

**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: THURSDAY
DATE: FEBRUARY 11, 2016
CALENDAR: 10:30 A.M. SPECIALLY SET CHAPTER 13 MATTER

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. [15-13604](#)-A-13 MARIO/DIANA PEREZ
DAM-1
BRANDON SCOTT/MV
PETER BUNTING/Atty. for dbt.
DANIEL MCDANIEL/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO EMPLOY DANIEL A.
MCDANIEL AS ATTORNEY(S)
1-11-16 [[170](#)]

Tentative Ruling

Motion and Application: Approval of Employment of Attorney for Receiver

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

Disposition: Disapproved and Denied

Order: Civil minute order

NO GROUNDS FOR EMPLOYMENT

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"). But § 327 is limited to employment of professionals by the trustee of a bankruptcy estate, 11 U.S.C. § 327, or a debtor in possession with the rights and powers of a trustee, § 1107. Committees appointed under the Code's provisions may also employ professionals. *See id.* § 1103(a).

The motion and application filed by Brandon Scott, the receiver appointed in the state court action entitled U.S. Bank National Association v. Roberto Perez, cites no federal bankruptcy law authorizing the appointment of counsel for the receiver. Instead, Scott references the standards of § 327 and § 101(14). These standards are not applicable to Scott's appointment of a professional but to a bankruptcy trustee's employment of a professional.

Custodians may be entitled to payment of reasonable compensation for services rendered and costs and expenses incurred by the custodian but only if they satisfy the Bankruptcy Code's requirements for such payment and only after notice and a hearing and court approval of the payment. *See id.* § 543(c)(2); *see also In re R. Brown & Sons, Inc.*, 498 B.R. 425 (Bankr. D. Vt. 2013) (requiring chapter 11 debtor to pay compensation and expenses of custodian as condition of confirmation of the plan). Both prepetition and postpetition compensation and expenses may be eligible for payment. *See In re R. Brown & Sons*, 498 B.R. at 436-37.

Lastly, persuasive authority from other bankruptcy courts suggests that the court's authorization of compensation and reimbursement of expenses under § 543(c)(2) and § 503(b)(3)(E) and (b)(4) is limited to "superseded custodians." *In re 245 Assocs., LLC*, 188 B.R. 743, 748-49 & n.7 (Bankr. S.D.N.Y. 1995). When a custodianship is continued postpetition (e.g., a "continued receiver"), a basis may exist for authorizing the employment of a professional. *Id.*

In this case, the court has not continued the receivership. The court has not issued an order excusing compliance with subsections (a)-(c) of § 543. Accordingly, the court has no grounds for employing the receiver's proposed attorney.

CIVIL MINUTE ORDER

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

Receiver Brandon Scott's motion and application to employ an attorney has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion and application, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion and application is denied and disapproved.

2. [15-13604](#)-A-13 MARIO/DIANA PEREZ
JDW-2
U.S. BANK NATIONAL
ASSOCIATION/MV
PETER BUNTING/Atty. for dbt.
JOSHUA WAYSER/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR ORDER
APPROVING RECEIVER'S FINAL
ACCOUNT AND REPORT
11-25-15 [[106](#)]

[The court makes no tentative ruling on the merits of the action. Telephonic appearances for debtors' counsel and receiver Scott's counsel are not authorized.]

No tentative ruling.

3. [15-13604](#)-A-13 MARIO/DIANA PEREZ
PBB-2
MARIO PEREZ/MV

PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION FOR SANCTIONS
FOR VIOLATION OF THE AUTOMATIC
STAY
11-6-15 [[76](#)]

No tentative ruling.