

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

WEDNESDAY

DECEMBER 17, 2014

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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.

9:00 a.m.

1. [13-17405](#)-A-7 GARY KINDLUND MOTION FOR COMPENSATION FOR
JTW-2 JANZEN, TAMBERI & WONG,
JANZEN, TAMBERI, & WONG/MV ACCOUNTANT(S).
MARK ZIMMERMAN/Atty. for dbt. 11-14-14 [[79](#)]

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 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).

COMPENSATION AND EXPENSES

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 all relevant factors. See *id.* § 330(a)(3).

Exhibit A shows that some expenses are included in the total amount requested. The applicant did not identify the expense reimbursement portion of the amount requested in the application and the prayer ("wherefore clause") seeks "compensation" for "accounting services rendered" in the amount of \$1,522.76. The court will therefore treat the application as requesting \$1,517.00 of compensation and \$5.76 of reimbursement of expenses.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts 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 Janzen, Tamberi & Wong for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,517.00 and

reimbursement of expenses in the amount of \$5.76.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

2. [14-12107](#)-A-7 AMADO GOMEZ RESTORED HEARING RE: OBJECTION
JES-3 TO DEBTOR'S CLAIM OF EXEMPTIONS
JAMES SALVEN/MV 9-30-14 [[43](#)]
OSCAR SWINTON/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
ORDER 11/17/14, RESPONSIVE
PLEADING

Final Ruling

The court's approval of the trustee's compromise of controversy in this case fully resolves the trustee's objection to the debtor's amended exemptions using provisions of § 704. The objection will be overruled as moot.

3. [14-12107](#)-A-7 AMADO GOMEZ MOTION TO COMPROMISE
JES-4 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH AMADO LARA GOMEZ
11-14-14 [[52](#)]
OSCAR SWINTON/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); 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). 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).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and

inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable given that creditors will be paid in full by the settlement funds. The compromise will be approved.

4. [14-13415](#)-A-7 RON/KARRIE HATLEY MOTION TO AVOID LIEN OF Y BOOK,
DRJ-1 LLC
RON HATLEY/MV 11-26-14 [[55](#)]
DAVID JENKINS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$140,369.53

Property Value: \$114,000.00

Judicial Lien Avoided: \$13,869.53

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

5. [14-13415](#)-A-7 RON/KARRIE HATLEY
DRJ-2
RON HATLEY/MV

MOTION TO AVOID LIEN OF
AMERICAN CONTRACTORS INDEMNITY
COMPANY
11-26-14 [58]

DAVID JENKINS/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$137,895.61

Property Value: \$114,000.00

Judicial Lien Avoided: \$11,395.61

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of-(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [11-18035](#)-A-7 MADERA MEDICAL
MKK-2 ASSOCIATES, INC.
M. KLEIN/MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION FOR COMPENSATION FOR M.
KATHLEEN KLEIN, ACCOUNTANT(S).
7-10-14 [[81](#)]

Final Ruling

Application: First and Final Application for Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: M. Kathleen Klein

Compensation approved: \$4,052.00

Costs approved: \$271.78

Aggregate fees and costs approved in this application: \$4,323.78

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).

DISCUSSION

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 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 as to the amounts requested.

CREDITORS MATRIX

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. *See* Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First and Final Fee Application filed by M. Kathleen Klein, certified public accountant, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and that: (1) the defaults of the respondents are entered; (2) compensation of \$4,052.00 is approved on a final basis; (2) costs of \$271.78 are approved on a final basis; (3) Chapter 7 trustee, Peter L. Fear, may said amounts immediately and without further order of this court, if the case is administratively solvent; and (4) if Chapter 7 trustee Peter L. Fear pays said amounts and the case is later determined to be administratively insolvent, the payment is without prejudice to recovery of those by trustee Fear or such other person authorized by law to act on behalf of the estate.

7. [13-16457](#)-A-7 DES BANGAR
TGM-3

MOTION FOR COMPENSATION FOR
TRUDI G. MANFREDO, TRUSTEE'S
ATTORNEY(S).
11-19-14 [[82](#)]

GARY HUSS/Atty. for dbt.

Final Ruling

Application: First and Final Application for Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: Trudi G. Manfredo

Compensation approved: \$4,354.00

Costs approved: \$191.45

Aggregate fees and costs approved in this application: \$4,545.45

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).

