

**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: AUGUST 31, 2016
CALENDAR: 1:30 P.M. CHAPTER 11 AND 9 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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

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. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY MICHAEL J.
FRC-2 PROPERTIES, LLC GOMEZ AS ATTORNEY(S)
DAVID STAPLETON/MV 8-2-16 [[1725](#)]
PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL CONTINUED MOTION FOR
LL-2 PROPERTIES, LLC COMPENSATION BY THE LAW OFFICE
OF LOEB & LOEB LLP FOR LANCE N.
JURICH, SPECIAL COUNSEL(S)
6-23-16 [[1661](#)]

PETER FEAR/Atty. for dbt.
LANCE JURICH/Atty. for mv.

Final Ruling

Application: Approval of Final Compensation and Expense Reimbursement under Confirmed Plan in Chapter 11

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, Loeb & Loeb, LLP, the applicant requests that the court approve final compensation in the amount of \$19,868.00 and reimbursement of expenses in the amount of \$261.86. 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 applicant further requests that the court approve payment of the holdback amount of \$3,741.50.

Here, a plan has been confirmed. Once a plan has been confirmed, its provisions bind the debtor, creditors, equity security holders, and other parties in interest. 11 U.S.C. § 1141(a). An exception to this rule is made for the discharge provisions of § 1141(d)(2) and (3). *Id.* The plan's terms governing compensation of professionals, therefore, govern the court's decision on this matter. And the content of such provisions "is primarily up to the genius of the drafter." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 560 (B.A.P. 9th Cir. 2002).

The confirmed plan in this case states that compensation for retained professionals is subject to bankruptcy court approval. It also provides that compensation paid for services rendered and expenses

incurred must be "reasonable." The plan's reasonableness standard for payment of compensation makes sense in light of § 1129(a)(4).

Section 1129(a)(4) imposes, as a confirmation requirement, a reasonableness standard for compensation for services and for costs and expenses in connection with the case, or in connection with the plan and incident to the case. 11 U.S.C. § 1129(a)(4). This standard applies to the payments made by the plan proponent, by the debtor, or by a person acquiring property under the plan, such as a plan administrator.

Section 330 of the Code contains specific standards for determining the reasonableness of compensation. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering the relevant factors. See *id.* § 330(a)(3). Although this standard is more exacting than the standard applicable in this case, the court may apply all or some of the elements of this standard as a guide to the extent appropriate.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court further authorizes the payment of the holdback amount requested.

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.

Loeb & Loeb, LLP's application for approval 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 approves final compensation in the amount of \$19,868.00 and reimbursement of expenses in the amount of \$261.86. The court approves the holdback amount of \$3,741.50. 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.

3. [10-62315](#)-A-11 BEN ENNIS
FRC-2
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY MICHAEL J.
GOMEZ AS ATTORNEY(S)
8-2-16 [[2146](#)]

No tentative ruling.

4. [10-62315](#)-A-11 BEN ENNIS
LL-2

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF LOEB & LOEB LLP FOR LANCE N.
JURICH, SPECIAL COUNSEL(S)
6-23-16 [[2087](#)]

RILEY WALTER/Atty. for dbt.
LANCE JURICH/Atty. for mv.

Final Ruling

Application: Approval of Final Compensation and Expense Reimbursement under Confirmed Plan in Chapter 11

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, Loeb & Loeb, LLP, the applicant requests that the court approve final compensation in the amount of \$22,262.50 and reimbursement of expenses in the amount of \$466.18. 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 applicant further requests that the court approve payment of the holdback amount of \$4,872.50.

Here, a plan has been confirmed. Once a plan has been confirmed, its provisions bind the debtor, creditors, equity security holders, and other parties in interest. 11 U.S.C. § 1141(a). An exception to this rule is made for the discharge provisions of § 1141(d)(2) and (3). *Id.* The plan's terms governing compensation of professionals, therefore, govern the court's decision on this matter. And the content of such provisions "is primarily up to the genius of the drafter." *In re Associated Vintage Grp., Inc.*, 283 B.R. 549, 560 (B.A.P. 9th Cir. 2002).

The confirmed plan in this case states that compensation for retained professionals is subject to bankruptcy court approval. It also provides that compensation paid for services rendered and expenses incurred must be "reasonable." The plan's reasonableness standard for payment of compensation makes sense in light of § 1129(a)(4).

Section 1129(a)(4) imposes, as a confirmation requirement, a reasonableness standard for compensation for services and for costs and expenses in connection with the case, or in connection with the plan and incident to the case. 11 U.S.C. § 1129(a)(4). This standard applies to the payments made by the plan proponent, by the debtor, or by a person acquiring property under the plan, such as a plan administrator.

Section 330 of the Code contains specific standards for determining the reasonableness of compensation. Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering the relevant factors. See *id.* § 330(a)(3). Although this standard is more exacting than the standard applicable in this case, the court may apply all or some of the elements of this standard as a guide to the extent appropriate.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court further authorizes the payment of the holdback amount requested.

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.

Loeb & Loeb, LLP's application for approval 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 approves final compensation in the amount of \$22,262.50 and reimbursement of expenses in the amount of \$466.18. The court approves the holdback amount of \$4,872.50. 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.

5. [15-12827](#)-A-11 BLUEGREENPISTA
ENTERPRISES, INC.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
7-18-15 [[1](#)]

DAVID JENKINS/Atty. for dbt.

Final Ruling

The status conference is continued to October 13, 2016, at 1:30 p.m. Not later than 14 days prior to the continued status conference, the trustee shall file a status report.