



**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: SEPTEMBER 25, 2023
CALENDAR: 9:00 A.M. CHAPTER 9 AND 11 CASES

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.

Parties in interest and members of the public may connect to the ZoomGov video and audio feeds, free of charge, using the connection information provided:

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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. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT
[CAE-1](#)**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-30-2020 [[1](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

The court is in receipt of the Chapter 11 trustee's status report, ECF No. 839, and, having reviewed it, the court has no questions. No other party has filed a status report and deadline to do so has passed. Order, ECF No. 795. The status conference is continued to January 16, 2024, at 9:00 a.m. Not later than 14 days prior to the continued status conference the trustee shall, and any other party may, file a status report. A civil minute order shall issue.

2. [23-22228](#)-A-11 **IN RE: KADEN KOFFLER
[CAE-1](#)**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-6-2023 [[1](#)]

KADEN KOFFLER/ATTY. FOR MV.

Final Ruling

The case having been dismissed, the status conference is concluded.

3. [23-22228](#)-A-11 **IN RE: KADEN KOFFLER
[MDN-2](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-28-2023 [[73](#)]

MIKE NEUE/ATTY. FOR MV.
PELORUS FUND REIT, LLC VS.

Final Ruling

The motion is denied without prejudice. Service under Rule 7004 has not been accomplished on the 20 largest creditors. Fed. R. Bankr. P. 4001(a)(1); *In re LSSR, LLC*, No. BAP CC-12-1636-DKITA, 2013 WL 2350853, at *1 (B.A.P. 9th Cir. May 29, 2013); see Official Form 104, ECF No. 49. Service of process was accomplished on these creditors only under Rule 5. Certificate of Service 6(B)(2) and Attachment 6B2, ECF No. 79. That is insufficient as a matter of law. A civil minute order shall issue.

4. [23-22228](#)-A-11 **IN RE: KADEN KOFFLER**
[UST-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
8-17-2023 [\[62\]](#)

JORGE GAITAN/ATTY. FOR MV.

Final Ruling

Motion: Dismiss

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

The U.S. Trustee moves to dismiss this Chapter 11 case. The debtor has not filed opposition.

DEFAULT OF RESPONDENT

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 motion was required not less than 14 days before the hearing on this motion. 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).

DISMISSAL

Section 1112 controls:

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under [section 1104\(a\)](#) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that--

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in [sections 1121\(e\)](#) and [1129\(e\)](#) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)--(i) for which there exists a reasonable

justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b).

Cause is discussed in § 1112((b)(4):

(4) For purposes of this subsection, the term "cause" includes--

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate;
- (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
- (E) failure to comply with an order of the court;
- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;
- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1112(b)(4).

Applying the three-step analysis discussed in § 1112(b), the court finds relief is warranted. The deadline for opposition has expired and the debtor has not filed opposition. First, there is continuing diminution of the estate. Rent generated on all properties is \$4,900 per month and the ongoing mortgage for the nine properties

owned by the debtor exceeds \$10,300. Bharat dec. ¶¶ 6-8, ECF No. 64. Second, the safe harbor is inapplicable. 11 U.S.C. § 1112(b)(2)(B). Third, dismissal is in the best interest of the estate because the properties appear to be over-encumbered. Schedule A/B and E, ECF No. 31. The motion will be granted.

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.

The U.S. Trustee's motion 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 motion,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that the case is dismissed.