

**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: JANUARY 13, 2016
CALENDAR: 1:30 P.M. CHAPTER 11 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.

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 CONTINUED MOTION TO EMPLOY THE
LRP-43 PROPERTIES, LLC HOPPER COMPANY AS APPRAISER(S)
DAVID STAPLETON/MV 12-1-15 [[1587](#)]
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED MOTION TO USE CASH
EVN-16 LLC COLLATERAL
BHAVIKA'S PROPERTIES, LLC/MV 11-24-15 [[402](#)]
ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

3. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION FOR COMPENSATION FOR
FLG-15 COMPANY, INC. TERENCE J. LONG, FINANCIAL
TERENCE LONG/MV ADVISOR(S)
12-11-15 [[206](#)]
PETER FEAR/Atty. for dbt.

Final 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, Terrence J. Long has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,937.50 and reimbursement of expenses in the amount of \$0.00.

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 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.

Terrence J. Long'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 \$3,937.50 and reimbursement of expenses in the amount of \$0.00. 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.

4. [15-10366](#)-A-11 ELLIOTT MANUFACTURING
FLG-16 COMPANY, INC. MOTION FOR COMPENSATION FOR
ROBERT DAVIS/MV ROBERT A. DAVIS, ACCOUNTANT(S)
PETER FEAR/Atty. for dbt. 12-11-15 [[213](#)]

No tentative ruling.

5. [15-10366](#)-A-11 ELLIOTT MANUFACTURING
FLG-17 COMPANY, INC. DISCLOSURE STATEMENT FILED BY
DEBTOR ELLIOTT MANUFACTURING
COMPANY, INC.
11-30-15 [[200](#)]
PETER FEAR/Atty. for dbt.

No tentative ruling.

6. [15-10366](#)-A-11 ELLIOTT MANUFACTURING
FLG-18 COMPANY, INC. MOTION TO SELL FREE AND CLEAR
OF LIENS
ELLIOTT MANUFACTURING COMPANY,
INC./MV 12-23-15 [[228](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted in part (granted except as to determination of
successor liability of the buyer)

Order: Prepared by moving party

Property: Personal property assets related to the debtor's Packaging
Machinery Business, as more fully described and defined in the
recitals of the Asset Purchase Agreement ("APA")

Buyer: Massman Automation Designs, LLC

Sale Price: \$200,000 cash plus (1) a 5% royalty paid on all net
revenues from buyer's sale of the "Seller's Products" (defined in the
APA) sold after the Effective Date and on or before January 31, 2019,
and (2) a 20% royalty paid on all net revenues from buyer's sale of
Seller's After-Market Parts (defined in the APA) sold after the
Effective Date and on or before January 31, 2019. Net revenues from
the sale of each item is defined in the APA as gross collected
revenues less sales tax and freight costs.

Sale Type: Private sale subject to overbid opportunity

Costs of Sale: Costs of escrow shall be paid to Fresno Escrow, Inc. in
the amount of \$5000

Good Faith Finding: Authorized pursuant to § 363(m) and the
declaration of Jeffrey Bigger, and such language may be included in
the terms of the order

Successor liability: The order submitted to the court shall not
include language determining that the buyer has no successor liability

Assumption and Assignment of Executory Contracts: Authorized pursuant to § 365 (see Section 14.B of the APA) (E.g., contract rights under existing contracts to manufacture products)

Sale Free and Clear of Lien: Relief granted under § 363(f)(3) as stated below and the order prepared 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). 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).

SALE PURSUANT TO § 363(b)(1)

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.,* 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

SALE FREE AND CLEAR UNDER § 363(f)

The sale will be free and clear of the liens of California Bank and Trust and the IRS on the personal property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f)(3).

The cash component of the sale price is \$200,000, which exceeds the aggregate face value of the liens. CB&T's lien is for approximately \$65,000. The IRS's lien is for approximately \$37,133.12 (or \$35,488.47 as stated in the declaration of Thomas Cole). The aggregate face amount of the liens is approximately \$102,133.12. The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the 2 liens identified and that such liens shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or debtor in possession shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

7. [15-10366](#)-A-11 ELLIOTT MANUFACTURING
FLG-20 COMPANY, INC.
ELLIOTT MANUFACTURING COMPANY,
INC./MV
PETER FEAR/Atty. for dbt.
- MOTION TO REJECT LEASE OR
EXECUTORY CONTRACT
12-23-15 [[234](#)]

Final Ruling

Having been withdrawn, the matter is deemed voluntarily dismissed.
The court drops the matter from calendar.

8. [14-11595](#)-A-11 RAY FISHER PHARMACY,
INC.
- CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-31-14 [[1](#)]
- ALAN KINDRED/Atty. for dbt.

No tentative ruling.

9. [14-11595](#)-A-11 RAY FISHER PHARMACY,
PWC-8 INC.
- AMENDED DISCLOSURE STATEMENT
11-11-15 [[272](#)]
- ALAN KINDRED/Atty. for dbt.

No tentative ruling.