DISCUSSION

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 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 as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First and Final Fee Application filed by Trudi G. Manfredo, attorney at law, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and that: (1) the defaults of the respondents are entered; (2) compensation of \$4,354.00 is approved on a final basis; (2) costs of \$191.45 are approved on a final basis; (3) Chapter 7 trustee, James E. Salven, may said amounts immediately and without further order of this court, if the case is administratively solvent; and (4) if Chapter 7 trustee James E. Salven pays said amounts and the case is later determined to be administratively insolvent, the payment is without prejudice to recovery of those by trustee Salven or such other person authorized by law to act on behalf of the estate.

8. [13-11665](#)-A-7 DENNIS MCGOWAN
JTW-2
JANZEN, TAMBERI AND WONG/MV

PETER BUNTING/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S).
11-14-14 [[69](#)]

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 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).

COMPENSATION AND EXPENSES

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 all relevant factors. *See id.* § 330(a)(3).

Exhibit A shows that some expenses are included in the total amount requested. The applicant did not identify the expense reimbursement portion of the amount requested and the prayer ("wherefore clause")

seeks "compensation" for "accounting services rendered" in the amount of \$1,891.06. The court will therefore treat the application as requesting \$1,868.50 of compensation and \$22.56 of reimbursement of expenses.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts 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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$1,868.50 and reimbursement of expenses in the amount of \$22.56.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. [14-12575](#)-A-7 ALICE RODRIGUEZ

ORDER TO SHOW CAUSE FOR
DISGORGEMENT
11-17-14 [[120](#)]

RICHARD MENDEZ/Atty. for dbt.

Final Ruling

The Order to Show Cause is discharged. A new Order to Show Cause has issued and is scheduled for hearing on January 13, 2015, at 9:00 a.m.

10. [14-14875](#)-A-7 JASON ESPINOSA

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-14-14 [[11](#)]

ERIC ESCAMILLA/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for December 22, 2014, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

11. [14-14889](#)-A-7 DONALD BROWN
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
11-14-14 [[16](#)]

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will

be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for December 22, 2014, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

12. [14-14293](#)-A-7 ANTONIO/THERESA JEBIAN CONTINUED MOTION TO AVOID LIEN
KDG-1 OF ROBERT H. SCRIBNER
ANTONIO JEBIAN/MV 10-10-14 [[18](#)]
HAGOP BEDOYAN/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Liens Plus Exemption: \$495,242.00
Property Value: \$450,000.00
Judicial Lien Avoided: \$49,427.88

The notice of continued hearing states that the motion is being filed and served pursuant to LBR 9014-1(f)(1) and (2). But then the notice requires written opposition not less than 14 days before the hearing pursuant to LBR 9014-1(f)(2). Because the notice of hearing is ambiguous about the notice procedure used, the court will deem the motion to have been noticed under LBR 9014-1(f)(2) and permit opposition at the hearing.

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

13. [12-11899](#)-A-7 CRAIG/SANDRA SCHARPENBERG CONTINUED MOTION TO PAY
DMG-4 11-19-14 [[85](#)]
VINCENT GORSKI/MV
LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

Tentative Ruling

Motion: For Order Directing Chapter 7 Trustee to Pay Final Fees and Expenses

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

Disposition: Granted in part, denied in part

Order: Prepared by moving party consistent with this ruling

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).

The movant, attorney D. Max Gardner, represents that attorneys' fees of \$9,964.00 and costs of \$247.16 were previously approved by an order entered August 28, 2014. The movant further asserts that the case is administratively solvent and an approximate 34% dividend will be paid to unsecured creditors in the amount of \$377,000.00. For the reasons stated in the motion, the court will grant the motion in part and issue an order authorizing the trustee to pay the fees and costs described in the motion. But the court will deny the motion in part to the extent it seeks an order directing the chapter 7 trustee to pay the fees and costs. The trustee's decision as to when to pay fees and costs is governed by the priorities of the Code, by bankruptcy procedure, and by the U.S. Trustee's policies and oversight.

9:15 a.m.

1. [14-10910](#)-A-7 CLAUDE/ERLINDA TEISINGER CONTINUED STATUS CONFERENCE RE:
[14-1115](#) COMPLAINT
CADLES OF GRASSY MEADOWS II, 9-30-14 [[1](#)]
LLC. V. TEISINGER ET AL
HOLLY WALKER/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

10:00 a.m.

