

**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: FEBRUARY 13, 2019

CALENDAR: 1:30 P.M. CHAPTERS 11 AND 9 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**
[KDG-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,
DENATALE, GOLDNER, COOPER, ROSENLIED, AND KIMBALL, LLP FOR
HAGOP T. BEDOYAN, CREDITOR COMM. ATY(S)
1-4-2019 [[640](#)]

PETER FEAR

Final Ruling

Application: Allowance of Fourth 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, Klein DeNatale, counsel for the Official Committee of Unsecured Creditors has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$9,768.50 and reimbursement of expenses in the amount of \$200.25.

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.

Klein DeNatale'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 \$9,768.50 and reimbursement of expenses in the amount of \$200.25. 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.

2. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-18](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
MACCONAGHY & BARNIER, PLC CHAPTER 11 TRUSTEE(S)
12-21-2018 [[1310](#)]

MICHAEL COLLINS

Final Ruling

Application: Allowance of First 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, MacConaghy & Barnier, PLC, counsel for the chapter 11 trustee Randy Sugarman, has applied for an allowance of

interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$143,165.00 and reimbursement of expenses in the amount of \$5,718.62.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the trustee 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.

MacConaghy & Barnier, PLC'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 \$143,165.00 and reimbursement of expenses in the amount of \$5,718.62. 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 trustee 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.

3. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-19](#)

CONTINUED MOTION FOR COMPENSATION FOR FRAZER, LLP,
ACCOUNTANT(S)
12-21-2018 [[1269](#)]

MICHAEL COLLINS

Final Ruling

Application: Allowance of First 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, Frazer, LLP, accountant for the chapter 11 trustee Randy Sugarman, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$85,551.50 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 accountants for the trustee 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.

Frazer, LLP'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 \$85,551.50 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 trustee 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.

4. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-21](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-16-2019 [\[1440\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Final Ruling

Motion: Assume and Assign 15 Executory Water Delivery Contracts

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

Disposition: Granted

The chapter 11 trustee has moved to assume with three different parties 15 executory water delivery contracts appurtenant to a large real property in Boardman, Oregon, known as the Lost Valley Farm. The trustee also asks for permission to assign the contracts to the buyer of the Lost Valley Farm property.

The motion was set for hearing on the notice required by LBR 9014-1(f)(1). In the absence of opposition by the responding party, the rules of default apply. Fed. R. Bankr. P. 9014(c); Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055. Upon default, a motion's well-pleaded facts are taken as true. *TeleVideo Sys., Inc.*

v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). Additionally, failure to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); see *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The default of the responding party is entered, and the matter is resolved without oral argument.

LEGAL STANDARDS

Section 365 of Title 11 gives the trustee limited options for its executory contracts and unexpired leases. 11 U.S.C. § 365(a), (f). The trustee has the option to assume, to assume and assign, or to reject. *Id.*; *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 201 (B.A.P. 9th Cir. 1991). "By assumption, the trustee or DIP elects to be bound by the terms of the agreement so that the other party must continue to perform thereunder. The contract or lease remains in force" Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, Cal. Practice Guide: Bankruptcy ¶ 16:2 (rev. 2011). Statutory conditions precedent must be satisfied before a court may approve an assumption of an executory contract or an unexpired lease. See 11 U.S.C. § 365(b). These conditions include curing defaults, compensating the lessor for actual pecuniary losses, and providing adequate assurance of that these conditions will be met. *Id.* § 365(b)(1), (2). The trustee must also provide adequate assurance of future performance under the contract or lease. *Id.* § 365(b)(3).

The trustee has until prior to plan confirmation to assume an executory contract. The court is unaware of having set an earlier deadline for the assumption of executory contracts. See 11 U.S.C. § 365(d)(2).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Group*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); March, Ahart & Shapiro, *supra*, ¶¶ 16:1535-1536, 16:515 (rev. 2011). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the trustee acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670.

ANALYSIS

This motion is timely. As no plan has been confirmed and there is no earlier deadline for assuming executory contracts, the deadline for such assumptions has not passed.

Here, the chapter 11 trustee has moved to assume with three different parties 15 executory water delivery contracts appurtenant to a large real property in Boardman, Oregon, known as the Lost Valley Farm. The trustee also asks for permission to assign the

contracts to the buyer of the Lost Valley Farm property. The court has already approved a sale of that property. See ECF No. 1600.

There are no defaults under the contracts to be assumed. The buyer purchased the property for \$66,879,000 in cash, which satisfies that party's adequate assurance of future performance requirement.

Based on the facts asserted in the motion regarding the statutory conditions under § 365(b), and under the rules of default applicable in the absence of opposition, the court approves the assumption. The trustee's decision to assume and assign the contracts is based on sound business judgment and has been made in good faith.

Accordingly, the motion will be granted. The moving party shall prepare and lodge an order consistent with this ruling.

5. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-22](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-16-2019 [[1435](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Final Ruling

Motion: Assume and Assign Oil and Gas Leases

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

Disposition: Granted

The chapter 11 trustee has moved to assume oil and gas leases originating with Savant Resources, LLC appurtenant to a large real property in Boardman, Oregon, known as the Lost Valley Farm. The trustee also asks for permission to assign the oil and gas leases to the buyer of the Lost Valley Farm property.

The motion was set for hearing on the notice required by LBR 9014-1(f)(1). In the absence of opposition by the responding party, the rules of default apply. Fed. R. Bankr. P. 9014(c); Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055. Upon default, a motion's well-pleaded facts are taken as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Additionally, failure to file written opposition not less than 14 days preceding the date, or continued date, of the hearing is deemed a waiver of opposition to the motion. LBR 9014-1(f)(1)(B); see *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The default of the responding party is entered, and the matter is resolved without oral argument.

LEGAL STANDARDS

Section 365 of Title 11 gives the trustee limited options for its executory contracts and unexpired leases. 11 U.S.C. § 365(a), (f). The trustee has the option to assume, to assume and assign, or to reject. *Id*; *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 201 (B.A.P. 9th Cir. 1991). "By assumption, the trustee or DIP elects to be bound by the terms of the agreement so that the other party must continue to perform thereunder. The contract or lease remains in force" Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, Cal. Practice Guide: Bankruptcy ¶ 16:2 (rev. 2011). Statutory conditions precedent must be satisfied before a court may approve an assumption of an executory contract or an unexpired lease. See 11 U.S.C. § 365(b). These conditions include curing defaults, compensating the lessor for actual pecuniary losses, and providing adequate assurance of that these conditions will be met. *Id.* § 365(b)(1), (2). The trustee must also provide adequate assurance of future performance under the contract or lease. *Id.* § 365(b)(3).

The trustee has until prior to plan confirmation to assume an executory contract. The court is unaware of having set an earlier deadline for the assumption of executory contracts. See 11 U.S.C. § 365(d)(2).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Group*, 476 F.3d 665, 670 (9th Cir. 2007); *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000); March, Ahart & Shapiro, *supra*, ¶¶ 16:1535-1536, 16:515 (rev. 2011). In applying the business judgment rule, the bankruptcy court gives the decision to assume or reject only a cursory review under the presumption that "the trustee acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *In re Pomona Valley*, 476 F.3d at 670.

ANALYSIS

This motion is timely. As no plan has been confirmed and there is no earlier deadline for assuming executory contracts, the deadline for such assumptions has not passed.

Here, the chapter 11 trustee has moved to assume the oil and gas leases appurtenant to a large real property in Boardman, Oregon, known as the Lost Valley Farm. The trustee also asks for permission to assign the contracts to the buyer of the Lost Valley Farm property. The court has already approved a sale of that property. See ECF No. 1600.

There are no defaults under the contracts to be assumed. The buyer purchased the property for \$66,879,000 in cash, which satisfies that party's adequate assurance of future performance requirement.

Based on the facts asserted in the motion regarding the statutory conditions under § 365(b), and under the rules of default applicable

in the absence of opposition, the court approves the assumption. The trustee's decision to assume and assign the contracts is based on sound business judgment and has been made in good faith.

Accordingly, the motion will be granted. The moving party shall prepare and lodge an order consistent with this ruling.

6. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[RAC-4](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
BLAKELEY LLP FOR RONALD A. CLIFFORD, CREDITOR COMM. ATY(S)
12-28-2018 [[1326](#)]

MICHAEL COLLINS
RONALD CLIFFORD/ATTY. FOR MV.

Final Ruling

Application: Allowance of Third 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, Blakeley LLP, counsel for the Official Committee of Unsecured Creditors, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$16,887.00 and reimbursement of expenses in the amount of \$1,197.60.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the committee 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.

Blakeley, LLP'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 \$16,887.00 and reimbursement of expenses in the amount of \$1,197.60. 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 trustee 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.

7. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO
BORROW
5-2-2018 [[64](#)]

GREGORY TE VELDE/MV
MICHAEL COLLINS

No Ruling

8. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-43](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SCOTT HARVESTING, LLC
1-14-2019 [[1428](#)]

MICHAEL COLLINS

No Ruling

9. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-45](#)

CONTINUED MOTION TO EXPAND EMPLOYMENT OF SPECIAL COUNSEL
12-17-2018 [[1245](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

No Ruling

10. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-46](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
WALTER WILHELM LAW GROUP FOR RILEY C. WATER, SPECIAL
COUNSEL(S)
12-21-2018 [[1278](#)]

MICHAEL COLLINS

No Ruling

11. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-47](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
COLLINS AND COLLINS, LLP FOR MICHAEL B. COLLINS, SPECIAL
COUNSEL(S)
12-21-2018 [[1274](#)]

MICHAEL COLLINS

No Ruling

12. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-48](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
SCHWABE WILLIAMSON AND WYATT FOR ELIZABETH E. HOWARD,
SPECIAL COUNSEL(S)
12-21-2018 [[1288](#)]

MICHAEL COLLINS

Final Ruling

Application: Allowance of Third 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, Schwabe Williamson & Wyatt, special counsel for the chapter 11 trustee Randy Sugarman, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$105,422.75 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 counsel for the trustee 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.

Schwabe Williamson & Wyatt'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 \$105,422.75 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 trustee 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.

13. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-49](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
SAGASER, WATKINS AND WIELAND, PC FOR IAN B. WIELAND, SPECIAL
COUNSEL(S)
12-21-2018 [[1295](#)]

MICHAEL COLLINS

Final Ruling

Application: Allowance of Second 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, Sagaser, Watkins & Wieland, PC, special counsel for the chapter 11 trustee Randy Sugarman, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,701.50 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 counsel for the trustee 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.

Sagaser, Watkins & Wieland, PC'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 \$2,701.50 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 trustee 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.

14. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-50](#)

CONTINUED MOTION FOR COMPENSATION FOR RANDY SUGARMAN,
CHAPTER 11 TRUSTEE(S)
12-21-2018 [[1302](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Final Ruling

Application: Allowance of First 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). Except for a "Reservation of Rights," filed by the U.S. Trustee, none has been filed. The default of all non-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, Randy Sugarman, the chapter 11 trustee has applied for an allowance of interim compensation and reimbursement of expenses.

The starting point in reviewing a chapter 11 trustee's fees is § 326 of the Bankruptcy Code. Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 11 case. *See, e.g., In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (reviewing court's order on chapter 7 trustee's compensation).

In addition, the court must also consider § 330(a)(1), (3), and (7). *See In re Salgado-Nava*, 473 B.R. 911, 920 n.11 (B.A.P. 9th Cir. 2012) ("But we cannot assume that Congress inadvertently included chapter 11 trustees within the scope of §330(a)(7)."). "Section 330(a)(7) applies to all trustees under all chapters." *Id.* at 919.

Under § 330(a)(7), in determining the reasonableness of a chapter 11 trustee's compensation, "the court shall treat such compensation as a commission, based on § 326." Congress has linked the reasonableness of a chapter 11 trustee's compensation to the commission rates set forth in § 326 for the vast majority of cases. *Id.* at 916-17, 920.

But for chapter 11 trustees, unlike chapter 7 trustees, § 330(a)(3) applies. BAPCPA's enactment in 2005 "amended § 330(a)(3) so that the only types of trustees that come within its ambit are chapter 11 trustees" *Id.* "On the other hand, if extraordinary circumstances exist, or if chapter 11 trustee fees are at issue, the bankruptcy court may be called upon in those cases to determine whether there exists a rational relationship between the amount of the commission and the type and level of services rendered. In the case of a chapter 11 trustee, this determination necessarily requires consideration of the § 330(a)(3) factors, and also ordinarily includes a lodestar analysis." *Id.* at 921 (emphases added). In short, the reasonableness factors listed in § 330(a)(3) continue to directly apply to chapter 11 trustees even though chapter 7 trustees are no longer subject to its terms. *See id.*

The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that a rational relationship exists between the commission amount of § 326(a) and the type of services rendered, § 330(a)(3), (7); and (3) that expenses to be reimbursed are actual and necessary. Moreover, the court finds that the maximum compensation under § 326(a) would be \$165,627.39, but trustee Sugarman seeks fees and costs aggregating less than that amount.

The court approves the application and allows on an interim basis compensation in the amount of \$117,463.50 and reimbursement of expenses in the amount of \$16,425.84.

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.

Randy Sugarman'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 \$117,463.50 and reimbursement of expenses in the amount of \$16,425.84. 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 trustee is authorized to pay himself 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.

IT IS FURTHER ORDERED that unless authorized by an order approving use of cash collateral for payment of professional fees, the trustee shall not use the cash collateral of any creditor to pay these fees.