



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: JANUARY 29, 2024
CALENDAR: 1:00 P.M. DISGORGEMENT CALENDAR

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered.

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To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
3. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

Please join at least 10 minutes prior to the start of the calendar. You are required to give the court 24 hours advance notice on the [Court Calendar](#).

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [23-24531](#)-A-7 **IN RE: CONNIE PERRY**
[CAE-1](#)

ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS RE:
DISCLOSURE OF ATTORNEY COMPENSATION
12-27-2023 [\[16\]](#)

MICHAEL MOORE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The Disclosure of Compensation has been filed. ECF No. 19. The Order to Show Cause is discharged without disgorgement. A civil minute order shall issue.

2. [23-12632](#)-A-7 **IN RE: ERICA HERRERA**
[FEC-1](#)

ORDER TO SHOW CAUSE
12-21-2023 [\[15\]](#)

JOEL WINTER/ATTY. FOR DBT.
DEBTOR DISMISSED: 12/18/23
RESPONSIVE PLEADING

Final Ruling

This matter is governed by 11 U.S.C. § 329(b). The court finds that the value of services rendered, i.e., a skeletal petition in this case, and the filing of a second case, *In re Herrera*, No. 24-10002 (Bankr. E.D. Cal. 2024), without additional compensation, meets or exceeds the retainer taken, i.e., \$1,662.00. The Order to Show Cause is discharged without disgorgement. A civil minute order shall issue.

3. [23-90540](#)-A-13 **IN RE: STEVEN CONTRERAS**
[FEC-1](#)

ORDER TO SHOW CAUSE
12-21-2023 [\[26\]](#)

DAVID FOYIL/ATTY. FOR DBT.
DEBTOR DISMISSED: 12/12/23
RESPONSIVE PLEADING

Final Ruling

The respondent has not yet demonstrated that the value of the services rendered equal or exceed the retainer taken. 11 U.S.C. § 329(b). The burden of proof lies with the respondent. *Am. Law Ctr. PC, v. Stanley (In re Jastrem)*, 253 F.3d 438, 443 (9th Cir. 2001); *Snyder v. Dewoskin (In re Mahendra)*, 131 F.3d 750, 757 (8th Cir. 1997); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 839 (Bankr. C.D. Cal. 1991). An attorney seeking compensation should maintain time records, *In re Roderick Timber Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir. 1995), and the failure to do so justifies denial of all fees, or otherwise justify the fees taken. Order to Show Cause ¶ 2, ECF No. 26 (“not later than January 16, 2024, David Foyil, shall file and serve detailed written opposition in the form of admissible evidence (including time records for each timekeeper or, if not available, a detailed description of work undertaken on behalf of the client and by name/capacity of each person undertaking that work”)).

Here, no time records were provided, and the descriptions are far too general to satisfy the “detailed description of work undertaken” standard. For example, the declaration in opposition to the motion shows that the attorney only spoke with the client twice: once at the initial consultation and once regarding the debtor’s intentions with respect to not proceeding with the Chapter 13. Foyil decl. ¶¶ 1, 9, ECF No. 34. The court cannot ascertain the time spent, e.g., a few minutes expended or many hours. All other tasks were completed by Foyil’s staff. *Id.* at ¶¶ 3-5, 7-8 (references to work performed by “my office”). There is no estimate of time provided, no description of the qualifications of office staff, or no explanation of the particular tasks undertaken. On the record, the court cannot say that the respondent has provided services the value of which meet or exceed the retainer taken, even after deducting the filing fee of \$313. Were the court to ruling on the Order to Show Cause on the record provided it would order disgorgement of some or all of the retainer. However, the court suspects that a more robust evidentiary record might support the retention of some or all of the retainer.

Accordingly, the matter is continued to March 11, 2024, at 1:00 p.m. to allow the respondent to more fully explain the value of his representation. Not later than February 12, 2024, the respondent may augment the evidentiary record. Any such augmentation of the record must be in the form of admissible evidence and should include: (1) time records or, in the absence of time records, an estimate of time spent; (2) detailed description of tasks

undertaken; (3) standard hourly rates charged by counsel and staff; (4) qualifications of staff members for whom billable time is sought. Not later than February 19, 2024, the U.S. Trustee, the Chapter 13 trustee or any other party may file a written response to the respondent's additional submissions. The matter will be deemed submitted on February 19, 2024. Should the respondent fail to file additional or sufficient evidence, the court may deny all compensation, order disgorgement of the retainer and do so without further notice or hearing. A civil minute order shall issue.

4. [23-24442](#)-A-13 **IN RE: RICHARD MAREK**
[CAE-1](#)

ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS RE:
DISCLOSURE OF ATTORNEY COMPENSATION
12-20-2023 [\[10\]](#)

CHERYL SOMMERS/ATTY. FOR DBT.
DEBTOR DISMISSED: 01/03/24
DISCLOSURE, ECF NO. 13

Final Ruling

The Disclosure of Compensation has been filed. ECF No. 13. The Order to Show Cause is discharged without disgorgement. A civil minute order shall issue.

5. [23-24370](#)-A-13 **IN RE: SARA KLINKENBORG**
[CAE-1](#)

ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS RE:
DISCLOSURE OF ATTORNEY COMPENSATION
12-14-2023 [\[9\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The Disclosure of Compensation has been filed. ECF No. 19. The Order to Show Cause is discharged without disgorgement. A civil minute order shall issue.

6. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[CAE-1](#)

ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS RE:
DISCLOSURE OF ATTORNEY COMPENSATION
1-2-2024 [[51](#)]

PETER FEAR/ATTY. FOR DBT.

Final Ruling

This Order to Show Cause was set in error. Counsel for the debtor need only file the Disclosure of Compensation with the petition in Chapter 7 and Chapter 13 cases. LBR 2016-4. This is a Chapter 11 case. The matter is dropped. A civil minute order shall issue.