

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 700

**TOCCATA AUTOMOTIVE GROUP, INC.'S AND PHIL HARRISON'S
MOTION FOR STAY PENDING APPEAL**

Toccata Automotive Group, Inc. ("Toccata") and Phil Harrison ("Harrison") by and through undersigned counsel, hereby request that the Court enter an Order pursuant to Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rule") 8005 staying the Court's *Order Granting Debtors' Motion (I) to Enforce Enforcement Order; (II) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for Violating the Same; and (III) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors to Address the Same* ("Contempt Order ") [D.I. 700] and in support thereof respectfully submits:

1. On June 17, 2024, and June 19, 2024 each of the six Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The cases are jointly administered under Case No. 24-11390.

2. On October 3, 2024, the Debtors' filed the Motion (i) to Enforce Enforcement Order; (ii) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors' corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.



Violating the Same; and (iii) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors to Address this Matter [D.I. 626].

3. On October 7, 2024, Toccata and Harrison filed the Opposition to Motion for Contempt for Violating Enforcement Order [D.I. 651].

4. On October 11, 2024, the Court entered the Contempt Order.

5. Bankruptcy Rule 8005 provides, in pertinent part, that:

[a] motion for a stay of the . . . order . . . of a bankruptcy judge . . . must ordinarily be presented to the bankruptcy judge in the first instance. A motion for such relief . . . may be made to the district court . . . , but the motion shall show why the relief . . . was not obtained from the bankruptcy judge.

Fed. R. Bankr. P. 8005.

6. This Court should grant a stay pending appeal because Toccata and Harrison have a substantial possibility of success on the merits on appeal, and Toccata and Harrison believe in good faith that the Contempt Order is erroneous in several respects, including non-exclusively:

a. Debtor, during oral argument, changed its request for compensation for thirteen (13) previously sold cars from \$16,500 to \$30,100. The Court permitted that oral change without opportunity for Movant to object or otherwise be heard. The monetary difference is \$176,800, *i.e.* the difference nearly doubles the amount that was disputed in the written papers, and was thus material. Moreover, Debtor did not lose \$30,100 even on its own logic (it wanted to deliver the cars to American Lease for \$16,500 each), and thus Debtor had no claim against Toccata for that amount.

b. Debtor demanded compensation of \$16,500 for five (5) cars that Toccata indisputably returned to the Debtor and that Debtor then sold to American Lease, supposedly because the cars were partially damaged. Debtor did not present evidence that these five (5) cars were destroyed or otherwise unavailable for sale. The Order as presently

written thus double charges Toccata for these five (5) specific cars: Toccata returned the cars, yet has been charged 100% of the cars' value as if it did not return the cars. The amount at issue is \$82,500. If American Lease imposed a discount for the supposed damage to these cars, then Debtor should be able to readily prove the amount of any such discount, which will be less than \$82,500.

c. The Contempt Order also directs Toccata to pay a non-liquidated and yet unproven or challenged amount of legal fees, such that Toccata does not yet know all of the appeal grounds. Toccata expects that the parties will dispute the applicability of legal fees to the limited disputes at issue in the Order.

7. Toccata respectfully states that it believes the amount of the Contempt Order to be incorrect by at least \$250,000, and paying that amount prior to appeal would inflict substantial hardship on Toccata. Toccata therefore respectfully moves the Court to stay the payment deadline on the contempt order pending appeal.

WHEREFORE, Toccata and Harrison respectfully requests entry of the order submitted herewith staying the Contempt Order and for such other and further relief as the Court deems appropriate.

Dated: Wilmington, Delaware
October 16, 2024

AKERMAN LLP

/s/ Andrew S. Dupre
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Counsel to Toccata Automotive Group, Inc.

CERTIFICATE OF SERVICE

I, Andrew S. Dupre, hereby certify that on October 16, 2024, a true and correct copy of the foregoing Motion to Stay Pending Appeal pursuant to Fed. R. Bankr. P. 8005 was served upon all interested parties by CM/ECF and the parties listed below by electronic mail.

/s/ Andrew S. Dupre

Andrew S. Dupre

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FOR THE DISTRICT OF DELAWARE**

In re:

FISKER, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 700

Hearing Date:

November 12, 2024 at 10:00 a.m. (ET)

Objection Deadline:

November 5, 2024 at 5:00 p.m. (ET)

**NOTICE OF MOTION OF TOCCATA AUTOMOTIVE GROUP, INC.
AND PHIL HARRISON FOR STAY PENDING APPEAL**

PLEASE TAKE NOTICE that on October 16, 2024, Toccata Automotive Group, Inc. ("Toccata") and Phil Harrison ("Mr. Harrison") filed a *Motion for Stay Pending Appeal* [D.I. ____] (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that any responses or objections to approval of the relief requested in the Motion must be (a) in writing; (b) filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **November 5, 2024, at 5:00 p.m. (ET)** (the "**Objection Deadline**"); and (c) served so as to be received on or before the Objection Deadline by the undersigned counsel to Toccata and Mr. Harrison.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON NOVEMBER 12, 2024, AT 10:00 A.M. (ET) BEFORE THE HONORABLE THOMAS M. HORAN AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE PROCEDURES ABOVE WILL BE CONSIDERED BY THE COURT AT SUCH HEARING.

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IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
October 16, 2024

AKERMAN LLP

/s/ Andrew S. Dupre

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*Counsel to Toccata Automotive Group, Inc.
and Phil Harrison*

CERTIFICATE OF SERVICE

I, Andrew S. Dupre, hereby certify that on October 16, 2024, a true and correct copy of the foregoing *Notice of Motion for Stay Pending Appeal* was served upon all interested parties by CM/ECF and the parties listed below by electronic mail.

/s/ Andrew S. Dupre

Andrew S. Dupre

**IN THE UNITED STATES BANKRUPTCY COURT
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(Jointly Administered)

**ORDER
PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 8005 STAYING CONTEMPT ORDER**

This matter having come before the Court upon the motion (the "Motion to Stay")² of Toccata Automotive Group, Inc. ("Toccata") and Phil Harrison ("Harrison") for entry of an order for stay pending appeal of the Court's *Order Granting Debtors' Motion (I) to Enforce Enforcement Order; (II) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for Violating the Same; and (III) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors to Address the Same* ("Contempt Order ") [D.I. 700]; and good and sufficient cause appearing thereof, all as more fully described in the Motion to Stay; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion to Stay.

been provided under the circumstances; and after due deliberation and sufficient cause appearing thereof,

IT IS HEREBY ORDERED THAT

1. The Motion to Stay is GRANTED as set forth herein.
2. The Order Granting Debtors' Motion (I) to Enforce Enforcement Order; (II) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for Violating the Same; and (III) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors to Address the Same, entered on October 11, 2024 is hereby stayed until further Order of this Court.
3. The Court shall retain jurisdiction over any and all matters arising from or related to this Order.

Dated: October __, 2024
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE