

**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: MAY 22, 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. [10-62315](#)-A-11 **IN RE: BEN ENNIS**
[FRC-14](#)

CONTINUED OBJECTION TO CLAIM OF BANK OF THE SIERRA, CLAIM
NUMBER 20
1-29-2019 [\[2289\]](#)

DAVID STAPLETON/MV
RILEY WALTER
MICHAEL GOMEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The objection is continued to June 12, 2019, at 1:30 p.m.

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

MOTION FOR ADMINISTRATIVE EXPENSES
4-11-2019 [\[1899\]](#)

FRINGS RANCH, LP/MV
MICHAEL COLLINS
JOSEPH SOARES/ATTY. FOR MV.
RESPONSIVE PLEADINGS

Final Ruling

Motion: Allowance and Payment of Administrative Expenses

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

Disposition: Denied without prejudice

Order: Civil minute order

Description of Expenses: Deficiency claim on account of a contract for the care of cattle belonging to the estate

Statutory Basis for Administrative Priority: § 503(b)(1)(A) ("actual and necessary expenses of preserving the estate")

The movant and creditor, Frings Ranch, LP, seeks allowance of an administrative expense claim against the bankruptcy estate in the amount of \$3,665,806.57. The claim is for the movant's alleged post-petition care of livestock belonging to the bankruptcy estate.

The chapter 11 trustee, the Official Committee of Unsecured Creditors, and Overland Stockyard, Inc. oppose allowance of the claim.

The motion will be denied without prejudice as the movant has not served all unsecured creditors in the case.

"[T]he FRBP do not specify the parties to be served with the motion [for administrative expenses]."

Priority Claims, Rutter Group Prac. Guide Bankruptcy (Nat. Ed.) Ch. 17-C; see also Fed. R. Bankr. P. 4001(c), (d).

"At a minimum, however, the following parties should be served: (a) Trustee/DIP: The moving party must serve the trustee or DIP and all entities as the court directs. [FRBP 9013] (b) U.S. Trustee: The U.S. Trustee should also be served. [See FRBP 9034] (c) *Unsecured creditors: Because they may be affected by an order compelling payment of an administrative expense, it is prudent to serve all unsecured creditors and the attorney for any official creditors' or equity security holders' committee.*"

Priority Claims, Rutter Group Prac. Guide Bankruptcy (Nat. Ed.) Ch. 17-C (emphasis added).

As a courtesy to the parties, below the court identifies issues that should be addressed, without limitation, if the movant decides to refile this motion:

- 1) Whether the absence of court approval of the stipulation between the trustee and the movant, associated with the movant's October 8, 2018 stay relief motion ("Stay Relief Stipulation"), renders the stipulation unenforceable;
- 2) Whether the absence of court approval of the Stay Relief Stipulation renders the stipulation non-binding;
- 3) Whether the trustee is prohibited from seeking court approval of the Stay Relief Stipulation at this time;
- 4) Whether state law has any relevance to the validity and enforceability of the Stay Relief Stipulation, given the absence of bankruptcy court approval;
- 5) Whether the movant is judicially estopped from taking the position that it did not waive a deficiency claim against the estate (it appears to the court that the movant's October 8 stay relief motion was granted because the trustee agreed to the granting of the motion, pursuant to the parties' Stay Relief Stipulation;
- 6) What portion, if any, of the movant's claim arose pre-petition;
- 7) What portion, if any, of the movant's claim represents actual and necessary expenses for the preserving of the bankruptcy estate;
- 8) What portion, if any, of the movant's claim represents direct and substantial benefit to the bankruptcy estate;
- 9) What portion, if any, of the movant's claim represents an actual benefit to the bankruptcy estate, measurable in assets distributable to creditors or by the elimination of claims which would otherwise require creditors to share the assets with others.

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.

Frings Ranch, LP's motion for allowance of an administrative expense claim has been presented to the court. Having considered the motion and responses and replies pertaining to the motion,

IT IS ORDERED that the motion is denied without prejudice.

3. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-47](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO
EMPLOY RITCHIE BROS. AUCTIONEERS AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
5-5-2019 [\[2004\]](#)

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

Final Hearing

The hearing on this motion has been re-noticed for June 5, 2019 at 10:30 a.m. ECF No. 2038.

4. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-44](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH COLUMBIA RIVER PROCESSING, INC.
4-8-2019 [\[1858\]](#)

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

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Denied without prejudice

Order: Civil minute order

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.*

In undertaking an examination of the settlement, we emphasize that this responsibility of the bankruptcy judge, and ours upon review, is not to decide the numerous questions of law and fact raised by appellants but rather to canvass the issues and see whether the settlement "*fall[s] below the lowest point in the range of reasonableness*", *Newman v. Stein*, 464 F.2d 689, 693 (2 Cir.), *cert. denied sub nom. Benson v. Newman*, 409 U.S. 1039, 93 S.Ct. 521, 34 L.Ed.2d 488 (1972).

Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983).

While not conclusive, the court may give weight to the opinions of the trustee, the parties, and their attorneys. "The judge and court may consider the principals' belief that the factors outlined above (and others) have been explored and considered and that the compromise is fair, reasonable, and the wisest course." *Port O'Call Inv. Co. v. Blair (In re Blair)*, 538 F.2d 849, 851 (9th Cir. 1976).

The movant requests approval of a compromise between the chapter 11 trustee and Columbia River Processing, Inc. (CRP).

Under the terms of the compromise, CRP will pay \$15,000 to the estate in full satisfaction of: CRP's pending claims against the estate and the estate's pending counterclaims against CRP. In addition, the parties will dismiss the pending adversary proceeding where the claims and counterclaims are pending, an agreement between the parties for CRP's purchase of milk from the estate will be terminated, and the parties will give each other mutual releases. The compromise is reflected in the settlement agreement attached to the motion as an exhibit.

The motion will be denied. The court cannot approve the compromise. The motion does not give sufficient facts for the court to independently determine whether the compromise satisfies the A & C

case factors and whether it falls below the lowest point in the range of reasonableness.

First, the motion makes no effort to summarize the dispute being settled. It refers the court to the actual settlement agreement. The settlement gives a mere cursory outline of the dispute.

For example, in the pending lawsuit involving the parties, there are counterclaims for turnover, stay violation(s), and breach(es) of the covenant of good faith and fair dealing.

However, the motion does not identify the object of the turnover request and does not describe the background to the trustee seeking stay violation and covenant breach damages from CRP.

Second, nothing in the moving papers states what are the actual stakes in the dispute between the parties.

All the court gleans from the papers is that CRP, a purchaser of milk from a dairy operated by the estate, filed an adversary proceeding against the bankruptcy estate in June 2018, seeking declaratory relief, relief from the automatic stay, and adequate protection.

The motion says nothing about what is monetarily at stake for the estate, on account of these claims.

The estate answered CRP's complaint and also asserted counterclaims against CRP, seeking turnover of unspecified property and seeking damages for automatic stay violation(s) and breach(es) of obligations of good faith and fair dealing.

The motion says nothing about what is monetarily at stake for the estate, on account of these counterclaims.

As a result, the court cannot assess the proposed \$15,000 payment's reasonableness and benefit to the estate. Without knowing the actual value of what the estate is giving up in its counterclaims, for example, the court cannot decide the value of the \$15,000 to the estate.

Third, as pointed out by CRP, the attached settlement agreement is an outdated draft the parties were exchanging in the course of their settlement negotiations. If and when this motion is re-filed, this deficiency should be corrected. And, the motion should clarify what the settlement agreement provides specifically with respect to the milk-buying agreement between the parties. Is the agreement being terminated or rejected? This is important because a rejection of an executory contract is not necessarily also a termination of it.

Given the above deficiencies, the motion will be denied.

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.

The chapter 11 trustee's motion to approve a compromise has been presented to the court. Having considered the motion and corresponding responses and replies pertaining to the motion, if any,

IT IS ORDERED that the motion is denied without prejudice.