

**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: TUESDAY**  
**DATE: DECEMBER 20, 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  
FRC-3 PROPERTIES, LLC  
DAVID STAPLETON/MV  
PETER FEAR/Atty. for dbt.  
JENNIFER BROOKS/Atty. for mv.

MOTION FOR AN ORDER TO APPROVE  
FIRST INTERIM DISTRIBUTION  
11-17-16 [[1743](#)]

### **Final Ruling**

**Motion:** For an Order to Approve First Interim Distribution

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

**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 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 V(N) of the confirmed plan authorizes the plan administrator in this case to seek court orders and instructions as necessary to carry out and further the purposes of the plan and to give full effect to the plan. Section VI(A) and (F) of this plan contains the authority for the plan administrator to make distributions and obtain court approval to do so. The motion proposes a \$4,000,000 interim distribution to unsecured creditors. For the reasons stated in the motion, the court will approve this distribution as specified in the motion and prayer for relief.

2. [10-62315](#)-A-11 BEN ENNIS  
FRC-5  
DAVID STAPLETON/MV  
RILEY WALTER/Atty. for dbt.  
WILLIAM FREEMAN/Atty. for mv.

MOTION FOR AN ORDER APPROVING  
THIRD INTERIM DISTRIBUTION  
11-17-16 [[2185](#)]

### **Final Ruling**

**Motion:** For an Order to Approve First Interim Distribution

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

**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 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).

At Article VI, the confirmed plan contains a mechanism for disbursing funds to creditors. Further, the confirmed plan authorizes the plan administrator to seek court orders and instructions as the plan

administrator deems necessary to carry out and further the intentions and purposes of the plan, and to give full effect to the plan's provisions. The motion proposes a \$3,000,000 interim distribution to unsecured creditors. For the reasons stated in the motion, the court will approve this distribution as specified in the motion and prayer for relief.

3. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION 1-4-16 [[1](#)]  
ASHLEY MCDOW/Atty. for dbt.  
ORDER ECF NO. 225,  
CONTINUING TO 2/2/17

#### **Final Ruling**

Pursuant to Order, ECF #225, the status conference has been continued to February 2, 2017, at 1:30 p.m.

4. [15-12827](#)-A-11 BLUEGREENPISTA MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS DRJ-5 ENTERPRISES, INC. ATTORNEY(S) 11-21-16 [[448](#)]  
DAVID JENKINS/Atty. for dbt.

#### **Tentative Ruling**

**Application:** Allowance of Interim 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, David R. Jenkins, counsel for the debtor in possession, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$21,081.77 and reimbursement of expenses in the amount of \$187.72.

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.

#### **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.

David R. Jenkins's application for allowance 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 allows interim compensation in the amount of \$21,081.77 and reimbursement of expenses in the amount of \$187.72. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

5. [15-12827](#)-A-11 BLUEGREENPISTA  
WSS-2 ENTERPRISES, INC.  
STATE BANK OF INDIA  
(CALIFORNIA)/MV  
DAVID JENKINS/Atty. for dbt.  
WILLIAM SMALL/Atty. for mv.

MOTION FOR PAYMENT OF  
ADMINISTRATIVE CLAIM  
11-22-16 [[452](#)]

**No tentative ruling.**

6. [15-10161](#)-A-11 FRESNO COUNTY  
FW-11 SPORTSMEN'S CLUB

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER L. FEAR, DEBTORS  
ATTORNEY(S)  
11-22-16 [[244](#)]

PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Approval of Final 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, Fear Waddell, P.C., the applicant, requests that the court approve final compensation in the amount of \$40,708.00 and reimbursement of expenses in the amount of \$1747.83. 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.

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).

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 a final basis. The court will also allow on a final basis all prior applications for fees and costs that the court has previously allowed 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.

Fear Waddell, P.C.'s application for approval 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 approves final compensation in the amount of \$40,708.00 and reimbursement of expenses in the amount of \$1747.83. 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.