

**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 30, 2016
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. [15-12827](#)-A-11 BLUEGREENPISTA CONTINUED MOTION TO USE CASH
TGM-3 ENTERPRISES, INC. COLLATERAL
RANDELL PARKER/MV 2-22-16 [[145](#)]
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

No tentative ruling.

2. [15-12827](#)-A-11 BLUEGREENPISTA MOTION TO REJECT LEASE OR
TGM-4 ENTERPRISES, INC. EXECUTORY CONTRACT
RANDELL PARKER/MV 2-25-16 [[157](#)]
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: Reject Executory Contract

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

Disposition: Granted

Order: Prepared by the movant

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).

In evaluating motions to assume or reject, the court applies the business judgment rule. See *In re Pomona Valley Med. Grp.*, 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); Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶¶ 16:1535-1536, 16:515 (rev. 2015). 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. The assumption or rejection of an unexpired lease or executory contract should be approved absent a finding that the decision is "so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)).

Applying this business judgment rule, the court gives the chapter 11 trustee's decision only a cursory review under the presumption that he acted prudently on an informed basis and in good faith. The court does not find the decision so manifestly unreasonable that it could only be based on bad faith, whim or caprice.

The court will authorize the rejection of the executory contract for water purchases between the estate and Sainand Medical, Inc., for the reasons stated in the motion.

3. [15-12827](#)-A-11 BLUEGREENPISTA MOTION TO EMPLOY WEGIS & YOUNG
TGM-5 ENTERPRISES, INC. PROPERTY MANAGEMENT, LLC AS
RANDELL PARKER/MV FARM MANAGER AND/OR MOTION FOR
COMPENSATION FOR WEGIS & YOUNG
PROPERTY MANAGEMENT, LLC, OTHER
PROFESSIONAL(S)
3-11-16 [[187](#)]
- DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
OST 3/14/16

Tentative Ruling

Application: Approval of Employment and Compensation pursuant to § 328

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).

EMPLOYMENT OF FARM MANAGER

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.

APPROVAL OF FIXED COMPENSATION AGREEMENT UNDER § 328

Section 328 authorizes professionals’ employment on a fixed fee basis. § 328(a). “A professional’s fixed or percentage fee agreement (whether entered into before or after the bankruptcy filing) must be approved by the court as part of the employment process.” Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 4:887 (rev. 2015). However, “the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a).

The court will approve the fixed fee agreement in Section 6 of the Farm Management Agreement attached as Exhibit 2, which provides for a management fee for Wegis & Young Property Management LLC in the amount of \$200 per acre per year, which fee is to increase 3% every two years as provided in the motion and exhibits. This amount totals

approximately \$2550 per month for the services provided in 2016.

APPROVAL OF COMPENSATION THROUGH DECEMBER 31, 2016 AND CERTAIN EXPENSES

The motion seeks approval of fees and expenses through December 31, 2016 as part of the motion. The court will approve such amounts under §§ 328 and 330. The proposed order shall include the specific dollar amounts approved and the dates for which such amounts apply.

4. [15-12827](#)-A-11 BLUEGREENPISTA
TGM-6 ENTERPRISES, INC.
RANDELL PARKER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CAL PURE PRODUCE
INC.
3-11-16 [[194](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
OST 3/14/16

No tentative ruling.

5. [15-12827](#)-A-11 BLUEGREENPISTA
TGM-7 ENTERPRISES, INC.
RANDELL PARKER/MV
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO ASSUME LEASE OR
EXECUTORY CONTRACT
3-11-16 [[199](#)]

No tentative ruling.

6. [15-12827](#)-A-11 BLUEGREENPISTA
TGM-8 ENTERPRISES, INC.
RANDELL PARKER/MV

MOTION FOR POST PETITION
FINANCING AND/OR MOTION TO USE
CASH COLLATERAL
3-11-16 [[205](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
OST 3/14/16

No tentative ruling.

7. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION FOR COMPENSATION FOR
FW-22 COMPANY, INC. TERENCE J. LONG, CPA, FINANCIAL
TERENCE LONG/MV ADVISOR(S)
3-2-16 [[299](#)]

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, Terence J. Long, financial consultant, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$8,235.00 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.

Terence J. Long, financial consultant'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 \$8,235.00 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.

8. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION FOR COMPENSATION FOR
FW-23 COMPANY, INC. ROBERT A. DAVIS, ACCOUNTANT(S)
3-2-16 [[306](#)]
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, Robert A. Davis, accountant, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,133.50 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.

Robert A. Davis'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 \$4,133.50 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.

9. [11-61382](#)-A-11 TONY/BARBARA MARTIN
WW-24
TONY MARTIN/MV
RILEY WALTER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION FOR ENTRY OF
DISCHARGE
2-5-16 [[321](#)]

No tentative ruling.

10. [14-11595](#)-A-11 RAY FISHER PHARMACY,
INC.
ALAN KINDRED/Atty. for dbt.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
3-31-14 [[1](#)]

No tentative ruling.

11. [14-11595](#)-A-11 RAY FISHER PHARMACY,
PWC-8 INC.

ALAN KINDRED/Atty. for dbt.
ORDER #294

HEARING ON CHAPTER 11 PLAN
CONFIRMATION
11-11-15 [[274](#)]

No tentative ruling.