

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: JUNE 28, 2021
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES

RULINGS

COURT REOPENING

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be

heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-20485](#)-A-12 **IN RE: PATRICK/PATRICIA MCCAULEY**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
2-10-2021 [\[1\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.

No Ruling

2. [21-20485](#)-A-12 **IN RE: PATRICK/PATRICIA MCCAULEY**
[HLF-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 12 TO CHAPTER 11
6-7-2021 [\[52\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.

Tentative Ruling

Motion: Conversion to Chapter 11, Subchapter V

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

Disposition: Denied

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

Conversion of a Chapter 12 case is governed by 11 U.S.C. § 1208. Subdivisions (b)-(d) deal only with dismissal. Conversion is governed by subdivisions (a) and (e). Those provisions provide:

(a) *The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.*

...

(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

11 U.S.C. § 1208 (emphasis added).

Section 1208(a) limits a Chapter 12 debtor's right to convert to Chapter 7. This is plain from the language of the statute. And though no party has objected, the court feels constrained by the language of the statute. 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.

Patrick Macauley and Patricia Macauley's 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 denied.

3. [21-21397](#)-A-11 **IN RE: CHRISTOPHER FIGUEROA**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-16-2021 [[1](#)]

GORDON BONES/ATTY. FOR DBT.

No Ruling

4. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**
[RLC-17](#)

MOTION FOR COMPENSATION FOR NORD & ASSOCIATES CPAS,
ACCOUNTANT(S)
6-9-2021 [\[228\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

Final Ruling

Motion: Compensation (Nord & Associates)

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

Disposition: Denied without prejudice

Order: Civil minute order

The application is denied without prejudice.

DISCUSSION

Two procedural issues preclude approving this application. First, applications for compensation must be served on a broad spectrum of parties in interest.

Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, *shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of*

...

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000....

Fed. R. Bankr. P. 2002(a)(6) (emphasis added).

Here the applicant seeks compensation in the amount of \$2,750.00 and reimbursement of expenses in the amount of \$0.00. The Certificates of Service offered in support of the motion do not reflect service complaint with Rule 2002(a)(6). Moreover, were debtor's counsel to contend that service of all required persons did, in fact, occur at or about the time the application is filed, he could not cure the defect by now filing a Certificate of Service so indicating. LBR 9014-1(e)(2).

Second, the application fails to state with particularity the relief sought. Rule 9013 states:

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The *motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought*. Every written motion, other than one which may be considered ex parte, shall

be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the trustee or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

Fed. R. Bankr. P. 9013 (emphasis added).

Here, the application fails to specify whether the compensation sought is interim or final. This does not comply with Rule 9013.

For these reasons, the application is denied without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Slidebelts, Inc.'s application has been presented to the court. Having considered the application together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the application is denied without prejudice.

5. [20-24098](#)-A-11 **IN RE: SLIDEBELTS, INC.**
[RLC-1](#)

MOTION TO AMEND O.S.T.
6-14-2021 [\[234\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling