

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

March 16, 2015 at 10:00 a.m.

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1. 12-41813-A-11 THOMAS/CARLA EATON MOTION TO  
CLH-10 CLOSE CHAPTER 11 CASE  
2-13-15 [165]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtors are asking the court to close the case and enter a final decree, contending that the plan was confirmed, that payments under the confirmed plan are being made, that all post-confirmation reports have been filed, and that there are no pending motions or adversary proceedings.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7<sup>th</sup> Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

This court confirmed the debtors' chapter 11 plan on March 25, 2014. The confirmation order is final. Property has reverted in the debtors pursuant to the terms of the plan. Docket 129 at 8.

Given that the debtors are current on their plan payments, that they have continued to operate their business under the terms of their confirmed plan,

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and given that there are no outstanding motions or adversary proceedings, substantial consummation has been achieved. Accordingly, the court will enter a final decree and close the case. The motion will be granted.

2. 12-41813-A-11 THOMAS/CARLA EATON MOTION TO  
CLH-9 APPROVE COMPENSATION OF DEBTORS'  
ATTORNEY  
2-6-15 [161]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor's counsel, Hill & Morris, has filed a first and final motion for approval of compensation. The requested compensation consists of \$29,350 in fees and \$1,409.37 in expenses, for a total of \$30,759.37. This motion covers the period from December 21, 2012 through March 25, 2014. The court approved the movant's employment as the chapter 11 debtor's attorney on January 24, 2013. In performing services, the movant charged an hourly rate of \$250.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) preparing schedules and statements, as the initial filing was skeletal, (2) analyzing estate asset issues, (3) assessing the estate's retention of other professionals, (4) preparing for and attending the IDI and meeting of creditors, (5) communicating with the United States Trustee, (6) assisting the debtors with the preparation of operating reports and responding to issues raised about the reports by the United States Trustee, (7) preparing pleadings and documents, such as a valuation motion, a status report, etc., (8) attending court hearings, (9) reviewing and analyzing proofs of claim, (10) preparing and revising plan and disclosure statement, (11) communicating with the debtors about various administration issues, and (12) preparing and filing employment an motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

3. 14-30833-A-11 SHASTA ENTERPRISES MOTION TO  
FWP-5 SELL AND TO PAY FEES  
3-2-15 [229]

**Amended Tentative Ruling:** The motion will be denied.

The chapter 7 trustee seeks authority to sell the estate's interest in approximately 1,200 cases of wine. The debtor holds two Alcohol and Beverage

Control licenses which permit the proposed sale in accordance with California law. The scheduled value of the wine is \$87,660, whereas the trustee estimates the value to be approximately \$35,000 to \$45,000.

The wine appears to be subject to a storage lien, not exceeding \$2,000, which the trustee proposes to pay from the sales proceeds. As the wine is stored in two places, some of it in Napa and the remainder in Redding, the trustee will be paying two outstanding storage charges.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The motion will be denied because it requests the court to authorize the sale of the wine in the debtor's "ordinary course of business." Yet, 11 U.S.C. § 363(b) requires court approval of only sales that are outside the ordinary course of business. Sales in the ordinary course of business of the chapter 11 debtor do not require court approval. See 11 U.S.C. § 363. This court does not enter "comfort orders" and it will not approve sales that are in the ordinary course of the debtor's business.

"[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions." Flast v. Cohen, 392 U.S. at 96 . . . (citing C. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97. . . ."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001).

Finally, the court will not "authoriz[e] the Trustee to treat the net proceeds of such sales as unencumbered property of the estate." Docket 229 at 2. The encumbrances against the wine inventory are what the movant purports them to be: none, except for possible storage lien(s) that will be paid in full from the sales proceeds. The movant has not identified any encumbrances against the wine that will not be paid from the sales proceeds.

In other words, even if the court were to authorize proposed sale, it would rely on the movant's representations as to the identity of encumbrances. By asking the court to "authoriz[e] the Trustee to treat the net proceeds of such sales as unencumbered property of the estate," the movant is essentially asking the court to determine that the wine is free of any encumbrances. This request will be denied because such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2). The court does not determine interests in property on a motion.

The motion sale will be denied because it is unnecessary. The court will authorize, however, the payment of any storage lien(s).

