

**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: THURSDAY

DATE: JULY 18, 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. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**
[FW-42](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JP FARMS, A CALIFORNIA PARTNERSHIP
6-19-2019 [\[692\]](#)

PIONEER NURSERY, LLC/MV
PETER FEAR

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. 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'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 as exhibit and filed at docket no. 695.

2. [09-14339](#)-A-11 **IN RE: DAMON/CLARA HOLIWELL**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-24-2019 [\[199\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
JACOB EATON
THERON COVEY/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 1308 South Chester Ave., Bakersfield, CA

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The movant is seeking stay relief as to the subject property in order "to exercise all available rights and remedies pursuant to state law with respect to the Property." ECF No. 199 at 4.

However, there is no automatic stay in existence as to the property. This case was filed on May 12, 2009. The court entered an order confirming the debtors' chapter 11 plan on October 5, 2009. The order provides that "[e]xcept as provided in Plan, the assets owned

by Debtors shall revest in Debtors upon closure of the case." ECF No. 112 (emphasis added).

From the court's review of the debtors' plan, the revestment provision of the plan confirmation order applies to the subject property. See ECF Nos. 99 & 94.

This case was closed twice, once on March 6, 2011 and another time on January 22, 2019 (after an earlier reopening). ECF Nos. 165 & 195.

Under the terms of the plan confirmation order, as well as under 11 U.S.C. § 362(c)(2)(A) (providing that the stay continues until the earliest of "the time the case is closed," among others), the stay as to the estate expired on March 6, 2011. The same is true as to the stay with respect to the debtors, under section 362(c)(2)(A). That stay also expired on March 6, 2011.

After March 6, 2011, the case was reopened on November 19, 2018. ECF No. 183.

The court is aware of no legal authority re-imposing the automatic stay after the March 6, 2011 closure of the case.

The court also notes that the case was closed again on January 22, 2019.

There is no automatic stay in this case. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

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.

U.S. Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied as moot.

3. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[JMB-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2019 [\[1985\]](#)

RABOBANK, N.A./MV
MICHAEL COLLINS
JOSEPH VANLEUVEN/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The motion is continued to August 28, 2019, at 1:30 p.m.

4. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-55](#)

MOTION FOR ORDER ESTABLISHING BAR DATE FOR SECTION 503(B) (9)
CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS
6-17-2019 [\[2175\]](#)

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

No Ruling

5. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-56](#)

MOTION TO ABANDON
6-19-2019 [\[2189\]](#)

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

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business
assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: 2000 MB Sports Ski Boat and Trailer

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted. The order will compel abandonment of only the business and its assets that are described in the motion.

6. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[WW-57](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH COLUMBIA RIVER PROCESSING, INC.
6-5-2019 [[2130](#)]

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

No Ruling

7. [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

8. [11-17165](#)-A-11 **IN RE: OAKHURST LODGE, INC., A CALIFORNIA**
CORPORATION
[DMS-50](#)

CONTINUED MOTION FOR DISTRIBUTION AND/OR MOTION FOR RELEASE
OF FUNDS HELD IN TRUST
5-24-2019 [\[582\]](#)

OAKHURST LODGE, INC., A
CALIFORNIA CORPORATION/MV
DONNA STANDARD
RESPONSIVE PLEADING

No Ruling