

**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: APRIL 27, 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. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-45 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THE PLAN
ADMINISTRATOR, ENNIS COMMERCIAL
PROPERTIES, LLC, ENNIS
ENTERPRISES, LLC, DARYL C.
NICHOLSON, VICTORIA M.
NICHOLSON, BEN ENNIS, ROBERTA
ENNIS
4-6-16 [[1623](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

[The hearing on this matter will be concurrent with the hearing on the motion to compromise controversy in the Ben Ennis case, Case No. 10-62315, having docket control no. LRP-56.]

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: Identified in the Settlement Agreement and Release of Claims, "Parties" Section (Exhibit 1 at page 3 of 38)

Dispute Compromised: Summarized in the Recitals section of Settlement Agreement and Release of Claims

Summary of Material Terms: See Mem. P. & A. Supp. Plan Admin. Mot. for Order Approving Compromise of Claims at 4

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

The movant, the ECP Plan Administrator David Stapleton, requests approval of a compromise and settlement agreement and releases of claims between various entities and parties. This compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 1626. Under the terms of the confirmed plan in this case, the court may, but is not required to, approve the terms of a compromise or settlement agreement, as discussed in the motion.

The plan provides that the Plan Administrator shall have authority and discretion to compromise claims, but this authority is subject to the Oversight Committee's supervision and control. The Plan Administrator must obtain the required Oversight Committee approval of any compromise or settlement that the Oversight Committee determines to be material.

The Oversight Committee has approved the terms of the subject compromise and settlement. 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.

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.

ECP Plan Administrator David Stapleton'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 1 and filed at docket no. 1626.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY COLLIERIES
LRP-46 PROPERTIES, LLC TINGEY INTERNATIONAL, INC. AS
DAVID STAPLETON/MV LEASING AGENT
4-7-16 [[1629](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

Unopposed applications 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).

The confirmed plan in this case provides that the plan administrator may retain professionals such as the leasing agent sought to be employed by this application. Such retention is to be approved by this court after notice and a hearing. The leasing agent sought to be employed, Colliers Tingey International, Inc., also serves as the real estate broker for the real properties for which it will provide services as a leasing agent. Although this presents a potential conflict, given that the broker representation (or leasing agent representation) could be limited by the other form of representation or the incentives presented by the other representation, the application reveals no facts showing an actual conflict. The court will approve the employment of Colliers on the terms proposed.

3. [10-62315](#)-A-11 BEN ENNIS
LRP-56
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THE PLAN
ADMINISTRATOR, ENNIS COMMERCIAL
PROPERTIES, LLC, ENNIS
ENTERPRISES, LLC, DARYL C.
NICHOLSON, VICTORIA M.
NICHOLSON, BEN ENNIS, ROBERTA
ENNIS
4-6-16 [[2030](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

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: Identified in the Settlement Agreement and Release of Claims, "Parties" Section (Exhibit 1 at 3)

Dispute Compromised: Summarized in the Recitals section of Settlement Agreement and Release of Claims (Exhibit 1 at 3-4)

Summary of Material Terms: See Plan Admin. Mot. for an Order Approving Compromise of Claims at 2

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

The movant, the Ennis Plan Administrator David Stapleton, requests approval of a compromise and settlement agreement and releases of claims between various entities and parties. This compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 2034. Under the terms of the confirmed plan in this case, the court may, but is not required to, approve the terms of a compromise or settlement agreement, as discussed in the motion.

The plan provides that the Plan Administrator shall have authority and discretion to compromise claims, but this authority is subject to the Oversight Committee's supervision and control. The Plan Administrator must obtain the required Oversight Committee approval of any compromise or settlement that the Oversight Committee determines to be material.

The Oversight Committee has approved the terms of the subject compromise and settlement. 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.

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.

Ennis Plan Administrator David Stapleton'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 1 and filed at docket no. 2034.

4. [10-62315](#)-A-11 BEN ENNIS
LRP-57
DAVID STAPLETON/MV

MOTION TO EMPLOY COLLIERS
TINGEY INTERNATIONAL, INC. AS
BROKER(S)
4-8-16 [[2041](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

Unopposed applications 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).

