

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

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY

**DATE:** JULY 18, 2018

**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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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. [17-13112](#)-A-11     **IN RE: PIONEER NURSERY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
8-11-2017    [[1](#)]

PETER FEAR

**No Ruling**

2. [17-13112](#)-A-11     **IN RE: PIONEER NURSERY, LLC**  
[FW-34](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH NORTH AMERICAN PLANTS INC.  
6-20-2018    [[525](#)]

PETER FEAR  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Approve Compromise of Controversy

**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).

**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 licensing violation dispute with North American Plants, Inc. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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.

Pioneer Nursery, Inc.'s motion to approve a compromise 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. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion an exhibit and filed at docket no. 528.

3. [18-11017](#)-A-11     **IN RE: VICTORY OUTREACH INC. VISALIA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
3-23-2018    [[1](#)]

MICHAEL TOTARO

#### **Final Ruling**

The status conference is continued to August 1, 2018, at 1:30 p.m.

4. [15-12827](#)-A-11     **IN RE: BLUEGREENPISTA ENTERPRISES, INC.**  
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)  
6-13-2018    [\[822\]](#)

JAMES SALVEN/MV

### **Final Ruling**

**Application:** Allowance of Final 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, James E. Salven, accountant, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$27,917.00 and reimbursement of expenses in the amount of \$455.86. The applicant also asks that the court (1) allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis, and (2) authorize payment of previously approved but unpaid interim fee awards.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis. It also authorizes payment of previous awarded but unpaid fees.

### **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.

James E. Salven's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$27,917.00 and reimbursement of expenses in the amount of \$455.86. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis and authorizes payment of all awarded but unpaid interim fees. Aggregate compensation of \$62,459.00 and costs of \$2,056.18. At his discretion the applicant may accept lesser sums in satisfaction of these amounts.

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.

5. [15-12827](#)-A-11     **IN RE: BLUEGREENPISTA ENTERPRISES, INC.**  
[TGM-35](#)

MOTION FOR COMPENSATION FOR RANDELL PARKER, CHAPTER 11  
TRUSTEE(S)  
6-8-2018    [[815](#)]

RANDELL PARKER/MV  
TRUDI MANFREDO/ATTY. FOR MV.

### **Final Ruling**

**Application:** Allowance of Compensation and Expense Reimbursement  
(Chapter 11 trustee)

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

**Disposition:** Approved

**Order:** Civil minute order

Unopposed applications 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, Randell Parker, the chapter 11 trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

The starting point in reviewing a chapter 11 trustee's fees is § 326 of the Bankruptcy Code. Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 11 case. See, e.g., *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (reviewing court's order on chapter 7 trustee's compensation).

In addition, the court must also consider § 330(a)(1), (3), and (7). See *In re Salgado-Nava*, 473 B.R. 911, 920 n.11 (B.A.P. 9th Cir. 2012) ("But we cannot assume that Congress inadvertently included chapter 11 trustees within the scope of §330(a)(7)."). "Section 330(a)(7) applies to all trustees under all chapters." *Id.* at 919.

Under § 330(a)(7), in determining the reasonableness of a chapter 11 trustee's compensation, "the court shall treat such compensation as a commission, based on § 326." Congress has linked the reasonableness of a chapter 11 trustee's compensation to the commission rates set forth in § 326 for the vast majority of cases. *Id.* at 916-17, 920.

But for chapter 11 trustees, unlike chapter 7 trustees, § 330(a)(3) applies. BAPCPA's enactment in 2005 "amended § 330(a)(3) so that the only types of trustees that come within its ambit are chapter 11 trustees . . . ." *Id.* "On the other hand, if extraordinary circumstances exist, or if chapter 11 trustee fees are at issue, the bankruptcy court may be called upon in those cases to determine whether there exists a rational relationship between the amount of the commission and the type and level of services rendered. In the case of a chapter 11 trustee, this determination necessarily requires consideration of the § 330(a)(3) factors, and also ordinarily includes a lodestar analysis." *Id.* at 921 (emphases added). In short, the reasonableness factors listed in § 330(a)(3) continue to directly apply to chapter 11 trustees even though chapter 7 trustees are no longer subject to its terms. See *id.*

The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that a rational relationship exists between the commission amount of § 326(a) and the type of services rendered, § 330(a)(3), (7); and (3) that expenses to be reimbursed are actual and necessary.

The court approves the application and allows compensation in the amount of \$26,085.33 and reimbursement of expenses in the amount of \$6.40. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## 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.

Randell Parker's application for allowance of 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 a final basis. The court allows the trustee compensation in the amount of \$26,085.33 and reimbursement of expenses in the amount of \$6.04. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis. Aggregate compensation is allowed on a final basis in the amount of \$75,340.00 and aggregate costs are allowed on a final basis in the amount of \$400.15.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code.

