

**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: DECEMBER 15, 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
LRP-43 PROPERTIES, LLC
DAVID STAPLETON/MV
PETER FEAR/Atty. for dbt.
JENNIFER BROOKS/Atty. for mv.

MOTION TO EMPLOY THE HOPPER
COMPANY AS APPRAISER(S)
12-1-15 [[1587](#)]

Tentative Ruling

Matter: Application to Employ the Hopper Company

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

Disposition: Continued to January 13, 2015 at 1:30 p.m.

Order: Not applicable

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 application seeks approval of the employment of the Hopper Company to appraise the value of the real property commonly known as 1061 West Henderson, Porterville, CA. The plan administrator has sought to employ the Hopper Company as an appraiser because the Oversight Committee desires to ensure that the real property's value is maximized in any sale.

The court continues the hearing on this matter so that a supplemental declaration may be filed in support. The court's concerns arise from paragraph 3 of the Hopper Declaration, the second sentence, in which Hopper makes an assertion regarding conflicts that is based on the best of his knowledge. Facts regarding conflicts require a greater level of certainty for a foundation.

In addition, paragraph 3 also references a number of creditors *in this case* for which the Hopper Company has performed services appraising real properties *owned or formerly owned by the Reorganized Debtor* as well as other entities related to Ben Ennis, Brian Ennis and/or Pamela Ennis, and properties owned by Daryl Nicholson. The Hopper Company also appraises annually properties owned by the Reorganized Debtor and other Ennis-Related Entities on behalf of creditor Rabobank, N.A. Before approving the employment with its signature, the court requires further factual detail regarding these potential conflicts, such as whether the real properties appraised by Hopper on behalf of Creditors in this case include the subject real property or real properties that could be used as comparable properties to subject real property or used in the underlying work for the appraisal of the subject real property.

2. [15-12827](#)-A-11 BLUEGREENPISTA FINAL HEARING RE: MOTION TO
DRJ-4 ENTERPRISES, INC. ENTER INTO FIVE YEAR PISTACHIO
BLUEGREENPISTA ENTERPRISES, SALES AGREEMENT AND/OR MOTION
INC./MV TO BORROW
12-1-15 [[85](#)]
- DAVID JENKINS/Atty. for dbt.
ORDER 12/4/15
RESPONSIVE PLEADING

Final Ruling

The matter finally resolved at the December 8, 2015, hearing the matter is dropped from calendar.

3. [15-10366](#)-A-11 ELLIOTT MANUFACTURING MOTION FOR COMPENSATION FOR
FLG-13 COMPANY, INC. PETER L. FEAR, DEBTORS
ATTORNEY(S)
11-17-15 [[189](#)]
- 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, Fear Law Group, P.C., counsel for the debtor in possession, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$53,069.00 and reimbursement of expenses in the amount of \$1,480.94.

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. 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.

Fear Law Group, P.C.'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 \$53,069.00 and reimbursement of expenses in the amount of \$1,480.94. 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.