The confirmed plan in this case provides that the plan administrator may retain professionals such as the leasing agent sought to be employed by this application. Such retention is to be approved by this court after notice and a hearing. The leasing agent sought to be employed, Colliers Tingey International, Inc., also serves as the real estate broker for the real properties for which it will provide services as a leasing agent. Although this presents a potential conflict, given that the broker representation (or leasing-agent representation) could be limited by the other of the two representations or the incentives presented by the other representation, the application reveals no facts showing an actual conflict. The court will approve the employment of Colliers on the terms proposed.

5. [10-62315](#)-A-11 BEN ENNIS
LRP-58
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY CHARLES DUNN
CO., INC. AS BROKER(S)
4-8-16 [[2046](#)]

Tentative Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by moving party

Unopposed applications 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).

The confirmed plan in this case provides that the plan administrator may retain professionals such as the real estate broker sought to be employed by this application. Such retention is to be approved by this court after notice and a hearing. The broker sought to be employed is Charles Dunn Co., Inc. The court will approve the employment of Colliers on the terms proposed.

6. [10-62315](#)-A-11 BEN ENNIS
LRP-7
DAVID STAPLETON/MV

MOTION TO EMPLOY COLLIERS
TINGEY INTERNATIONAL, INC. AS
BROKER(S)
4-8-16 [[2036](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Tentative Ruling

Application: Approval of Third Supplement to Application for Employment

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

Disposition: Approved

Order: Prepared by moving party

Unopposed applications 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).

The court previously approved the application of Plan administrator David Stapleton to employ Colliers Tingey International, Inc., as well as two supplements to the application that broadened and modified the scope of employment. Stapleton now requests approval of his Third Supplement to his application to employ Colliers Tingey International, Inc. The Third Supplement includes additional real properties for which Colliers Tingey International, Inc. may render its services as a real estate broker. No new disqualifying conflicts of interest have

been identified. Hale Decl. ¶ 4. These additional properties that are the subject of Colliers's representation are described more fully in the motion. The court will approve the application.

7. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT HEARING ON ELIGIBILITY TO FILE UNDER CHAPTER 9 OF TITLE 11 OF THE UNITED STATES CODE RE: CHAPTER 9 VOLUNTARY PETITION 1-4-16 [[1](#)]

ASHLEY MCDOW/Atty. for dbt.

No tentative ruling.

8. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION 1-4-16 [[1](#)]

ASHLEY MCDOW/Atty. for dbt.

No tentative ruling.

9. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE SSN-1 DISTRICT MOTION FOR RELIEF FROM AUTOMATIC STAY 3-29-16 [[118](#)]
J.M.H., II, A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM,
ASHLEY MCDOW/Atty. for dbt.
DANIEL SHELDON/Atty. for mv.
ORDER #133 DENYING

Final Ruling

The matter resolved by order approving stipulation, ECF #144, the matter is dropped from calendar.

10. [15-12827](#)-A-11 BLUEGREENPISTA TGM-6 ENTERPRISES, INC. CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CAL PURE PRODUCE INC. 3-11-16 [[194](#)]
RANDELL PARKER/MV

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

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

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

No tentative ruling.

12. [15-12827](#)-A-11 BLUEGREENPISTA
TGM-8 ENTERPRISES, INC.
RANDELL PARKER/MV

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

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

No tentative ruling.

13. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES,
EVN-15 LLC
BHAVIKA'S PROPERTIES, LLC/MV
ELAINE NGUYEN/Atty. for dbt.
CONTINUED TO JUNE 29, 2016,
ORDER

PRETRIAL CONFERENCE RE: MOTION
TO CONFIRM CHAPTER 11 PLAN
11-18-15 [[389](#)]

Final Ruling

Pursuant to Civil Minute Order, ECF #501, the pretrial conference is continued to June 29, 2016, at 1:30 p.m. No later than June 15, 2016, the parties shall file a joint status report.