



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, March 27, 2024  
Department A - Courtroom #11  
Fresno, California

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Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**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.

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

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
12-15-2023 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**  
[FW-2](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL  
12-15-2023 [7]

KODIAK TRUCKING INC./MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a final basis through September 30, 2024.

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 set for final hearing on March 27, 2024 pursuant to the initial motion papers and an second interim order authorizing use of cash collateral ("Interim Order"). Doc. #82. The final hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before March 13, 2024. Id.

On March 13, 2024, the debtor filed a supplemental document and revised budget. Doc. ##188, 189. Because the request authorizing final use of cash collateral through September 30, 2024 was set on less than 28 days' notice, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant continued use of cash collateral on a final basis through September 30, 2024. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Kodiak Trucking, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing DIP to use the cash collateral of: (i) Triple E Trucking, LLC; (ii) U.S. Small Business Administration; (iii) Corporation Service Company, as representative for one or more unknown entities; (iv) EC Master Trust; (v) eCapital Freight Factoring Corp.; (vi) California Employment Development Department; (vii) Mint Business Capital; (viii) Vivian Capital Group, and (ix) the Internal Revenue Service (collectively, "Secured Creditors") through September 2024 on a monthly basis

subject to a budget. Motion, Doc. #7; Notice, Doc. #187. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business that provides construction trucking services, primarily for highway construction. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for the Secured Creditors with valid liens to the extent cash collateral is actually used. Motion, Doc. #7.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Bankruptcy Code section 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). Pursuant to 11 U.S.C. § 363(p), DIP carries the burden of proof on the issue of adequate protection.

The court finds DIP has met its burden of showing that Secured Creditors are adequately protected for DIP's use of their cash collateral by the proposed replacement liens. Ex. B, Doc. #188. Moreover, DIP needs to use the cash collateral to continue its post-petition business operations. Decl. of Marco Arambula, Doc. #189.

Accordingly, the court is inclined to GRANT DIP's request to use cash collateral on a final basis through September 2024 on the terms set forth in the motion.

11:00 AM

1. [24-10092](#)-A-7 **IN RE: EDUARDO MEZA IBARRA**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORPORATION  
2-22-2024 [[27](#)]

RAYMOND PEREZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor does not state how he can afford the payment and has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with American Honda Finance Corporation will be DENIED.

2. [24-10092](#)-A-7 **IN RE: EDUARDO MEZA IBARRA**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
2-29-2024 [[30](#)]

RAYMOND PEREZ/ATTY. FOR DBT.

NO RULING.

1. [23-11815](#)-A-7     **IN RE: SOR XIONG**  
[JES-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
SOR XIONG  
2-23-2024    [[17](#)]

JAMES SALVEN/MV  
JEFFREY ROWE/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 prior to the hearing date 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.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Sor Xiong ("Debtor"), moves the court for an order, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a compromise with Debtor's son related to the pre-petition sale of a 2008 Lexus (the "Vehicle") by Debtor to his son for a payment of \$2,000.00 to the estate. Doc. #17.

Trustee investigated the assets of the estate and a pre-petition sale of the Vehicle to Debtor's son disclosed in the Statement of Financial Affairs. Doc. #17. Trustee believes that Vehicle was worth approximately \$6,000.00 at the time the Vehicle was sold to Debtor's son. Decl. of Trustee, Doc. #19. The estate's auctioneer and Trustee believed the Vehicle would sell at a public auction for between \$5,000.00 and \$7,000.00. Id. A sale by public auction would have incurred a sales commission of \$900 and storage costs. Id. Debtor sold the Vehicle to Debtor's son for \$2,000.00, and Debtor's son has paid the estate \$2,000.00 to resolve this issue. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense,

inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Trustee Decl., Doc. #19. Although Trustee believes he will ultimately succeed in litigation, such litigation will exceed \$3,000 and the likely costs of recovering the Vehicle coupled with the estimated costs of sale outweigh recovery through the proposed settlement. The proposed settlement allows for a payment of \$2,000.00 that has already been paid to the estate. Id. The settlement resolves the dispute without the expense of litigation costs or issue in the matter of collection. The settlement is fair, reasonable, and obtains an economically advantageous result. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtor's son is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

2. [23-12022-A-7](#) **IN RE: KECIA CONWELL**  
[JES-1](#)

MOTION TO SELL  
2-16-2024 [21]

JAMES SALVEN/MV  
JERRY LOWE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Kecia Carolyn Conwell ("Debtor"), moves the court pursuant to 11 U.S.C. § 363

for an order authorizing the sale of the bankruptcy estate's interest in a 2018 Toyota Camry SE (the "Vehicle") to Debtor for the purchase price of \$2,000.00, subject to higher and better bids at the hearing. Doc. #21.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. ##21, 23. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle less deductions for Debtor's claimed exemption and avoided sale costs if the Vehicle had been sold at public auction. Doc. #23. Debtor offered to buy the Vehicle for the net purchase price of \$2,000.00, subject to overbid at the hearing. Doc. #21. The court recognizes that no commission will need to be paid because the sale is to Debtor.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

3. [22-11841](#)-A-7     **IN RE: ANTHONY COTTON**  
[G-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-15-2024    [\[20\]](#)

FLAGSHIP CREDIT ACCEPTANCE/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
MICHAEL VANLOCHEM/ATTY. FOR MV.  
DISCHARGED 02/13/2023

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

DISPOSITION:     Granted in part and denied as moot in part.

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



This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the movant failed to include in section 4 of the original certificate of service form the date on which service was accomplished. Doc. #27. An amended certificate of service was filed on March 26, 2024 that resolved this deficiency. Doc. #28.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on February 13, 2023. Doc. #18. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Flagship Credit Acceptance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Chevrolet Impala, VIN: 2G1105S35H9171376 (the "Vehicle"). Doc. #20.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the loan is delinquent by at least four complete post-petition payments. Movant has produced evidence that the loan is delinquent by at least \$1,881.68. Decl. of April Rawls, Doc. #23.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle between \$11,978.00 and \$13,465.00, and the amount owed to Movant is \$15,115.25. Rawls Decl., Doc. #23.

Accordingly, this motion is granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the loan is in default post-petition and the Vehicle is a depreciating asset.

MOTION TO SELL  
2-23-2024    [17]

JAMES SALVEN/MV  
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Alejandro Lemus Mejia and Brenda Patricia Vazquez (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2018 Acura MDX (the "Vehicle") to Debtors for the purchase price of \$5,000.00, subject to higher and better bids at the hearing. Doc. #17.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. ##17, 19. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle less deductions for Debtors' claimed exemption and avoided sale costs if the Vehicle had been sold at public auction. Doc. #19. Debtors offered to buy the Vehicle for the net purchase price of \$5,000.00, subject to overbid at the hearing. Doc. #17. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtors on the terms set forth in the motion.