6. [15-12827](#)-A-11     **IN RE: BLUEGREENPISTA ENTERPRISES, INC.**  
[TGM-36](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES  
ATTORNEY(S)  
6-20-2018    [\[831\]](#)

RANDELL PARKER/MV  
TRUDI MANFREDO/ATTY. FOR MV.

### Final Ruling

**Application:** Allowance of Final 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, Trudi G. Manfredo, attorney for trustee Randell Parker, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$42,006.00 and reimbursement of expenses in the amount of \$3,231.49. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

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 a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

## **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.

Trudi G. Manfredo's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$4,006.00 and reimbursement of expenses in the amount of \$3,231.49. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.



7. [18-11651](#)-A-11      **IN RE: GREGORY TE VELDE**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
4-26-2018    [[1](#)]

RILEY WALTER

**No Ruling**

8. [18-11651](#)-A-11      **IN RE: GREGORY TE VELDE**  
[GGL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-20-2018    [[408](#)]

SINECO CONSTRUCTION LLC/MV  
RILEY WALTER  
VICTOR LUKE/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Stay Relief (Foreclosure of Mechanics/Construction Lien)

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

**Disposition:** Denied

**Order:** Civil minute order

Sineco Construction, LLC ("SCL") alleges it holds a mechanics/construction lien against Gregory te Velde's ("te Velde") Lost Valley Farm dairy in Oregon. Oregon law limits the duration of that lien to 120 days, unless the creditor perfects it by filing a civil action within that period. ORS § 87.055. SCL's lien was recorded on April 18, 2018 and, without action by SCL or extension by operation of law, that lien expires on or about August 16, 2018. Citing the forthcoming expiration of the lien, SCL moves for stay relief under 11 U.S.C. § 362(d)(1)(lack of adequate protection) moves for stay relief to file a civil action, give notices as is appropriate and foreclose its lien. The motion is opposed by te Velde and the Official Committee of Unsecured Creditors, citing the tolling provisions of 11 U.S.C. § 108(c). The debtor and the committee have the better side of the argument.

**DISCUSSION**

Service

Motions for stay relief are contested matters that must be served under Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 7004, 9013, 9014. Service must be on the debtor, debtor's counsel and the committee of unsecured creditors. *Id.*; Fed. R. Bankr. P. 4001(a)(3); *In re LSSR, LLC*, 2013 WL 2350853 (9th Cir. BAP May 29, 2013). SCL did not do so. Proof of Service, June 20, 2018, ECF # 414.

But because te Velde opposed the motion on the merits by joining in Committee of Unsecured Creditors opposition and because the court intends to deny the motion on the merits, the court has disregarded the service defect.

#### Scope of the Relief Requested

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

SCL contends that it is merely seeking relief to preserve the status quo by filing the action to perfect its lien, but not actually seeking foreclosure. Reply p. 2, lines 23-25, July 11, 2018, ECF # 519. The problem is that the motion, and ancillary documents supporting it, are at best ambiguous. The motion seeks relief to send notices to property owners and mortgages, respond in writing to requests for information, file a lawsuit and take necessary actions to consolidate the SCL construction lien with other construction foreclosure actions. Motion, p. 2, June 20, 2018, ECF # 408. Contrast that with the relief requested in the Memorandum of Points and Authorities, **"Sineco seeks relief from the automatic stay for cause in order to foreclose its lien without delay."** Memorandum of Points and Authorities, p. 1, lines 24-26, June 20, 2018, ECF # 409 (emphasis added); see also *Id.* at p. 3 ("Sineco needs relief from the automatic stay to foreclose its construction lien because otherwise there is not adequate protection for Sineco's lien against, and interest in, the property.").

As it must, this court construes ambiguity against the pleader and the court deems the motion to be one for relief to proceed through foreclosure, and not for the more limited relief of commencement of the action and giving notices.

#### On the Merits

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--(1) for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1).

#### *Protecting SCL's Rights Against the Debtor*

But the bankruptcy code provides a solution to SCL's problem. Section 108(c) provides:

"Except as provided in section 524 of this title, **if applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor**, or against an individual with respect to which

such individual is protected under section 1201 or 1301 of this title, **and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--(1) the end of such period,** including any suspension of such period occurring on or after the commencement of the case; **or (2) 30 days after notice of the termination or expiration of the stay** under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim." 11 U.S.C. § 108(c) (emphasis added).

As one commentator stated, "The purpose of § 108(c) is to prevent a debtor from taking advantage of the bankruptcy scheme by filing for bankruptcy and then waiting for the statute of limitations to run on the creditor's claim." [*Hazen First State Bank v. Speight* (8th Cir. 1989) 888 F.2d 574, 577; see also *In re Confidential Investigative Consultants, Inc.* (BC ND IL 1995) 178 BR 739, 749]." March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Representing Creditors in Bankruptcy § 3:177 (Rutter Group 2018).

