

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Friday, July 30, 2021  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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. [19-10802](#)-B-13     **IN RE: STEVE/SHELLY BIERER**  
[DMG-3](#)

RESCHEDULED MOTION TO MODIFY PLAN  
6-14-2021    [[42](#)]

SHELLY BIERER/MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 hearing.

Steve Bierer and Shelly Ann Bierer ("Debtors") seek confirmation of their Second Amended Chapter 13 Plan. Doc. #42. Debtors wish to extend the duration of the plan to 66 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed. Doc. #53.

Debtors' response proposes to resolve Trustee's objections to confirmation in the order confirming plan ("OCP"). Doc. #55. Debtors have conferred with Trustee and request to apprise the court at the hearing of the case status.

This matter will proceed as scheduled. The court may GRANT the motion.

This motion was set for hearing on July 28, 2021 with 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). Doc. #43. The court rescheduled that hearing to July 30, 2021. Doc. #50. The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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. Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021). Here, joint debtor Steve Bierer declares that his wife, Shelly Brier, lost work for a period of time during the COVID-19 pandemic. Doc. #45. Debtors' previous plan was confirmed on June 17, 2019, which is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #18. Accordingly, Debtors satisfy the requirements to extend their plan beyond 60 months under § 1329(d).

However, Trustee objects because the plan fails to provide for submission of all or such portion of future earnings or other income to the supervision and control of Trustee to execute the plan as required by 11 U.S.C. § 1322(a). Doc. #53. Trustee states that the plan neither addresses the delinquency owed to Class 2 creditors nor bring the delinquency current.

Debtors propose to add language to the OCP to address the plan payment delinquency and Class 2 creditor dividends. Doc. #55.

This matter will be called as scheduled to inquire about Trustee's position. In the absence of further opposition from Trustee, this motion may be GRANTED. Any order confirming plan shall be approved by Trustee, include the docket control number of the motion, and reference the plan by the date it was filed.

2. [21-10418](#)-B-13     **IN RE: SAMUEL/ANGELA BERMUDEZ**  
[SL-1](#)

RESCHEDULED MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS  
ATTORNEY(S)  
6-24-2021    [\[19\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

ORDER:             Moving party shall prepare the order in accordance  
with the ruling below.

Scott Lyons ("Applicant"), counsel for Samuel Bermudez and Angela Selen Bermudez ("Debtors"), asks the court to approve an application for interim compensation in the amount of \$8,995.85 in fees and \$425.50 in expenses for a total of \$9,421.35 for services rendered from November 1, 2017 through June 24, 2021. Doc. #19. Debtors state that they have reviewed the fee application and have no objection. *Id.*, ¶ 9(14).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 28, 2021 with at least 28 days' notice. Doc. #20. The court rescheduled that hearing to July 30, 2021. Doc. #23. The failure of the creditors, the U.S. Trustee, 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. Therefore, the defaults of the above-mentioned parties in interest are entered. 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing (Doc. #20) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Under the Plan confirmed May 4, 2021 (Doc. #16) Applicant opted to apply for fees and expenses under 11 U.S.C. §§ 330 and 331. This is the first interim application. Debtors have represented they have reviewed the application and have no objection to allowance and payment of the fees. Doc. #19.

Applicant states that his firm spent 45.20 billable hours on services totaling \$8,995.85 as follows:

Professional	Rate	Hours	Total Amount
Scott Lyons <sup>1</sup>	\$400.00	1.9333	\$773.33
Louis Lyons <sup>2</sup>	\$350.00	15.7833	\$5,524.18
Louis Lyons	\$100.00	1.1667	\$116.67
Sylvia Gutierrez	\$100.00	25.8167	\$2,581.67
<b>Total</b>		<b>44.70</b>	<b>\$8,995.85</b>

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<sup>1</sup> Although Scott Lyons states that he worked "2:26" hours (2.4333 hours), he did not charge for 0.5 hours for the Initial Consultation on November 1, 2017. Doc. #21, Ex. B. Subtracting 0.5 hours from his 2.4333 total hours results in hours of 1.9333. With his \$400 hourly rate, his fees total \$773.33, as requested.

<sup>2</sup> Louis Lyons claims to have worked "16:57" hours (16.95 hours). Doc. #21, Ex. B. However, he billed at Ms. Gutierrez's hourly rate for 1.1667 hours. Subtracting those hours from his total and re-adding them at \$100 per hour totals approximately \$5,640.85.

