

**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: OCTOBER 26, 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. [11-15025](#)-A-11 DAVID/LINDA CATES
BBR-3
DAVID CATES/MV

MOTION FOR ENTRY OF DISCHARGE
AND/OR MOTION FOR FINAL DECREE
AND ORDER CLOSING CASE
10-7-16 [[254](#)]

T. BELDEN/Atty. for dbt.

Tentative Ruling

Motion: Enter Discharge and Enter Final Decree Closing Chapter 11 Case

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

Disposition: Granted

Order: Prepared by moving party and submitted no later than October 28, 2016

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).

DISCHARGE OF INDIVIDUAL DEBTORS

The debtors qualify for entry of their discharge under 11 U.S.C. § 1141(d)(5). All payments under the plan have been completed. 11 U.S.C. § 1141(d)(5)(A). The court finds that there is no reasonable cause to believe that § 522(q)(1) may be applicable to the debtors. The court finds that there is no reasonable cause to believe that the debtors may be found (1) guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B).

FINAL DECREE AND ORDER CLOSING CASE

Under § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." 11 U.S.C. § 350(a); Fed. R. Bankr. P. 3022. "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" *See In re Ground Sys., Inc.*, 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Rule 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. *See* Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. These factors present a court with "flexibility in determining whether an estate is fully administered," and "not all of the factors . . . need to be present to establish that a case is fully administered for final decree purposes." *In re Provident Fin., Inc.*, Nos. MT-10-1134-JuPaD, MT-10-1135-JuPaD, Bankr. No. 09-61756, 2010 WL 6259973 (B.A.P. 9th Cir. Oct. 12, 2010) (unpublished opinion).

The Advisory Committee Note also states that entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed." Fed. R. Bankr. P. 3022 advisory committee's note-1991 Am. It further provides that "[t]he court

should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code." *Id.*

Here, factors supporting a finding of full administration of the estate have been satisfied. The order confirming the plan has become final pursuant to Rule 8002 and payments under the confirmed plan have commenced and have been completed. All motions, other than this motion, contested matters, and adversary proceedings have been resolved. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

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| 2. <u>15-10161</u> -A-11 FRESNO COUNTY
FW-7 SPORTSMEN'S CLUB
FRESNO COUNTY SPORTSMEN'S
CLUB/MV
PETER FEAR/Atty. for dbt. | MOTION CHALLENGE TO BALLOTS OF
DOUGLAS BOWMAN
10-11-16 [<u>219</u>] |
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No tentative ruling.

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| 3. <u>15-10161</u> -A-11 FRESNO COUNTY
FW-7 SPORTSMEN'S CLUB

PETER FEAR/Atty. for dbt.
ORDER #197 | CONFIRMATION HEARING RE:
AMENDED CHAPTER 11 PLAN
6-22-16 [<u>166</u>] |
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No tentative ruling.

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| 4. <u>15-10161</u> -A-11 FRESNO COUNTY
FW-9 SPORTSMEN'S CLUB
FRESNO COUNTY SPORTSMEN'S
CLUB/MV
PETER FEAR/Atty. for dbt. | MOTION TO BORROW AND/OR MOTION
TO INDEMNIFY GUARANTOR
10-5-16 [<u>213</u>] |
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No tentative ruling.

5. [15-14274](#)-A-11 LOURIE FOLLAND CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-30-15 [[1](#)]

PETER FEAR/Atty. for dbt.

[Of the four matters on calendar in this case, this matter will be called last.]

No tentative ruling.

6. [15-14274](#)-A-11 LOURIE FOLLAND CONFIRMATION HEARING RE:
FW-3 AMENDED CHAPTER 11 PLAN
8-9-16 [[74](#)]

PETER FEAR/Atty. for dbt.
ORDER #76

[Of the four matters on calendar in this case, this matter will be called second.]

No tentative ruling.

7. [15-14274](#)-A-11 LOURIE FOLLAND CONTINUED MOTION TO VALUE
FW-5 COLLATERAL OF CIT BANK, N.A.
LOURIE FOLLAND/MV 8-19-16 [[89](#)]
PETER FEAR/Atty. for dbt.
OPPOSITION

[Of the four matters on calendar in this case, this matter will be called first.]

No tentative ruling

8. [15-14274](#)-A-11 LOURIE FOLLAND OBJECTION TO CONFIRMATION OF
PPR-1 PLAN BY CIT BANK, N.A.
CIT BANK, N.A./MV 9-23-16 [[111](#)]
PETER FEAR/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.

[Of the four matters on calendar in this case, this matter will be called second and simultaneously with the debtor in possession's motion to confirm, FW-3.]

No tentative ruling.