That commentator continued, "Where state law specifies a deadline for bringing a foreclosure action, the deadline may be extended until after the automatic stay terminates or expires. [11 USC § 108(c) (internal citations omitted); see also *In re Shamus Holdings, LLC* (1st Cir. 2011) 642 F.3d 263, 268—filing of debtor's bankruptcy petition tolled statutory period for mortgagee to commence judicial foreclosure action against debtor under Massachusetts law]." *Id.* at 8:249.

As the court in *Shamus Holdings* aptly observed:

**"Creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code."** *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15, 20, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000). **Consequently, when federal bankruptcy law supplies a rule that speaks directly to the right at issue, that rule controls.** See *Jafari v. Wynn Las Vegas, LLC (In re Jafari)*, 569 F.3d 644, 648 (7th Cir.2009). **So it is here: while Massachusetts law defines the parties' rights and obligations under the mortgage (including the duration of the limitations period), section 108(c) of the Bankruptcy Code speaks directly to the enlargement of state limitations periods.** See *Jinks v. Richland Cnty.*, 538 U.S. 456, 461 & n. 1, 123 S.Ct. 1667, 155 L.Ed.2d 631 (2003). Accordingly, section 108(c) controls here." *Shamus Holdings* at 267-68."

SCL argues ". . . **Sineco may have difficulty persuading a Morrow County, Oregon Circuit Court judge, a title company insuring title to the [p]roperty after any foreclosure sale, or any third person who might purchase the property, that 11 U.S.C. § 108(c) extends the right to foreclose Sineco's lien past the 120 day duration period.**" Memorandum of Points and Authorities p. 6, lines 4-8, June 20, 2018, ECF # 409 (emphasis added). This court does not share SCL's lack of

confidence as to Oregon state court officials and, at any rate, SCL's lack of confidence does not constitute a basis for stay relief.

#### *Protecting SCL's Rights Against Third Parties*

SCL argues that the need to name third parties in the Oregon foreclosure action constitutes a basis to grant the motion. This court disagrees. First, this court read ORS § 87.055's 120 day limitation as a deadline for action against the debtor, but not as to third parties. Second, there is no prohibition for SCL from filing its action under § 87.055 against all parties, except te Velde, for the purposes of stopping the running of the 120 day deadline, since the stay of § 362 does not protect third parties. That action can be stayed pending resolution of the bankruptcy and, if te Velde's bankruptcy is dismissed, he can be added to that action at a later time.

In the alternative, SCL prays declaratory relief parties may not contend that it has failed to comply with the 120-day bar date of ORS § 87.055. Such an argument fails for two reasons. First, it would require an adversary proceeding. Fed.R. Bankr. P. 7001. Second, this court's jurisdiction over such an adversary proceeding is questionable. 28 U.S.C. § 1334.

#### *Why More Limited Relief is Not Appropriate*

This court could grant SCL the lesser relief of authority to file the action, give notices, and respond to inquiries, but nothing further. But it will not do so. Part of the relief a party obtains with a petition under chapter 11 is a respite from creditors efforts. Granting more limited relief, particularly when unnecessary, deprives the debtor of a portion of the benefits of chapter 11 by requiring te Velde to expend precious resources, viz., time and money, to monitor the Oregon foreclosure action for compliance with such a limited stay relief order.

For each of these reasons the motion will be denied.

#### **MOTION FOR STAY RELIEF, GGL-2**

This court is mindful that SCL has filed a duplicate motion for the same stay relief to be heard on August 1, 2018. Reply p. 3, lines 8-17, July 11, 2018, ECF # 519. It did so to address the service problem raised by the debtor. Because this court has ruled on the merits of the action, it will issue an order denying the second, duplicative motion for stay relief.

#### **CIVIL MINUTE ORDER**

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

Sineco Construction, LLC's motion for stay relief to foreclose its mechanics/construction lien has been presented to the court. Having considered the motion together with papers filed in support and

opposition, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied; and

IT IS FURTHER ORDERED that the Clerk issue an order denying SCL's motion for stay relief, GGL-2, July 11, 2018, ECF # 512, at his earliest opportunity and no party need file opposition to that motion.

9. [18-11651](#)-A-11      **IN RE: GREGORY TE VELDE**  
[WW-12](#)

MOTION TO PAY  
6-8-2018    [[332](#)]

GREGORY TE VELDE/MV  
RILEY WALTER

### **Final Ruling**

**Motion:** Pay Accrued Unpaid Pre-Petition Vacation Pay  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted to the extent provided  
**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).

### **RELIEF REQUESTED**

Debtor Gregory te Velde ("te Velde") prays leave to pay accrued, unpaid pre-petition vacation pay to his employees. All amounts are within the cap of 11 U.S.C. § 507(a)(4) and were earned within 180 days of the petition.

### **DISCUSSION**

Debtors must pay unpaid wages and vacation pay not later than the date provided in the confirmed plan or on the effective date of the plan, depending on whether the class accepted the plan. 11 U.S.C. § 1129(a)(9)(B).

Section 507(a) of the bankruptcy code provides, 'The following expenses and claims have priority in the following order . . . .[f]ourth, allowed unsecured claims, but only to the extent of \$12,8501 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition

or the date of the cessation of the debtor's business, whichever occurs first, for--(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual. .  
."

te Velde prays leave to pay 12 employees pre-petition vacation pay. The motion will be granted to the extent provided herein.

#### **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.

Gregory te Velde's motion to pay § 507(a)(4) (accrued vacation pay) 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 to the extent provided herein;

IT IS FURTHER ORDERED that Gregory te Velde may those persons and amounts specified in Exhibit A in Support of the Motion, June 8, 2018, ECF # 335, but only to the extent that the total wages, vacation and other compensation (including that approved in ECF # 52) paid to any single individual does not exceed \$12,850;

IT IS FURTHER ORDERED that the order is without prejudice to any party in interest asserting arguments that the individual so paid does not qualify for priority treatment under 11 U.S.C. § 507(a)(4);

IT IS FURTHER ORDERED that if the event that payments reorders the distribution scheme set forth in the Bankruptcy Code, including but not limited to 11 U.S.C. §§ 507, 726, and retrieval of those funds is necessary, the debtor shall at his own cost and expense recover said payments from those individuals paid; and

IT IS FURTHER ORDERED that all other relief is denied.

10. [18-11651](#)-A-11     **IN RE: GREGORY TE VELDE**  
[WW-16](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM  
LAW GROUP FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
6-20-2018    [[415](#)]

RILEY WALTER

### **Tentative Ruling**

**Application:** Allowance of Interim Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

Walter Wilhelm Law Group ("Walter Wilhelm") is counsel for debtor in possession Gergory te Velde in this chapter 11 case. Walter Wilhelm seeks interim compensation of \$172,788.50 and costs of \$12,938.78, for an aggregate of \$185,727.28. Walter Wilhelm is holding a retainer of \$185,922.10. The U.S. Trustee opposes the fee application because Walter Wilhelm has not proffered evidence that its hourly rates are commensurate with those of skilled practitioners charge for non-bankruptcy work.

### **COMPENSATION AND EXPENSES**

In this Chapter 11 case, Walter Wilhelm, counsel for the debtor in possession, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$172,788.50 and reimbursement of expenses in the amount of \$12,938.78.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession 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). Those factors include:

- (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary

- (B) compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. §330(a)(3).

The U.S. Trustee correctly observes that Walter Wilhelm has not offered evidence of its hourly rates vis-à-vis comparably situated non-bankruptcy lawyers. But the court does not find that argument persuasive in this instance. First, this is an interim fee application, subject to later adjustment. Second, the litmus test for fees is reasonableness of the fees, the comparability of Walter Wilhelm's hourly rates compared to non-bankruptcy practitioners is but one factor, a tool, in determining the reasonableness of those fees. Third, and finally, this court finds that the hourly rates are, in fact, consistent with the rates of other practitioners. As the Ninth Circuit has held that the court may rely on its own knowledge of prevailing hourly rates in awarding fees. *Ingram v. Oroudijan*, 647 F.3d 925, 928 (9th Cir. 2011). Here, paralegals are billed at \$95-135 per hour, associates at \$185-200 per hour and senior partners at \$440-490 per hour. This is consistent with the prevailing hourly rate and the court so finds.

Mindful of the complexity and acrimony associated with the case, viz. the docket is now just short of 500 entries, 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.

Walter Wilhelm'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 \$172,788.50 and reimbursement of expenses in the amount of \$12,938.78. 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.

11. [11-17165](#)-A-11     IN RE: OAKHURST LODGE, INC., A CALIFORNIA CORPORATION

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
6-22-2011    [[1](#)]

DONNA STANDARD

**No Ruling**

12. [18-11651](#)-A-11     IN RE: GREGORY TE VELDE  
[WW-14](#)

MOTION TO BORROW  
7-3-2018    [[472](#)]

GREGORY TE VELDE/MV  
RILEY WALTER

**Final Ruling**

At the request of the moving party, the motion is continued to August 1, 2018. Not later than 7 days prior to the continued hearing the debtor shall, and any other party in interest may, file a status report. A civil minute order shall issue.