Doc. #19, ¶ 7; Doc. #21, Ex. B. Applicant also incurred the following expenses:

Postage	\$38.50
Filing Fees	\$313.00
Credit Reports	\$74.00
<b>Total Costs</b>	<b>\$425.50</b>

*Ibid.*; Doc. #19, ¶ 6.

Under 11 U.S.C. § 330(a)(4)(B), in a chapter 13 case, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration "of the benefit and necessity of such services to the debtor and other factors (included in § 330)."

The court has reviewed the application. Though there are some problematic charges from clerical personnel that appear to be clerical in nature, the Debtors have not objected to the application. Neither have any unsecured creditors nor the Trustee. The amounts are not substantial. The services rendered include consultation with the Debtors; review of the Debtors' documents, meetings with the Debtors, responding to Debtors' inquiries, preparing both original and amended schedules and Statement of Affairs, preparing the "means test," attendance at two creditors' meetings and follow up regarding each. The Order Confirming Plan references two pending litigation claims that may involve further monitoring and administration.

The services appear reasonable in scope and necessary to represent the debtors. So, the court will approve the request as an interim application.

The application specifies that the debtors paid a pre-petition retainer of \$1,884.00 which was applied to pre-petition fees and costs. That leaves \$7,537.35 to be paid through the Plan. The Plan apparently allows for \$10,503.00 to be paid through the Plan.

The application will be GRANTED. Fees of \$8,995.85 (including pre-petition fees) and \$425.50 of costs (including pre-petition costs) will be approved on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. Applicant will be awarded \$9,421.35 for services rendered from November 1, 2017 through June 24, 2021.

3. [21-10726](#)-B-13     **IN RE: DAVID CONTRERAS**

RESCHEDULED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-29-2021    [\[34\]](#)

BENNY BARCO/ATTY. FOR DBT.  
DISMISSED 07/02/2021

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

An order dismissing this case was entered on July 2, 2021. Doc. #40. Accordingly, the Order to Show Cause will be DROPPED AS MOOT.

4. [20-13727](#)-B-13     **IN RE: ADOLFO/AURELIA HERNANDEZ**  
[ETW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-2-2021    [\[61\]](#)

PELICAN HOLDINGS, LLC/MV  
SCOTT LYONS/ATTY. FOR DBT.  
EDWARD WEBER/ATTY. FOR MV.  
RESPONSIVE PLEADING

FINAL RULING:     This matter will proceed as scheduled.

DISPOSITION:     Continued to September 1, 2021 at 9:30 a.m.

ORDER:             The court will issue an order.

Pelican Holdings, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) so it can seek remedies with respect to its security interest in real property located at 14744 Avenue 112, Pixley, CA 93256 ("Property"). Doc. #61.

Adolfo Hernandez and Aurelia Hernandez ("Debtors") timely opposed. Doc. #79. Debtors contend that their First Modified Chapter 13 Plan is set for confirmation hearing on September 1, 2021, and confirmation will satisfy Movant's claim in full. SL-3. Notably, Movant also objects to Debtors' plan confirmation motion. Doc. #83.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest except Debtors 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). Therefore, the defaults of the above-mentioned parties in interest except Debtors are entered.

As a procedural matter, the Notice of Hearing (Doc. #62) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Second, the exhibits do not comply with LBR 9004-2(d), which requires an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, there was an exhibit index, but it did not identify the page on which each exhibit is located, and the exhibit pages were not consecutively numbered throughout the entire exhibit document. Doc. #64. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

The court finds "good cause" to continue the hearing to September 1, 2021 under § 362(e)(2)(B)(ii). Though movant has objected to plan confirmation, the resolution of this motion and plan confirmation may be reached and implemented through the plan confirmation order. If not, the extension is only one day past the 60 days since this motion was filed. There is no evidence that the property is in danger of loss or value diminution during the period. The movant's declaration references absence of proof of insurance, but the debtor's opposition says otherwise. This presents a factual dispute which needs resolution. Finally, the property at issue is the debtor's residence and there is no proof the property is damaged or in danger of damage.

The court is inclined to CONTINUE this matter to September 1, 2021 at 9:30 a.m. to be heard in connection with Debtors' motion to confirm chapter 13 plan. The automatic stay will be continued in effect for good cause pending resolution of a final hearing on September 1, 2021 under 11 U.S.C. § 362(e)(2)(B)(ii).

