

**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: OCTOBER 18, 2017
CALENDAR: 1:30 P.M. CHAPTER 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 PIONEER NURSERY, LLC STATUS CONFERENCE RE: CHAPTER
11 VOLUNTARY PETITION
8-11-17 [[1](#)]

PETER FEAR/Atty. for dbt.

No Ruling

2. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO EMPLOY HOCKING DENTON
FW-[4](#) PALMQUIST AS ACCOUNTANT(S)
PIONEER NURSERY, LLC/MV 9-1-17 [[27](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

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 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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); *see also id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed or the petition date, whichever is earlier.

3. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION FOR ADMINISTRATIVE
FW-6 EXPENSES
PIONEER NURSERY, LLC/MV 9-12-17 [[46](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Authorize the Debtor in Possession to Pay Administrative Expense Claims under § 503(b)(9)

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

Disposition: Granted

Order: Prepared by the movant

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).

The debtor in possession seeks to pay administrative expenses under § 503(b)(9) to three different creditors in the total amount of \$2,978.66. The amounts are allocated to each creditor on page two of the motion.

Regarding the timing of payment: the outer limit in chapter 11 cases is the effective date of the plan. See 11 U.S.C. § 1129(a)(9)(A). But the court has discretion to allow earlier payment of the administrative claim. See *In re Arts Dairy, LLC*, 414 B.R. 219, 221 (Bankr. N.D. Ohio 2009) (citing *In re Plastech Engineered Prods., Inc.*, 394 B.R. 147, 152 (Bankr. E.D. Mich. 2008

The court will allow the administrative expense and authorize its payment consistent with the statutory priority afforded all administrative expenses under § 507(a)(2) and § 1129(a)(9)(A).

4. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO EMPLOY M. KATHLEEN
FW-7 KLEIN AS ACCOUNTANT(S)
PIONEER NURSERY, LLC/MV 9-5-17 [[35](#)]
PETER FEAR/Atty. for dbt.

Final Ruling

Application: Approval of Employment

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

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

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 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).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between [professional's name] and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed or the petition date, whichever is earlier.

5.	15-12827 -A-11 BLUEGREENPISTA JES -3 ENTERPRISES, INC. JAMES SALVEN/MV JAMES SALVEN/Atty. for mv.	MOTION TO ALLOW FURTHER FEE APPLICATIONS 9-6-17 [696]
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Final Ruling

Motion: for Rule 60(b) Relief re Order, January 13, 2017, ECF # 527

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).

DISCUSSION

Rule 60(b) allows relief from an order based on mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9024. In December 2016, estate accountant James E. Salven filed his final fee application, based on the belief that the estate was administratively insolvent. Salven decl. ¶ 4, September 6, 2017, ECF # 698. That application was granted. Order, January 13, 2017, ECF # 527. Since then, the estate received an unexpected "grower bonus" for the 2015 crop year in the amount of \$559,937.98. This bonus will necessitate further accounting work by the movant. Based on the Salven's supporting declaration, the court finds surprise and will grant the motion.

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 motion 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;

IT IS FURTHER ORDERED that the Order, January 13, 2017, ECF # 527, is modified as follows: (1) the word "final" in the third paragraph, first sentence is replaced with "interim;" and (2) the fourth sentence of the third paragraph is stricken; and

IT IS FURTHER ORDERED that James E. Salven may file such further interim and final application for compensation and costs as are authorized by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

6.	15-12827 -A-11 BLUEGREENPISTA TGM -30 ENTERPRISES, INC. RANDELL PARKER/MV TRUDI MANFREDO/Atty. for mv.	MOTION FOR ADMINISTRATIVE EXPENSES 9-20-17 [705]
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Final Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In*

re *Clooback*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, California minimum tax in the amount of \$879.00 for 2016 and \$824.00 for subsequent years as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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.

The chapter 7 trustee Randell Parker's motion for allowance of administrative expense 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 allows the trustee to pay the California minimum tax in the amount of \$879.00 for 2016, and \$824.00 for subsequent years as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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| 7. 17-12389 -A-11 DON ROSE OIL CO., INC.
CLF -2
DONALD ROSE/MV
RILEY WALTER/Atty. for dbt.
VONN CHRISTENSON/Atty. for mv. | CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-9-17 [189] |
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No Ruling

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| 8. 17-12389 -A-11 DON ROSE OIL CO., INC.
DJP -1
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS/MV
RILEY WALTER/Atty. for dbt. | MOTION TO EMPLOY DAVID D.
FERGUSON AS ATTORNEY(S)
9-19-17 [396] |
|---|---|

No Ruling

9. [17-12389](#)-A-11 DON ROSE OIL CO., INC.
[LAK](#)-2
SALLYPORT COMMERCIAL FINANCE,
LLC/MV
- MOTION FOR APPROVAL OF
STIPULATION AUTHORIZING
AMENDMENT TO ACCOUNT SALE AND
PURCHASE AGREEMENT
9-26-17 [[435](#)]
- RILEY WALTER/Atty. for dbt.
SCOTT SIEGEL/Atty. for mv.