1. [14-15113](#)-A-7 VICENTE REYNOSO MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
U.S. BANK TRUST, N.A./MV 11-12-14 [[26](#)]
KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 18536 East Lincoln Avenue, Reedley, California

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).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

2. [14-14890](#)-A-7 MICHAEL/PAULA BULLOCK MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC/MV 11-19-14 [[13](#)]
MARC CARASKA/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1718 Teak Avenue, Merced, California

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).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

10:30 a.m.

1. [14-14741](#)-A-7 DENITA RAZO REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC
11-25-14 [[13](#)]

JEFFREY ROWE/Atty. for dbt.

No tentative ruling.

2. [14-14256](#)-A-7 TONG XIONG PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO BANK, N.A
11-25-14 [[18](#)]

No tentative ruling.

3. [14-14380](#)-A-7 LILIANA VALDIVIA MACIAS PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
11-24-14 [[15](#)]

No tentative ruling.

1:30 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO COMPROMISE
LRP-25 PROPERTIES, LLC CONTROVERSY/APPROVE SETTLEMENT
DAVID STAPLETON/MV AGREEMENT WITH CITIZENS
BUSINESS BANK
11-19-14 [[1443](#)]

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

Final Ruling

Motion: Plan Administrator's Motion for Order Approving Compromise

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).

For the reasons stated in the motion and supporting papers, the court will approve the compromise. The order shall attach as an exhibit a copy of the settlement agreement signed by all the parties thereto.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO CLARIFY APPLICATION
LRP-27 PROPERTIES, LLC OF PLAN ADMINISTRATOR TO EMPLOY
DAVID STAPLETON/MV THE STAPLETON GROUP AS PROPERTY
MANAGER
11-19-14 [[1436](#)]

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

No tentative ruling.

3. [10-62315](#)-A-11 BEN ENNIS MOTION TO SELL FREE AND CLEAR
LRP-36 OF LIENS
DAVID STAPLETON/MV 11-20-14 [[1797](#)]
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Pending

Order: Pending

Property: 303 W. Henderson Ave., Porterville, CA
Buyer: Junior Gill but not to his undisclosed nominee
Sale Price: \$128,000
Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: Colliers Tingey International, Inc. (Plan Administrator's broker)

Compensation Requested: 6% commission on the total purchase price: 3% for Plan Administrator's real estate broker and another 3% commission for the buyer's real estate broker

At the hearing, the court may discuss with counsel for the movant the following issues to the extent necessary: (i) the bidding procedures proposed and the requirements for an overbid; (ii) the amount of the overbid as a percentage of the proposed sale price; (iii) whether this court has authorized the broker to be retained by the Plan Administrator by a prior order pursuant to an application brought pursuant to the terms of the plan; (iv) service of the motion pursuant to Rule 7004 on all respondents affected by the request for § 363(f) relief, or waiver of any deficiency in such service by respondents' appearance at the hearing through counsel, and (v) any other issues the court may deem material to raise at the hearing.

4. [10-62315](#)-A-11 BEN ENNIS
LRP-37

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CITIZENS
BUSINESS BANK, ET AL.
11-19-14 [[1791](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); 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). 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).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection;

(iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

5. [10-62315](#)-A-11 BEN ENNIS MOTION TO CLARIFY APPLICATION
LRP-40 OF PLAN ADMINISTRATOR TO EMPLOY
DAVID STAPLETON/MV THE STAPLETON GROUP AS PROPERTY
MANAGER
11-19-14 [[1784](#)]
- RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

6. [10-62315](#)-A-11 BEN ENNIS MOTION TO SELL
LRP-41 11-26-14 [[1804](#)]
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Pending

Order: Pending

Property: 409 N. Main Street, Porterville, CA

Buyer: Kevin L. Puett and Catherine Adams-Puett but not to their undisclosed nominee

Sale Price: \$225,000

Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: Colliers Tingey International, Inc. (Plan Administrator's broker)

Compensation Requested: 6% commission on the total purchase price: 3% for Plan Administrator's real estate broker and another 3% commission for the buyer's real estate broker

At the hearing, the court may discuss with counsel for the movant the following issues to the extent necessary: (i) the bidding procedures proposed and the requirements for an overbid; (ii) the amount of the overbid as a percentage of the proposed sale price; (iii) whether this court has authorized the broker to be retained by the Plan Administrator by a prior order pursuant to an application brought pursuant to the terms of the plan; (iv) service of the motion pursuant to Rule 7004 on all respondents affected by the request for § 363(f)

relief, or waiver of any deficiency in such service by respondents' appearance at the hearing through counsel, and (v) any other issues the court may deem material to raise at the hearing.

