

**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: NOVEMBER 18, 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. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO EMPLOY STAPLETON
LRP-40 PROPERTIES, LLC GROUP AS REALTOR(S)
DAVID STAPLETON/MV 11-4-15 [[1572](#)]
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

Tentative Ruling

Matter: Application to Employ the Stapleton Group as Real Estate Agent for 1061 W. Henderson, Porterville, CA

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

Disposition: Approved

Order: Prepared by the applicant

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).

The Stapleton Group has no connections to the reorganized debtor, Ennis Commercial Properties, LLC, other than that the Plan Administrator is the President of the Stapleton Group, and the Stapleton Group has been employed as a leasing agent for the subject real property and other real properties owned by the reorganized debtor. These two connections have been fully disclosed.

Although a potential conflict of interest may conceivably exist given the Stapleton Group's role as a leasing agent and a broker for the same real property (i.e., the Stapleton Group as broker could have an incentive to delay the sale given compensation it receives as a leasing agent while a lease is in place), no actual conflict of interest has been identified. Further, the connection has been fully disclosed. In any event, § 327 is inapplicable to this employment application and has been applied by analogy only, and the court believes that based on the facts given in the application, § 327(a) would not prevent the employment. Absent opposition, the court will approve the application for the reasons stated in the application and papers filed in support thereof.

2. [10-12709](#)-A-11 ENNIS COMMERCIAL MOTION TO SUPPLEMENT THE
LRP-41 PROPERTIES, LLC EMPLOYMENT TERMS OF LANG,
DAVID STAPLETON/MV RICHERT & PATCH, P.C.
PETER FEAR/Atty. for dbt. 11-4-15 [[1560](#)]
SYDNEY SMITH/Atty. for mv.

No tentative ruling.

3. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-42 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO ESTABLISH PLAN
ADMINISTRATOR'S COMPENSATION
FOR FRAUDULENT TRANSFER CLAIMS
11-4-15 [[1566](#)]

PETER FEAR/Atty. for dbt.
SYDNEY SMITH/Atty. for mv.

No tentative ruling.

4. [10-62315](#)-A-11 BEN ENNIS
LRP-7
DAVID STAPLETON/MV

MOTION TO EMPLOY COLLIERS
TINGEY INTERNATIONAL INC. AS
BROKER(S)
11-4-15 [[1991](#)]

RILEY WALTER/Atty. for dbt.
SYDNEY SMITH/Atty. for mv.

Tentative Ruling

Matter: Second Supplement to Application of Plan Administrator to
Employ Colliers Tingey International, Inc., as Real Estate Broker

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

Disposition: Approved

Order: Prepared by the applicant

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).

Last year, the Plan Administrator employed, with the court's approval,
Colliers Tingey International, Inc. as real estate broker for several
real properties. A supplement to the application was later filed to
include certain other real properties in the scope of Colliers'
employment. This later supplement was also approved.

The Plan Administrator requests that he be authorized to employ
Colliers Tingey International, Inc. as the real estate broker for
certain additional real properties. These real properties are
identified in the supplement (2 real properties on W. Northgrand
Avenue, Porterville, CA, and 5 real properties located on Castle
Avenue, Porterville, CA). For the reasons stated in the application,
the court will approve the application. No improper connections have
been presented between Colliers and the reorganized debtor, creditors,
or any other party in interest, including the Plan Administrator.