



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, February 1, 2023
Department A – Courtroom #11
Fresno, California**

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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. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[MKK-4](#)

MOTION FOR COMPENSATION FOR M. KATHLEEN KLEIN, ACCOUNTANT(S)
1-6-2023 [[1316](#)]

M. KLEIN/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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 filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's motion and exhibits. Doc. #1316.

Kathleen Klein ("Movant"), accountant for debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia ("DIP"), requests allowance of final compensation and reimbursement for services rendered from October 1, 2021 through January 4, 2023. Doc. #1316. Movant provided accounting services valued at \$22,639.50, and pursuant to Movant's motion for compensation and declaration, Movant requests compensation for \$22,639.50. Doc. #1316. Movant requests reimbursement for expenses in the amount of \$392.00. Doc. #1316. The court has previously awarded interim compensation and expenses to Movant in the aggregate amount of \$23,982.72. Doc. ##300, 709, 833. DIP state they have no objections to the motion. Decl. of Eduardo Garcia and Amalia Perez, Doc. #1318.

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) preparing monthly operating reports; (2) preparing form 593 for sale of real estate; (3) preparing 2022 income tax returns; (4) preparing 2021 income tax returns; (5) preparing tax clearance request pursuant to Section 505(b) and IRS Rev. Proc. 2006-24; and (6) preparing final fee application. Decl. of Kathleen Klein, Doc. #1316;

Motion, Doc. #1316. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows compensation and expenses in the amount of \$23,031.50 on a final basis.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-49](#)

CONTINUED MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE
12-15-2022 [[1306](#)]

AMALIA GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the record is supplemented before the hearing.

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

This motion was set for hearing on at least 28 days' notice 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). Because the motion to approve the professional fees for the debtors' accountant may require a further hearing, a hearing on this motion is required. In addition, the debtors need to supplement the record before the court can grant their discharge. This matter will proceed as scheduled.

Debtors Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors") move the court for an order entering a Chapter 11 discharge and for a final decree. Doc. #1306.

With respect to the entry of a discharge, 11 U.S.C. § 1141(d)(5) provides that the confirmation of a plan for an individual in Chapter 11 does not automatically discharge them of their debts. Rather, the court must hold a properly noticed hearing and find "that there is no reasonable cause to believe that (i) section 522(q)(1) may be applicable to the debtor; and (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind

described in section 522(q)(1)(B); and if the requirements of subparagraph (A) and (B) are met." 11 U.S.C. § 1141(d)(5)(A) requires all plan payments to be met, which is applicable in this case. 11 U.S.C. § 1141(d)(5)(B) permits entry of a discharge to an individual debtor who has not completed payments required under the plan if certain conditions are met. 11 U.S.C. § 1141(d)(5)(B) does not apply in this case.

The Chapter 11 plan ("Plan") was confirmed by order dated December 6, 2022. Doc. #1302. Article XI, section 12.02 of the Plan provides that, upon a noticed hearing "Debtors shall receive their discharge upon proof of completion of [payments of Class Fourteen Claims] provided notice in compliance with the Bankruptcy Rules is given." Doc. #1235. According to the declaration of Leonard Welsh, counsel for Debtors, Debtors have completed plan payments to Class Fourteen Claimants as required by the Plan. Decl. of Leonard K. Welsh at ¶¶ 4-5, Doc. #1308. Accordingly, the requirements of section 1141(d)(5)(A) have been met.

However, there was no evidence filed with the motion that permits this court to make the additional findings required by 11 U.S.C. § 1141(d)(5), namely that (i) there is no reasonable cause to believe that section 522(q)(1) may be applicable to Debtors and (ii) there is not pending any proceeding in which Debtors may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B). Accordingly, the court is inclined to continue the hearing on this motion to permit Debtors to supplement the record so the court can make the additional findings required by 11 U.S.C. § 1141(d)(5).

With respect to Debtors' request for a final decree, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022.

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define "full administration" of a chapter 11 case, but the Advisory Committee Notes to the 1991 amendments to Federal Rule of Bankruptcy Procedure 3022 outline several factors the court should consider when making that determination. Those factors include: whether the confirmation order is final; whether property proposed to be transferred under the plan has been transferred; whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan; whether the payments under the plan have commenced; and whether all motions, contested matters, and adversary proceedings have been resolved.

Assuming that the record has been supplemented adequately and the court can grant entry of Debtors' discharge, the court finds that the order confirming the plan has become final, that Debtors have assumed the business and management of the property dealt with under the Plan, that payments under the Plan have been made, and that all property required to be transferred under the Plan has been transferred. Welsh Decl., Doc. #1308. All motions, contested matters, and adversary proceedings have been resolved. Therefore, a final decree shall be entered closing this case pursuant to Federal Rule of Bankruptcy Procedure 3022.

1. [22-12068](#)-A-7 **IN RE: ARMANDO GUTIERREZ**
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-30-2022 [\[16\]](#)

VOLVO CAR FINANCIAL SERVICES LLC/MV
GARRY MASTERSON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #22. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

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

2. [22-11897](#)-A-7 **IN RE: ROSENDO VERDUSCO AND MA DE LOURDES DE VERDUZCO**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-12-2023 [\[17\]](#)

THE GOLDEN 1 CREDIT UNION/MV
T. O'TOOLE/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules

of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #23. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

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