7. [10-62315](#)-A-11 BEN ENNIS MOTION TO AMEND
LRP-42 11-26-14 [[1812](#)]
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

8. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, DISCLOSURE STATEMENT FILED BY
EVN-11 LLC DEBTOR BHAVIKA'S PROPERTIES,
LLC
11-14-14 [[224](#)]
ELAINE NGUYEN/Atty. for dbt.
RENOTICED FOR 1/13/15, ECF
NO. 241

Final Ruling

The hearing renoticed for January 13, 2015, at 1:30 p.m., this matter is dropped as moot.

9. [14-14241](#)-A-11 ARTHUR FONTAINE CONTINUED MOTION TO AUTHORIZE
DMG-6 USE OF PROPERTY AND/OR MOTION
ARTHUR FONTAINE/MV TO ASSUME LEASE OR EXECUTORY
CONTRACT
10-29-14 [[74](#)]
D. GARDNER/Atty. for dbt.

No tentative ruling.

10. [13-17744](#)-A-11 SREP V, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-6-13 [[1](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

11. [13-17744](#)-A-11 SREP V, LLC
PLF-2

DISCLOSURE STATEMENT FILED BY
DEBTOR SREP V, LLC
11-14-14 [[182](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Matter: Approval of Disclosure Statement

Notice: LBR 9014-1(f)(1) / Continued date of the hearing; written opposition required

Disposition: Approved

Order: Prepared by the court

Unopposed matters 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).

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under § 1125 of the Bankruptcy Code, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted).

The court will approve the disclosure statement. At the hearing on this matter, the court will set procedural deadlines for taking action relating to the disclosure statement, balloting, and plan confirmation.

12. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
HAR-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE &
CARRUTH FOR HILTON A. RYDER,
CREDITOR COMM. ATY(S).
11-18-14 [[297](#)]

RILEY WALTER/Atty. for dbt.

Tentative Ruling

Application: Second Interim Application Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: McCormick Barstow
Compensation approved: \$12,975.00
Costs approved: \$202.52
Aggregate fees and costs approved in this application: \$13,177.52
Retainer held: \$0.00
Amount to be paid as administrative expense: \$13,177.52

DISCUSSION

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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Second Interim Fee Application filed by McCormick Barstow, attorneys at law, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and that: (1) compensation of \$12,975.00 is approved on an interim basis; (2) costs of \$202.52 are approved on an interim basis; and (3) such awards shall be finalized prior to the close of the case.

13. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-20
JOHN VAN DYK/MV
RILEY WALTER/Atty. for dbt.
OST 12/2/14,

MOTION TO DISMISS CASE
12-2-14 [[329](#)]

Tentative Ruling

Motion: Dismiss Chapter 11 Case

Notice: LBR 9014-1(f)(3) and order shortening time; written opposition required 2 days before the hearing

Disposition: Granted

Order: Prepared by the movant

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 2 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).

For the reasons stated in the motion, the court will grant the motion and dismiss the case for cause under § 1112(b). The court may not convert the case given the debtors' status as farmers. § 1112(c). The motion asserts that unsecured creditors have each consented to the dismissal and will be paid 85% of their allowed claims.

14. [13-13284](#)-A-11 NICOLETTI OIL INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-7-13 [[1](#)]
DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.

15. [13-13284](#)-A-11 NICOLETTI OIL INC. MOTION FOR COMPENSATION FOR
LC-4 LARRY CLEVELAND, ACCOUNTANT(S).
LARRY CLEVELAND/MV 11-19-14 [[384](#)]
DAVID GOLUBCHIK/Atty. for dbt.