4.	15-20034-A-11	C & N LANDSCAPE	MOTION TO
	ET-2	MAINTENANCE, INC.	EMPLOY
			2-11-15 [17]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf.

Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests authority to employ Eason & Tambornini as bankruptcy counsel for the estate. The movant's compensation will be based on an hourly fee arrangement. The movant will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at hearings; negotiating with creditors; assisting with the preparation and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the estate; and addressing post-confirmation issues.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. The movant is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

5.	13-34541-A-11	6056 SYCAMORE TERRACE	MOTION TO
	CAH-13	L.L.C.	CONFIRM PLAN
			5-28-14 [135]

**Tentative Ruling:** The motion will be denied without prejudice.

The hearing on this motion was continued from January 20, 2015. An amended ruling from January 20 follows below.

The debtor is seeking confirmation of its chapter 11 plan filed on May 28, 2014. Docket 135.

However, this motion will be denied because the debtor filed an amended plan and disclosure statement on October 6, 2014. Dockets 213 & 215. These most recent plan and disclosure statement supersede the plan as to which the debtor is seeking confirmation by this motion. The court last approved a disclosure statement of the debtor on September 10, 2014. Docket 190.

The court reminds the debtor's counsel to utilize different docket control numbers for each amended plan and disclosure filed. The plan and disclosure statement filed on May 28, 2014 have the docket control number for the most recent plan and disclosure statement, filed on October 6, 2014.

Lastly, each amended plan and/or disclosure statement should be accompanied by

a red/black-lined version of the document.

6. 10-20345-A-12 BETSY ROME  
SAC-12

MOTION FOR  
ENTRY OF DISCHARGE  
1-30-15 [113]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the chapter 12 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion for entry of a chapter 12 discharge will be granted.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on January 7, 2010. The court confirmed the debtor's chapter 12 plan on March 8, 2010. Dockets 77 & 78. The debtor does not have any domestic support obligations.

First, the trustee has filed a final report and the time to file objections to it has expired. Docket 103. The report was filed on March 25, 2014 and the last day to file an objection to the report was on April 28, 2014. Docket 104. The report was approved on December 22, 2014. Docket 111. The trustee's report demonstrates that the debtor has made the payments required by the plan and that the trustee has made the payments to creditors required by the plan. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, the debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket

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115 at 2. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind specified in section 522(q)(1)(B). No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).

7.	13-21454-A-11	TRAINING TOWARD SELF	MOTION TO
	CAH-35	RELIANCE	APPROVE DISCLOSURE STATEMENT
			1-22-15 [330]

**Tentative Ruling:** The motion will be conditionally granted.

The debtor is asking the court to approve an amended disclosure statement filed on January 22, 2015. Docket 333.

First, the motion is confusing. In the title caption of the motion, it asks for conditional approval of the debtor's disclosure statement, while in the body of the motion, it asks for "final approval" of the disclosure statement. Docket 330 at 1.

The debtor shall clarify at the March 16 hearing the nature of the disclosure statement approval it is seeking.

Second, the court already approved the debtor's prior disclosure statement, filed on August 12, 2014, on January 12, 2015. Docket 321. Yet, this motion makes no effort to explain why the debtor has filed another plan and disclosure statement and it is now seeking the approval of this new disclosure statement.

The debtor shall clarify at the March 16 hearing why it had to amend the plan and disclosure statement.

Third, the court has been unable to locate a deadline for objections to proofs of claim in the debtor's latest disclosure statement.

Such deadline may be inserted in the order approving the disclosure statement.

8.	10-35071-A-12	PRATT VINEYARDS, L.L.C.	MOTION FOR
	SAC-6		ENTRY OF DISCHARGE
			1-30-15 [229]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the chapter 12 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral

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argument.

The motion for entry of a chapter 12 discharge will be granted.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on June 8, 2010. The court confirmed the debtor's chapter 12 plan on June 17, 2011. The debtor does not have any domestic support obligations.

First, the trustee has filed a final report and the time to file objections to it has expired. The report was filed on September 19, 2014 and the last day to file an objection to the report was on October 22, 2014. Dockets 224 & 225. The report was approved on October 28, 2014. Docket 228.

The trustee's report demonstrates that the debtor has made the payments required by the plan and that the trustee has made the payments to creditors required by the plan. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, the debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 231 at 2. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind specified in section 522(q)(1)(B). Docket 231 at 2. No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).