

**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: MARCH 22, 2017
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. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE OMNIBUS OBJECTION TO CLAIMS
BH-16 DISTRICT 1-26-17 [[234](#)]
SOUTHERN INYO HEALTHCARE
DISTRICT/MV
ASHLEY MCDOW/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (1); written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

DISCUSSION

Southern Inyo Healthcare District ("SIHD") presents an omnibus objection to Claim 2 (Covidien), Claim No. 20 (Action Capital Corporation), Claim No. 28 (Dean Vander Wall), and Claim No. 38 (GE HFS, LLC). The objection to each claim is the same "the claim should be disallowed for failure to provide any documentation in support of their respective claims which would allow the debtor to determine the validity of such claims." Motion 4:26-5:1, January 26, 2017, ECF # 237. The only evidence offered in support of the objection is the Declaration of Fahim Farivar, an associate at Baker & Hostetler, LLP, counsel for the debtor.

The crux of SIHD's argument is that the absence of supporting documentation, Fed. R. Bankr. P. 3001(c), coupled with its objection shifts the burden of persuasion to the claimant to demonstrate the validity of their claim. According to SIHD, absent further evidence, the objection must be sustained.

This court disagrees. Such an argument is foreclosed by the sibling cases of *In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005), and *In re Campbell*, 336 B.R. 430 (9th Cir. BAP 2005). In *Campbell*, debtors filed Chapter 13 cases and, after claims were filed, objected to each claim. The objection stated, that the creditor had not provided "proper documentation to support its claim." Each objection conceded that the debt was scheduled as undisputed. The objection were supported by check box declarations that stated the proof of claim failed to attach supporting documentation. But the debtors did not provide evidence that the debt on which the claim was based. The bankruptcy court overruled the objection and the debtors appealed. Citing *Heath*, the bankruptcy appellate panel stated, "We recently held that a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." This case is directly on point as to this objection.

Moreover, SIHD's has admitted the validity of two of the four debts by scheduling the debtors without disputing their validity. See Schedule E/F § 3.92, February 5, 2016, ECF #53 (Covidien debt scheduled as undisputed); Schedule E/F § 3.99 (Vander Wall debt scheduled as undisputed).

As a consequence, the objection will be overruled.

VIOLATIONS OF REVISED GUIDELINES FOR PREPARATION OF DOCUMENTS

SIHD has not complied with the Revised Guidelines for Preparation of Documents, EDC 2-901.

Aggregating Documents

SIHD has aggregated the notice, objection, memorandum, declaration and exhibits. See Objection, January 26, 2017, ECF # 237.

Revised Guideline § III(A) requires that each component part of a motion be filed separately.

Exhibits

SIHD has not proffered its exhibits in the form required by the Revised Guidelines for Preparation of Documents, EDC 2-901. Particular problems include: (1) appending the exhibits to the objection, *Id.* at § IV(A); (2) failing to include an index, which identifies exhibit by number/letter and states the page number at which the exhibit is found, *Id.* at § IV(B); and (3) omitting page numbers from the exhibit, *Id.* at § IV(C).

Future violations of local rules and/or guidelines for preparation of documents may result in summary overruling of the objection.

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.

SIHD's omnibus objection 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 objection,

IT IS ORDERED that the objection is overruled without prejudice.

2. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE OMNIBUS OBJECTION TO CLAIMS
BH-16 DISTRICT 1-26-17 [[237](#)]
SOUTHERN INYO HEALTHCARE
DISTRICT/MV
ASHLEY MCDOW/Atty. for dbt.

Final Ruling

Objection: Amended Objection to Claim

Notice: LBR 3007-1(b) (1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order.

Objections to claims must be served. Fed. R. Bankr. 3007(a). The docket does not reflect a Certificate of Service. LBR 9014-1(e). As a result the objection is overruled without prejudice. The court will issue a civil minute order.

3. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE OMNIBUS MOTION TO RECLASSIFY
BH-17 DISTRICT THE UNSECURED PRIORITY CLAIMS
SOUTHERN INYO HEALTHCARE OF CLAIM NO. 39, CLAIM NO. 46,
DISTRICT/MV CLAIM NO. 16 AND CLAIM NO. 6 TO
NON-PRIORITY GENERAL UNSECURED
CLAIMS
1-26-17 [[238](#)]

ASHLEY MCDOW/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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).

ON THE MERITS

SIHD objections to the priority status of claims by the Employment Development Department (Nos. 39 and 46), Lee Barron (Nos. 16), and MJL & Associates (No. 6). Priority status is asserted for each claim under 11 U.S.C. § 507(a)(4), (8). In Chapter 7, the only priority claim is under 11 U.S.C. § 507(a)(2). See 11 U.S.C. § 901. As a result, the objection is sustained as to the priority status of each of these claims. The claims will be allowed as general unsecured claims.

SIHD has not complied with the Revised Guidelines for Preparation of Documents, EDC 2-901.

SIHD has aggregated the notice, objection, memorandum, declaration and exhibits. See Objection, January 26, 2017, ECF # 237.

Future violations of local rules and/or guidelines for preparation of documents may result in summary overruling of the objection.

- No tentative ruling.

- No tentative ruling.

- No tentative ruling.

7. [15-14274](#)-A-11 LOURIE FOLLAND

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-30-15 [[1](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

The case dismissed, the status conference is concluded.

8. [15-14274](#)-A-11 LOURIE FOLLAND

MOTION TO DISMISS CASE
2-21-17 [[189](#)]

UST-2

TRACY DAVIS/MV

PETER FEAR/Atty. for dbt.

TERRI DIDION/Atty. for mv.

NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

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 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).

DISCUSSION

After notice and a hearing, on the request of a party in interest the court may dismiss a Chapter 11 case. 11 U.S.C. § 1112(b). The court employs a three part analysis: (1) cause; (2) the absence of unusual circumstances; and (3) a determination of whether creditors and the estate are better served by dismissal or conversion. 11 U.S.C. § 1112(b)(1), (2).

Here, the U.S. Trustee moves to dismiss citing six different flavors of cause, including administrative compliance failures and delay. The debtor has filed a non-opposition to the motion. No creditor has expressed opposition or preferences as between dismissal or conversion. As a result, the motion will be granted.

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.

U.S. Trustee's motion to dismiss Lourie Folland's Chapter 11 case 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 motion,

IT IS ORDERED that the motion is granted.

9. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE MOTION TO COMPROMISE
BH-16 DISTRICT CONTROVERSY/APPROVE SETTLEMENT
SOUTHERN INYO HEALTHCARE AGREEMENT WITH SOUTHERN INYO
DISTRICT/MV HEALTHCARE DISTRICT AND
EVERBANK COMMERCIAL FINANCE,
INC.
3-7-17 [[247](#)]

ASHLEY MCDOW/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Southern Inyo Healthcare District and GE Optima

Dispute Compromised: Debt re Medical Equipment

Summary of Material Terms: Debtor to pay GE Optima \$150,000 for transfer/release of medical equipment

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).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a debt pertaining to medical equipment. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 249. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair

and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

VIOLATION OF LBR 9014-1

LBR 9014-1(c)(3) permits a docket control number to be used but a single time in each case. Here, SIDH has used BH-16 twice: Objection to Claims, January 26, 2017, ECF # 234, and Motion to Approve Compromise, March 7, 2017, ECF # 247. Future violations may result in summary denial of the motion.

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.

Southern Inyo Healthcare District's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 249.