Final Ruling

Application: Second Interim Application for Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: Larry Cleveland

Compensation approved: \$10,834.00

Costs approved: \$0.00

Aggregate fees and costs approved in this application: \$10,834.00

Retainer held: \$0.000

Amount to be paid as administrative expense: \$10,834.00

DISCUSSION

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 an interim

basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Second Interim Fee Application filed by Larry Cleveland, certified public accountant, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that the motion is granted and that: (1) compensation of \$10,834.00 is approved on an interim basis; (2) no costs are approved; and (3) such award shall be finalized prior to the close of the case.

16. [13-13284](#)-A-11 NICOLETTI OIL INC.
LNB-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LEVENE, NEALE,
BENDER, YOO & BRILL LLP FOR
KURT RAMLO, DEBTOR'S
ATTORNEY(S)
11-19-14 [[379](#)]

DAVID GOLUBCHIK/Atty. for dbt.

Tentative Ruling

Application: Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil Minute Order

Applicant: Levene, Neal, Bender et. al.

Compensation approved: \$191,447.50

Costs approved: \$7,805.57

Aggregate fees and costs approved in this application: \$199,353.07

Retainer held: \$91,824.50

Amount to be paid as administrative expense: \$107,528.57

DISCUSSION

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 an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed

prior to case closure. The moving party is authorized to draw on any retainer held.

CIVIL MINUTE ORDER

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The First Interim Application for Compensation filed by Levene, Neale, Bender et. al., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

It is hereby ordered that: (1) compensation of \$191,447.50 is approved on an interim basis; (2) costs of \$7,805.57 are approved on an interim basis; (3) said amounts aggregate to \$199,353.07; (4) the applicant has \$91,824.50 in trust, which it may apply to the interim fees and costs described herein; (5) the debtor in possession may pay the applicant \$107,528.57 as an administrative expense without further order, provided the estate is administratively solvent; and (6) the applicant shall perfect those amounts by final application prior to the closure of the case.

17. [14-11595](#)-A-11 RAY FISHER PHARMACY, DISCLOSURE STATEMENT FILED BY
PWC-4 INC. DEBTOR RAY FISHER PHARMACY,
INC.
11-19-14 [[122](#)]
- ALAN KINDRED/Atty. for dbt.
VACATED BY ORDER #125

Final Ruling

The hearing vacated by Order, ECF #125, this matter is dropped as moot.

18. [12-17310](#)-A-11 JOHN/GRACE VISSER CONTINUED MOTION FOR FINAL
RAC-47 DECREE AND ORDER CLOSING CASE
JOHN VISSER/MV AND/OR MOTION FOR ENTRY OF
DISCHARGE
11-19-14 [[1036](#)]
- RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

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

Notice: LBR 9014-1(f)(2) / Continued hearing date; no written opposition required

Disposition: Granted

Order: Prepared by the 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).

FINAL DECREE

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. The motion asserts that the Reorganized Debtors have paid in full, with interest where required, all claims—thus, all plan payments have been made. All motions, other than this motion, contested matters, and adversary proceedings have been finally resolved. Other factors addressed in the motion support entry of the final decree closing the case. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

At the continued hearing, the court will grant the motion as to the final decree and issue an order closing the case assuming all other aspects of the motion are able to be resolved at that time.

DISCHARGE OF DEBTORS

The debtors have paid in full, with interest where required under the Plan, all unclassified and classified claims, and the motion further states that all Plan payments have been made. § 1141(d)(5)(A).

Supplemental declarations have been filed addressing the provisions of § 1141(d)(C)(i)-(ii). For the reasons stated in the motion, the court finds that entry of discharge is appropriate under § 11 U.S.C. 1141(d)(5).

1:45 p.m.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED MOTION FOR ENTRY OF
[14-1062](#) PROPERTIES, LLC LRP-4 DEFAULT JUDGMENT
ENNIS COMMERCIAL PROPERTIES, 10-3-14 [[33](#)]
LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

2. [10-62315](#)-A-11 BEN ENNIS MOTION FOR SUMMARY JUDGMENT
[13-1108](#) LRP-5 11-19-14 [[94](#)]
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED STATUS CONFERENCE RE:
[14-1062](#) PROPERTIES, LLC COMPLAINT
ENNIS COMMERCIAL PROPERTIES, 6-16-14 [[1](#)]
LLC ET AL V. ENNIS DEVELOPMENT
MICHAEL GOMEZ/Atty. for pl.

No tentative ruling.