



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, May 29, 2024
Department A – Courtroom #11
Fresno, California

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. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[MBR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [[62](#)]

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

2. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-24-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[DNL-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO DISMISS CASE AND/OR MOTION FOR
REMOVAL OF DEBTOR IN POSSESSION
9-19-2023 [[118](#)]

CALVIN KIM/MV
PETER FEAR/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
CALVIN KIM
4-29-2024 [\[228\]](#)

NABIEKIM ENTERPRISES, INC./MV
PETER FEAR/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.

NabieKim Enterprises, Inc. ("DIP"), the chapter 11 debtor-in-possession, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving a settlement agreement between DIP Calvin K. Kim ("Claimant") and co-defendant Kaye Yekyung Kim ("Kim") resolving Claimant's motion to dismiss DIP's bankruptcy case and Claimant's dispute with DIP regarding confirmation of DIP's chapter 11 plan of reorganization. Doc. #228.

DIP filed its bankruptcy petition on March 24, 2023. Doc. #1. After DIP's bankruptcy petition was filed, Claimant raised issues in connection with confirmation of DIP's chapter 11 plan of reorganization and moved to dismiss DIP's chapter 11 bankruptcy case. Doc. #95, 118. DIP, Claimant and Kim agreed to mediate their disputes and reached a settlement agreement. Doc. #228. The material terms of the settlement agreement are as follows:

- (1) Claimant will support confirmation of (i) Kim's chapter 13 plan and (ii) DIP's amended chapter 11 plan of reorganization.
- (2) The state court litigation filed by Claimant against Kim and DIP will be dismissed without prejudice.
- (3) Claimant will be allowed a general unsecured claim against DIP's bankruptcy estate.
- (4) Claimant will be allowed a secured claim in the amount of \$587,868.57 in Kim's chapter 13 case secured by Kim's stock in DIP.
- (5) DIP will propose an amended chapter 11 plan consistent with the terms of the settlement agreement.

- (6) Kim will modify her chapter 13 plan ("Plan") to pay Claimant's claim as a secured claim outside of the Plan and with payments to Claimant extending beyond the term of the Plan.
- (7) All obligations underlying the proofs of claim filed by Claimant in both DIP and Kim's bankruptcy cases will be deemed satisfied upon Claimant's receipt of \$324,000.00 in installment payments of at least \$3,000.00 per month.
- (8) If a sale of Kim's stock in DIP closes before Claimant receives the \$324,000.00 in installment payments, Claimant will receive \$116,000.00 of the sale proceeds as a bonus payment in addition to the monthly payments. Claimant's right to receive the bonus payment will terminate upon his timely receipt of \$324,000.00 in timely monthly installment payments.

Ex. A, Doc. #231.

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 DIP has considered the standards of A & C Properties and Woodson. Doc. #228. The proposed settlement agreement has been proposed in good faith and is believed to be the best result that can be achieved under the facts of the case. Decl. of Kaye Yekyung Kim, Doc. #230. Further, DIP states that the dispute cannot be concluded without litigation and the settlement agreement results in eliminating the high cost of litigation. Id. Lastly, DIP states the settlement agreement is fair and equitable because it allows DIP's chapter 11 bankruptcy case to proceed and for DIP to confirm a chapter 11 plan of reorganization resulting in payment to the estate's creditors in accordance to the plan. The court concludes that the A & C Properties 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 reasonable. The court may give weight to the opinions of the debtor in possession, 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 DIP, Kim and Claimant is approved. DIP is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

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

5. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[FW-5](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V
PLAN
6-22-2023 [[67](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

1. [15-11835](#)-A-7 **IN RE: JAMES/JAMIE CANNON**
[PFC-1](#)

TRUSTEE'S FINAL REPORT
3-25-2024 [\[824\]](#)

PHILLIP GILLET/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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 debtors, 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.

Peter L. Fear ("Trustee"), the successor chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as successor trustee in this case. Doc. #826. Since being appointed to this case on December 31, 2018, Trustee has objected to the debtors' amended claim of exemptions, employed general counsel, negotiated a settlement with the debtors, received funds from settlement with the debtors, and prepared final filings. Ex. A, Doc. #824. Trustee provided trustee services valued at \$607.62 and requests final compensation in that amount. Doc. #824. Trustee also accrued expenses in the amount of \$61.25 and requests final reimbursement of expenses in that amount. Id.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of 11 U.S.C. § 326. Doc. #824. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$607.62 and reimbursement for expenses in the amount of \$61.25.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-2024 [\[11\]](#)

ALLY BANK/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

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 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 Sys., 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.

The movant, Ally Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Nissan NV2500 HD Cargo SV Van 3D, VIN: 1N6BF0LY2LN804216 (the "Vehicle"). Doc. #11.

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 debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,612.94 plus repossession and other charges in the amount of \$473.73. Decl. of Paul Tangen, Doc. #13. Movant repossessed the Vehicle pre-petition on January 16, 2024. Id.

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. The Vehicle is valued at \$19,370.00 and the debtor owes \$31,995.99. Tangen Decl., Doc. #13.

Accordingly, the motion will be 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 debtor has failed to make at least five pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and Movant repossessed the Vehicle pre-petition.

3. [23-12694](#)-A-7 **IN RE: RICARDO/ARASELI ACEVES**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-17-2024 [\[20\]](#)

CAPITAL ONE AUTO FINANCE/MV
LAYNE HAYDEN/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
DISCHARGED 03/25/2024

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 at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on March 25, 2024. Doc. #18. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Capital One Auto Finance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2024 Subaru Impreza AWD, VIN: JF1GUABC3R8278699 (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 debtors do 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 debtors have failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,554.44. Decl. of Jeanne Scharf, Doc. #22.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$23,507.00 and the debtors owe \$33,830.34. Scharf Decl., Doc. #22.

Accordingly, the motion will be 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 debtors have failed to make at least five pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.