

**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: TUESDAY
DATE: AUGUST 11, 2015
CALENDAR: 1:30 P.M. CHAPTER 11 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.

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. [10-62315](#)-A-11 BEN ENNIS
LRP-52
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
WILLIAM FREEMAN/Atty. for mv.

MOTION TO SELL
7-21-15 [[1955](#)]

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 3450 Stine Road, Bakersfield, CA

Buyer: Rami and Claudia Haddad

Sale Price: \$1,342,500

Sale Type: Private sale subject to overbid opportunity

Real Estate Broker: Paccom Realty Advisors, Inc. d/b/a/ Cushman and Wakefield Pacific

Compensation Requested: 5% commission (assuming no other broker represents buyer)

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).

SECTION 363(b)

Section 363 is made applicable by the provisions of the confirmed Plan in this case. Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a) (5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

COMMISSION

The court approves the 5% commission to be paid to the broker named above. In the event another broker represents an overbidder, a 6% commission may be paid without further order of this court, and split between the brokers according to customary practice.

SECTION 363(f) RELIEF

The Nicholson parties have stipulated to this sale being free and clear of the Nicholson parties' liens, claims or interests, if any, in the real property described above. The stipulation is attached as Exhibit 2. Such lien, claim or interest shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. 11 U.S.C. § 363(f). The court will not approve the sale free

and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The order shall also include the following statement verbatim: "If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or debtor in possession shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."

GOOD FAITH PURCHASER

The court finds that the proposed buyer is a good faith purchaser. 11 U.S.C. § 363(m). Stapleton has no relationship with the proposed buyer. No evidence of any fraud, collusion, or unfair advantage by the parties to the sale has been offered.

2. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION TO PAY
FLG-10 COMPANY, INC. 7-14-15 [[142](#)]
ELLIOTT MANUFACTURING COMPANY,
INC./MV
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Premature Payment of Priority Wages

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

Disposition: Granted

Order: Prepared by moving party

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).

Debtor in possession Elliott Manufacturing Company, Inc. prays leave to pay nine employees pre-petition wage claims earned as accrued vacation under 11 U.S.C. § 507(a)(4)(A). No party has opposed the motion. It will be granted, (1) subject to the amount limitation of \$12,475.00; and (2) without prejudice to recovery should the estate be administratively insolvent.

3. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION FOR COMPENSATION FOR
FLG-9 COMPANY, INC. TERENCE J. LONG, OTHER
TERENCE LONG/MV PROFESSIONAL(S)
7-14-15 [[135](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Interim 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, Terence J. Long, CPA, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$8910.00 and reimbursement of expenses in the amount of \$87.75.

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 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.

Terence J. Long'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 \$8910.00 and

reimbursement of expenses in the amount of \$87.75. 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.

4. [15-10966](#)-A-11 RODNEY HARON

STATUS CONFERENCE RE: VOLUNTARY
PETITION
3-13-15 [[1](#)]

TIMOTHY SPRINGER/Atty. for dbt.

No tentative ruling.

5. [13-13284](#)-A-11 NICOLETTI OIL INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-7-13 [[1](#)]

DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.

6. [13-13284](#)-A-11 NICOLETTI OIL INC.
KR-14

DISCLOSURE STATEMENT FILED BY
DEBTOR NICOLETTI OIL INC.
6-30-15 [[492](#)]

DAVID GOLUBCHIK/Atty. for dbt.

No tentative ruling.

7. [13-13284](#)-A-11 NICOLETTI OIL INC.
UST-1
TRACY DAVIS/MV

CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO CONVERT
CASE FROM CHAPTER 11 TO CHAPTER
7
3-27-15 [[435](#)]

DAVID GOLUBCHIK/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

8. [14-11991](#)-A-11 CENTRAL AIR
CONDITIONING, INC.
STATE FARM GENERAL INSURANCE
COMPANY/MV
HAGOP BEDOYAN/Atty. for dbt.
DAVID BRISCO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-7-15 [[505](#)]

Tentative Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee (or debtor in possession) are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor does not appear on the proof of service for either the motion or the notice of hearing. If service on the debtor is required, and the debtor is represented by an attorney, then the attorney must also be served pursuant to Rule 7004(g). Fed. R. Bankr. P. 7004(g). The proof of service does not indicate service was made on the debtor's attorney in this bankruptcy case. Further, service on Carlos C. Cabral, an attorney, does not suffice. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

Additionally, the proofs of service have not been filed in accordance with the court's local rules. The proof of service is required to be filed as a separate document. LBR 9014-1(e)(3). A proof of service has been attached to the motion. Another proof of service was attached to the notice and yet another proof of service attached to the amended notice.

Further, the motion fails to use a docket control number in accordance with the court's local rules. LBR 9014-1(c). Such a docket control number must appear, as designated in the local rules, on each document filed in support of or opposition to a motion. The number must even appear on the proofs of service. LBR 9014-1(e)(3).

Lastly, the notice fails to comply with LBR 9014-1(d) and (f). The notice of hearing does not advise potential respondents whether and

when written opposition is required, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. The notice also does not select either the notice procedure of LBR 9014-1(f)(1) or (f)(2).