

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, November 16, 2022  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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, and all parties will need to appear at the hearing unless otherwise ordered. 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.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

9:30 AM

1. [20-10010](#)-A-11     **IN RE: EDUARDO/AMALIA GARCIA**  
[GAG-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF NINO GLOBAL, LLC,  
CLAIM NUMBER 13, OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 14,  
OBJECTION TO CLAIM OF PLATINUM FARMS SERVICES, LLC, CLAIM NUMBER 16,  
OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 17  
5-24-2021     [[593](#)]

AMALIA GARCIA/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     The status conference will be dropped as moot and the  
objections to the proofs of claim filed by Nino Global, LLC  
and the proof of claim filed by Platinum Farm Services, LLC  
sustained.

ORDER:     The court will issue an order.

Pursuant to calendar matter #2, below, the court will issue an order sustaining  
the objections of the debtors to proofs of claim nos. 13, 14 and 17 filed by  
Nino Global, LLC and proof of claim no. 16 filed by Platinum Farm Services,  
LLC. Therefore, this status conference is dropped as moot.

2. [20-10010](#)-A-11     **IN RE: EDUARDO/AMALIA GARCIA**  
[GAG-1](#)

ORDER TO SHOW CAUSE AS TO WHY OBJECTIONS TO CLAIMS OF NINO GLOBAL LLC  
AND PLATINUM FARM SERVICES, LLC SHOULD NOT BE SUSTAINED  
10-4-2022     [[1199](#)]

LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Objections to the proofs of claim filed by Nino Global, LLC  
and the proof of claim filed by Platinum Farm Services, LLC  
sustained.

ORDER:     The court will issue an order.

On October 4, 2022, the court issued an Order to Show Cause ("OSC") as to why  
the objections of the debtors to proofs of claim nos. 13, 14 and 17 filed by  
Nino Global, LLC and proof of claim no. 16 filed by Platinum Farm Services, LLC  
should not be sustained. OSC, Doc. #1199. The court ordered Nino Global, LLC  
and Platinum Farm Services, LLC to file written responses to the OSC no later  
than November 9, 2022. Doc. #1199. The failure of Nino Global, LLC and Platinum  
Farm Services, LLC to file written opposition in accord with the OSC may be  
deemed a waiver of any opposition to the granting of the relief set forth in  
the OSC. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because

the court will not materially alter the relief set forth in the OSC, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of Nino Global, LLC and Platinum Farm Services, LLC are entered and the OSC will be resolved without oral argument.

For the reasons set forth in the OSC, the objections of the debtors to proofs of claim nos. 13, 14 and 17 filed by Nino Global, LLC and proof of claim no. 16 filed by Platinum Farm Services, LLC are sustained.

3. 20-10010-A-11      **IN RE: EDUARDO/AMALIA GARCIA**  
LKW-45

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
10-14-2022    [1219]

LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$5,860.00 and reimbursement for expenses in the amount of \$153.90 for services rendered from September 1, 2022 through September 30, 2022. Doc. #1219. This is Movant's eighteenth fee application in this case. The court has previously approved a total of \$208,262.29 in interim fees and expenses, of which \$172,402.20 have been paid to Movant. Doc. #1219.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) advising DIP and secured creditor about the sale of real property; (3) preparing and prosecuting a second motion for order authorizing DIP to borrow \$3 million secured by real property; (4) assisting DIP and special counsel in prosecuting objections to allowance of claims filed in DIP's case; (5) advising DIP and creditors about \$4 million loan to DIP from RoBott Land Company; (6) communicating with DIP's former attorney regarding non-bankruptcy litigation; and (7) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #1223; Ex. B, Doc. #1221. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$5,860.00 and reimbursement of expenses in the amount of \$153.90. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, 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. Movant may draw on any retainer held. DIP 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. [20-10010](#)-A-11     **IN RE: EDUARDO/AMALIA GARCIA**  
[LKW-46](#)

MOTION TO AMEND ORDER  
10-28-2022    [[1241](#)]

AMALIA GARCIA/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

On June 3, 2022, Eduardo Zavala Garcia and Amalia Perez Garcia (together, "DIP"), the debtors and debtors in possession in this chapter 11 case, filed a motion to permit DIP to borrow \$4 million from RoBott Land Company ("RoBott") at an interest rate of 13.5%, among other terms. Doc. #1017. The court granted that motion by order filed on August 19, 2022. Doc. #1133.

On August 30, 2022, DIP filed a second motion to permit DIP to borrow \$3 million from RoBott also at an interest rate of 13.5%, among other terms.

Doc. #1152. The court granted that motion by order filed on September 30, 2022.  
Doc. #1191.

