,739.50 and reimbursement of expenses in the amount of \$5,836.61. The applicant further requests that the court approve payment of a holdback in the amount of \$51,253.50.

Here, a plan has been confirmed. Once a plan has been confirmed, its provisions bind the debtor, creditors, equity security holders, and other parties in interest. 11 U.S.C. § 1141(a). An exception to this rule is made for the discharge provisions of § 1141(d)(2) and (3). *Id.* The plan's terms governing compensation of professionals, therefore, govern the court's decision on this matter. And the content of such provisions "is primarily up to the genius of the drafter." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 560 (B.A.P. 9th Cir. 2002).

The confirmed plan in this case states that compensation for retained professionals is subject to bankruptcy court approval. It also provides that compensation paid for services rendered and expenses incurred must be "reasonable." The plan's reasonableness standard for payment of compensation makes sense in light of § 1129(a)(4).

Section 1129(a)(4) imposes, as a confirmation requirement, a reasonableness standard for compensation for services and for costs and expenses in connection with the case, or in connection with the plan and incident to the case. 11 U.S.C. § 1129(a)(4). This standard applies to the payments made by the plan proponent, by the debtor, or by a person acquiring property under the plan, such as a plan administrator.

Section 330 of the Code contains specific standards for determining the reasonableness of compensation. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary

services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering the relevant factors. See *id.* § 330(a)(3). Although this standard is more exacting than the standard applicable in this case, the court may apply all or some of the elements of this standard as a guide to the extent appropriate.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. The court further authorizes the payment of the holdback amount requested.

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.

The application of David Stapleton, Plan Administrator, for approval of interim 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 an interim basis. The court approves interim compensation in the amount of \$247,739.50 and reimbursement of expenses in the amount of \$5,836.61. The court approves payment of the holdback amount of \$51,523.50 on an interim basis as well. The applicant is authorized to draw on any retainer held.

4. 10-12709-A-11 ENNIS COMMERCIAL
LRP-51 PROPERTIES, LLC
DAVID STAPLETON/MV MOTION FOR COMPENSATION FOR THE
PETER FEAR/Atty. for dbt. STAPLETON GROUP, OTHER
MICHAEL GOMEZ/Atty. for mv. PROFESSIONAL(S)
6-28-16 [1667]

Final Ruling

Application: Approval of Interim Compensation and Expense Reimbursement under Confirmed Plan in Chapter 11

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, The Stapleton Group, the applicant, requests that the court approve interim compensation in the amount of \$101,897.50 and reimbursement of expenses in the amount of \$1,183.95. The applicant further requests that the court approve payment of a holdback in the amount of \$20,379.50.

Here, a plan has been confirmed. Once a plan has been confirmed, its provisions bind the debtor, creditors, equity security holders, and other parties in interest. 11 U.S.C. § 1141(a). An exception to this rule is made for the discharge provisions of § 1141(d)(2) and (3). *Id.* The plan's terms governing compensation of professionals, therefore, govern the court's decision on this matter. And the content of such provisions "is primarily up to the genius of the drafter." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 560 (B.A.P. 9th Cir. 2002).

The confirmed plan in this case states that compensation for retained professionals is subject to bankruptcy court approval. It also provides that compensation paid for services rendered and expenses incurred must be "reasonable." The plan's reasonableness standard for payment of compensation makes sense in light of § 1129(a)(4).

Section 1129(a)(4) imposes, as a confirmation requirement, a reasonableness standard for compensation for services and for costs and expenses in connection with the case, or in connection with the plan and incident to the case. 11 U.S.C. § 1129(a)(4). This standard applies to the payments made by the plan proponent, by the debtor, or by a person acquiring property under the plan, such as a plan administrator.

Section 330 of the Code contains specific standards for determining the reasonableness of compensation. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering the relevant factors. See *id.* § 330(a)(3). Although this standard is more exacting than the standard applicable in this case, the court may apply all or some of the elements of this standard as a guide to the extent appropriate.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. The court further authorizes the payment of the holdback amount requested.

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.

The application of The Stapleton Group for approval of interim 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 an interim basis. The court approves interim compensation in the amount of \$101,897.50 and reimbursement of expenses in the amount of \$1,183.95. The court approves payment of the holdback amount of \$20,379.50 on an interim basis as well. The applicant is authorized to draw on any retainer held.

5. 10-12709-A-11 ENNIS COMMERCIAL
SHB-13 PROPERTIES, LLC

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHULMAN HODGES &
BASTIAN LLP FOR JAMES C.
BASTIAN, JR., SPECIAL
COUNSEL(S)
6-29-16 [[1679](#)]

PETER FEAR/Atty. for dbt.
JAMES BASTIAN/Atty. for mv.

No tentative ruling.

6. 10-62315-A-11 BEN ENNIS
LL-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LOEB & LOEB LLP
FOR LANCE N. JURICH, SPECIAL
COUNSEL(S)
6-23-16 [[2087](#)]

RILEY WALTER/Atty. for dbt.
LANCE JURICH/Atty. for mv.

Final Ruling

The proof of service filed June 23, 2016, ECF #2092, refers on page 5 to an "attached service list" which is not attached to the pleading. The hearing is continued to August 31, 2016, at 1:30 p.m. Not later than 28 days before the hearing, moving party shall file and properly serve a Notice of Continued Hearing which gives parties in interest notice that opposition must be filed no later than 14 days before the continued hearing. Moving party shall contemporaneously file and serve a proof of service evidencing that this instruction has been complied with.

7. 15-12827-A-11 BLUEGREENPISTA
ENTERPRISES, INC.
RANDEEP DHILLON/MV
DAVID JENKINS/Atty. for dbt.
BARRY JORGENSEN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-27-16 [[306](#)]

No tentative ruling.

8. 15-10161-A-11 FRESNO COUNTY
LRP-1 SPORTSMEN'S CLUB
DOUGLAS BOWMAN/MV
PETER FEAR/Atty. for dbt.
KIMBERLY MAYHEW/Atty. for mv.

MOTION BY KIMBERLY L. MAYHEW TO
WITHDRAW AS ATTORNEY
7-12-16 [178]

Tentative Ruling

Motion: Attorney's Withdrawal from Representation of a Client

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

Disposition: Granted

Order: Prepared by moving party

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).

Withdrawal of an attorney from representing a client is governed by Local Bankruptcy Rule 2017-1(e) and the Rules of Professional Conduct of the State Bar of California. Pursuant to Local Bankruptcy Rule 2017-1(e), the attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. California Rule of Professional Conduct 3-700(C)(5) provides for permissive withdrawal if "[t]he client knowingly and freely assents to termination of the employment." Cal. R. Prof'l Conduct 3-700(C)(5).

The declaration properly states the last known address of the client and mentions the attorney's efforts to notify the client of the motion to withdraw. The court finds that the attorney's withdrawal from the representation is appropriate.