



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 20, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in 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.

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

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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.

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[NCK-11](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
11-22-2023 [[566](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(4) requires a motion to convert a chapter 11 case to chapter 7 to be served on all creditors. Here, the motion to convert was only served on the U.S. Trustee, the Subchapter V Trustee and creditors that filed proofs of claim. Doc. #569. Because this is a chapter 11 case, only creditors that are not scheduled or whose claims are scheduled as disputed, contingent or unliquidated need to file proofs of claim. Fed. R. Bankr. P. 3003(c)(2). Creditors whose claims are scheduled as undisputed, noncontingent and liquidated are not required to file proofs of claim. Consequently, creditors whose claims were scheduled by the debtor as undisputed, noncontingent and liquidated and who did not file proofs of claim remain creditors in this chapter 11 bankruptcy case and needed to be served with the motion to convert pursuant to Rule 2002(a)(4). Because only creditors that filed proofs of claim were served with the motion, the motion was not served properly pursuant to Rule 2002(a)(4).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

3. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[NCK-16](#)

MOTION FOR COMPENSATION FOR NOEL KNIGHT, DEBTORS ATTORNEY(S)
11-16-2023 [[423](#)]

NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

On November 16, 2023, the applicant filed a notice of hearing that provided for written opposition to the motion pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #424. However, on November 29, 2023, the applicant filed an amended notice of hearing that includes both a deadline for written opposition and a notice that oral opposition can be presented at the hearing. Doc. #428. Because the amended notice of hearing is inconsistent as to what type of opposition is required, the court finds that the amended notice of hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires that "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition."

If the applicant files a new motion to approve fees and costs, the applicant is highly encouraged to address in the new motion the points raised in the opposition filed by the United States Trustee (Doc. #430) with respect to (a) the lack of time records or billing statements, (b) the request for fees incurred prior to the effective date of applicant's employment, and (c) the apparent conflict of interest from applicant receiving a referral fee from the DIP lender. In addition, the applicant should provide more information as to when each of the expenses for which reimbursement is requested was incurred and the exact amount of that expense rather than requesting each expense type as a single blocked entry.

4. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FW-2](#)

MOTION TO USE CASH COLLATERAL
12-15-2023 [[7](#)]

KODIAK TRUCKING INC./MV
PETER FEAR/ATTY. FOR DBT.
OST 12/18/23

NO RULING.

11:00 AM

1. [23-12339](#)-A-7 **IN RE: REBHE MOHAMMAD**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
11-29-2023 [[19](#)]

NO RULING.

2. [23-12387](#)-A-7 **IN RE: LESLIE RICHARDT**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
11-28-2023 [[18](#)]

NO RULING.

1. [23-12308](#)-A-7 **IN RE: MARIA HERNANDEZ**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2023 [\[12\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
JOEL WINTER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Toyota Camry, VIN: 4T1G11AK5NU005398 (the "Vehicle"). Doc. #12.

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 five complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,672.15. Ex. C, Doc. #15; Doc. #16.

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 \$27,500.00 and the debtor owes \$33,951.60. Doc. #16.

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-petition payments to Movant and the Vehicle is a depreciating asset.

2. [23-12237](#)-A-7 **IN RE: MICHAEL OLEA AND BEATRIX HARVEY-OLEA**
[VC-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2023 [\[23\]](#)

ALLIANT CREDIT UNION/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
MICHAEL VANLOCHEM/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent December 5, 2023, with a hearing date set for December 20, 2023. The motion was set for hearing on less than 28 days' notice prior to the hearing date and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion cited LBR 9014-1(f)(1) and stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The notice of hearing does not comply with LBR 9014-1(f)(2).

3. [23-12546](#)-A-7 **IN RE: MA BELEN MELENDREZ RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2023 [\[12\]](#)

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid in full. The case shall remain pending.

4. [23-12547](#)-A-7 **IN RE: NOEMI LOZA MELENDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2023 [\[13\]](#)

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid in full. The case shall remain pending.

[23-12554](#)-A-7 **IN RE: ESAU PAGAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-29-2023 [\[16\]](#)

DANIEL KING/ATTY. FOR DBT.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid in full. The case shall remain pending.

6. [08-13957](#)-A-7 **IN RE: HERBERT/THERESE ANDERSON**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL PC FOR
PETER A, SAUER, TRUSTEES ATTORNEY(S)
11-17-2023 [\[88\]](#)

ADRIAN WILLIAMS/ATTY. FOR DBT.
PETER SAUER/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.

Fear Waddell, P.C., ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from July 25, 2022 through November 14, 2023. Doc. #88. Movant provided legal services valued at \$14,457.50 and requests compensation for that amount. Doc. #88. Movant requests reimbursement for expenses in the amount of \$220.09. Doc. #88. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the bankruptcy estate's interest in a mass tort claim that was not disclosed in the debtors' schedules; (2) reviewing and analyzing various documents regarding the mass tort claim; (3) preparing and prosecuting a motion to approve a settlement of the mass tort claim; (4) filing a motion to amend the order regarding the settlement because there were more funds to be distributed to the bankruptcy estate than anticipated; and (5) preparing and filing employment and fee applications. Decl. of Peter A. Sauer, Doc. #92; Ex. A-C, Doc. #91. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$14,457.50 and reimbursement for expenses in the amount of \$220.09. Trustee is authorized to make a combined payment of \$14,677.59, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

7. [23-12274](#)-A-7 **IN RE: DESTINY DUNN**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
11-22-2023 [\[17\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for January 18, 2024 at 1:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.