Since entry of the two orders permitting DIP to enter into the two loans with RoBott, RoBott has informed DIP that the interest rate on both loans would increase from 13.5% to 15%. Decl. of Eduardo Zavala Garcia, Doc. #1244. By this motion, DIP seek to permit DIP to enter into the two loans with RoBott at an increased interest rate of 15%. Id. Because the two loans require DIP to impound twelve monthly interest payments from the loan proceeds, the amount of interest that is subject to impound on the first RoBott loan will increase from \$540,000.00 to \$600,000.00 and the amount of the interest that is subject to impound on the second RoBott loan will increase from \$405,000.00 to \$450,000.00. Id. In addition, the aggregate fees for loan documentation charged by RoBott with respect to both loans will increase from \$15,000.00 to \$20,000.00. Id.

The overall effect of these changes is to decrease the estimated payment to Helena Chemical Company by \$60,000.00 from the proceeds of the first loan and increase the estimated payment to Helena Chemical Company by \$60,000.00 from the proceeds of the second loan. Garcia Decl., Doc. #1244. In addition, the surplus funds to be paid to DIP from the second loan will decrease by the aggregate amount of \$110,000.00. Id. DIP believes that the reduction in the surplus loan proceeds to be paid to DIP will not prejudice DIP's reorganization, business operations, or goal of diversifying DIP's business operations. Id.

DIP contends the court has authority to approve the proposed borrowings with the increased interest rate pursuant to 11 U.S.C. § 105(a), which provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

The court finds that good cause exists pursuant to 11 U.S.C. § 105(a) to authorize DIP to enter into the two loans with RoBott at an increased interest rate of 15%, and the motion will be GRANTED.

5. [22-11226](#)-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**  
[FW-5](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
10-25-2022 [[54](#)]

ALVARENGA TRANSPORT, LLC/MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) Federal Rule of Bankruptcy Procedure 6006 and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will

consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Alvarenga Transport LLC ("DIP"), the debtor and debtor in possession in this chapter 11 case, moves the court for authorization to assume an insurance premium financing agreement with Capital Premium Financing, LLC ("Capital") entered into pre-petition (the "Executory Contract") by which Capital financed DIP's purchase of certain commercial liability insurance. Doc. #54; Ex. A, Doc. #57. The Executory Contract provided for a down payment of \$58,538.52 and ten monthly payments, in the amount of \$33,007.58, beginning on August 1, 2022. Ex. A, Doc. #57. DIP and Capital entered into a stipulation for the assumption of the Executory Contract. Id. Through the stipulation, in addition to assumption of the Executory Contract, DIP and Capital agree that: (1) Capital may cancel the financed insurance in the event of any default under the terms of the Executory Contract; (2) the full rights of Capital are preserved and remain unimpaired by this or any other bankruptcy proceeding, the appointment of a trustee in this case or conversion of this case to chapter 7; and (3) in the event that any unearned or returned premiums are insufficient to pay the total amount owing by DIP to Capital, including reasonable attorneys' fees, Capital shall be permitted an administrative expense priority claim for those amounts. Id.

Section 365(a) of the Bankruptcy Code provides that, subject to court approval, the debtor-in-possession may assume an executory contract of the debtor. In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

Here, DIP states that assumption of the Executory Contract is necessary for DIP's continued operation of its business. Decl. of Jose Alvarenga, Doc. #56. DIP cannot operate its business without the commercial liability insurance financed by Capital, and DIP is unable to pay the premiums for this insurance without financing it. Id. DIP believes that assumption of the Executory Contract is in the best interests of DIP and its creditors. Id. The court finds that DIP's decisions are based on sound business judgment.

DIP is authorized to assume the Executory Contract, as defined here, in conformance with DIP's motion and the stipulation between DIP and Creditor. Doc. #54; Ex. A, Doc. #57.

6. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
5-8-2022 [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

7. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[FW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION  
FOR ADEQUATE PROTECTION  
7-13-2022    [\[58\]](#)

DAKOTA NOTE, LLC/MV  
NOEL KNIGHT/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

NO RULING.

1. [22-11684](#)-A-7      **IN RE: CARLOS GUZMAN**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.  
10-31-2022    [\[15\]](#)

SIMRAN HUNDAL/ATTY. FOR DBT.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

The debtor's counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by his bankruptcy attorney.



1:30 PM

1. [20-11367](#)-A-7     **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**  
[JMV-1](#)

CONTINUED NOTICE OF INTENT TO ABANDON INTEREST IN ESTATE PROPERTY  
6-1-2022    [[408](#)]

LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.