No Ruling

10. [17-12389](#)-A-11 DON ROSE OIL CO., INC.
[WW](#)-10
- MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR MICHAEL L.
WILHELM, DEBTORS ATTORNEY(S)
9-20-17 [[409](#)]
- RILEY WALTER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, continued in part

Order: Civil minute order

Counsel for former debtor in possession Don Rose Oil, Inc. filed its first and final application for compensation. Fees and costs sought are \$210,347.50 (discounted from \$300,347.50) and \$9,337.61, for an aggregate of \$219,685.11. The applicant is presently holding a retainer in the amount of \$14,404.50. Recently appointed Chapter 11 trustee Howard Ehrenberg prays an additional 60 days to review the applicant's fees but is agreeable to approval of those fees on an interim basis (including application of the retainer to reduce the unpaid balances of the fees). No party has opposed the application for compensation.

COMPENSATION AND EXPENSES

In this Chapter 11 case, Walter Wilhelm, counsel for the debtor in possession, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$210,347.50 and reimbursement of expenses in the amount of \$9,337.61.

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).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. In doing so, this court notes that this was a particularly acrimonious Chapter 11 case, which was filed on an emergency basis and that the applicant has voluntarily discounted fees by reduced fees by 30%.

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 final compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application and the limited support, viz. approval on an interim basis, of the Chapter 11 trustee,

IT IS ORDERED that the application is approved on an interim, but not on a final, basis. The court allows interim compensation in the amount of \$210,347.50 and reimbursement of expenses in the amount of \$9,337.61, for an aggregate of \$219,685.11. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the debtor in possession is authorized, but not required, 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.

IT IS FURTHER ORDERED that the final hearing on this application is continued to January 10, 2018, at 1:30 p.m. and that opposition to the application be filed and served not later than December 27, 2017.

IT IS FURTHER ORDERED that not later than November 1, 2017, the applicant shall file and serve a notice of the continued hearing date, as well as the date for written opposition to the application, on parties entitled to notice. Fed. R. Bankr. P. 2002(a)(6), (k).

11. [17-12389](#)-A-11 DON ROSE OIL CO., INC. MOTION FOR COMPENSATION FOR
[WW-11](#) BROWN ARMSTRONG ACCOUNTANCY
BROWN ARMSTRONG/MV CORP., ACCOUNTANT(S)
9-20-17 [[402](#)]
RILEY WALTER/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved in part, continued in part

Order: Civil minute order

Accountant for former debtor in possession Don Rose Oil, Inc. filed its first and final application for compensation. Fees and costs

sought are \$31,364.00 and \$0.00, for an aggregate of \$31,364.00. The applicant is presently holding a retainer in the amount of \$0.00. Recently appointed Chapter 11 trustee Howard Ehrenberg prays an additional 60 days to review the applicant's fees but is agreeable to approval of those fees on an interim basis. No party has opposed the application for compensation.

COMPENSATION AND EXPENSES

In this Chapter 11 case, Brown Armstrong, accountant for the debtor in possession, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$31,364.00 and reimbursement of expenses in the amount of \$0.00.

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).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. In doing so, this court notes that this was a particularly acrimonious Chapter 11 case, which was filed on an emergency basis.

CLARIFICATION OF INTENTIONS

The applicant prays fees and costs as its "First and Final Application." Application, September 20, 2017, ECF # 402. Trustee Ehrenberg has indicated his desire to continue the use of Brown Armstrong. Status Report ¶ 15, September 21, 2017, ECF # 420. Prior to the continued hearing, Brown Armstrong and trustee Ehrenberg will meet and confer to clarify Brown Armstrong's role in the case going forward and, if Brown Armstrong, will continue its services whether fees and costs approved at the continued hearing should only be approved 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.

Brown Armstrong's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application and the limited support, *viz.* approval on an interim basis, of the Chapter 11 trustee,

IT IS ORDERED that the application is approved on an interim, but not on a final, basis. The court allows interim compensation in the amount of \$31,364.00 and reimbursement of expenses in the amount of \$0.00, for an aggregate of \$31,364.00.

IT IS FURTHER ORDERED that the debtor in possession is authorized, but not required, 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.

IT IS FURTHER ORDERED that the final hearing on this application is continued to January 10, 2018, at 1:30 p.m. and that opposition to the application be filed and served not later than December 27, 2017.

IT IS FURTHER ORDERED that not later than November 1, 2017, the applicant shall file and serve a notice of the continued hearing date, as well as the date for written opposition to the application, on parties entitled to notice. Fed. R. Bankr. P. 2002(a)(6),(k).

IT IS FURTHER ORDERED that not later than November 1, 2017, the trustee shall file a statement regarding his continued employment of Brown Armstrong.

12. [17-12389](#)-A-11 DON ROSE OIL CO., INC.
[WW-7](#)
DON ROSE OIL CO., INC./MV

CONTINUED MOTION FOR APPROVAL
OF STIPULATION AND AGREEMENT
FOR ADEQUATE PROTECTION AND
MODIFICATION OF THE AUTOMATIC
STAY
8-7-17 [[179](#)]

RILEY WALTER/Atty. for dbt.

No Ruling