5. [18-13728](#)-B-13     **IN RE: CANDELARIA MUNIZ**  
[PBB-3](#)

MOTION TO INCUR DEBT  
7-16-2021    [\[58\]](#)

CANDELARIA MUNIZ/MV  
PETER BUNTING/ATTY. FOR DBT.

NO RULING.

Candelaria Connie Muniz ("Debtor") seeks authorization to incur \$23,556.90 in new debt to purchase a 2019 Honda Accord ("Vehicle") for \$27,428.88. Doc. #58.

Written opposition was not required and may be presented at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, respondents' defaults will be entered. 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.

LBR 3015-1(h)(1)(A) allows the debtor, *ex parte* and with court approval, to finance the purchase of a motor vehicle if written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is a certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the new debt; (iv) the new debt is a single loan incurred to purchase a vehicle that is reasonably necessary for the maintenance or support of the debtor, or necessary for the continuation, preservation, and operation of the debtor's business; (v) the only security for the new debt will be the vehicle purchased by debtor; and (vi) the new debt does not exceed \$20,000.00.

If the trustee will not give consent, or if debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(A), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

Debtor asks the court for authority to purchase Vehicle from Shift Operations, LLC ("Creditor") for \$27,428.88. Debtor wants to borrow \$23,556.90 from Creditor at an interest rate of 7.4% to purchase Vehicle. Doc. #61, Ex. A. The loan will be secured by Vehicle and include the following terms:

Total Price:	\$27,428.88
Down Payment:	\$4,000.00 (or \$4,124.98?)
Financed Amount:	\$23,556.90
Interest Rate:	7.40%
Monthly Payment:	\$470.91
Term:	60 months

*Ibid.* Debtor states that she was approved for financing on a loan from Westlake Financial, but she first needs court approval. Doc. #60. Debtor intends to make a down payment of \$4,000.00, which was a gift given to her by her uncle. *Id.*, ¶ 4. The court notes that the loan documents reference a down payment of \$4,124.98, but Debtor states her down payment will only be \$4,000.00. Doc. #61, Ex. A. Additionally, the loan terms include an arbitration agreement requiring all disputes to be submitted to binding arbitration, with the parties also agreeing to submit to personal jurisdiction of any state or federal court in San Francisco County to compel arbitration, stay proceedings pending arbitration, or confirm,



modify, vacate, or enter judgment on the award entered by the arbitrator.

Debtor believes she can pay the monthly \$470.91 vehicle payment, along with her plan payment of \$1,588.31 and all other living expenses. Doc. #60. Debtor amended Schedules I and J to reflect the new car payment, which shows she will still have disposable income of \$1,589.24. Doc. #61, Ex. C.

The new debt is a single loan incurred to purchase a motor vehicle, which Debtor claims is reasonable and necessary. Doc. #60. Debtor currently owns a 2007 Acura with over 200,000 miles, which is her only form of transportation to and from work. At the Acura's last oil change, Debtor declares that she was informed by her mechanic that there is an oil leak in the engine, the Acura is not reliable transportation, and that it will not be worth repairing when the engine stops running. The mechanic recommended that she replace her Acura rather than repairing it.

The statements from the unidentified mechanic are hearsay and cannot be used to prove that the Acura has an oil leak, is not reliable transportation, and should be replaced rather than repaired. Fed. R. Evid. ("FRE") 801. Nevertheless, Debtor's opinion and concerns about her Acura as its owner are admissible as opinion testimony. FRE 701.

Debtor states that her Acura is "disabled and will not start." Doc. #60. That is not opinion, but a statement of fact. Since it is her only vehicle, she needs it for transportation to and from work, and she does not believe it is worth replacing, Debtor wishes to incur this debt to purchase Vehicle, a 2019 Honda Accord with 21,905 miles. Doc. #61, Ex. A.

This matter will be called as scheduled to inquire whether any parties in interest oppose.

6. [21-10443](#)-B-13     **IN RE: JORGE LOPEZ**  
[DJ-4](#)

RESCHEDULED MOTION TO CONFIRM PLAN  
6-8-2021     [\[86\]](#)

JORGE LOPEZ/MV  
DUSHAWN JOHNSON/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.

Jorge L. Lopez ("Debtor") seeks confirmation of his Third Amended Chapter 13 Plan. Doc. #86.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed. Doc. #96.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

The amended notice (Doc. #98) did not contain the language required under LBR 9014-1(d)(3)(B). LBR 9014-1(d)(3)(B)(iii), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Further, Trustee objects for three reasons:

1. The plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507, as required by § 1322(a).
2. The plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors as required by § 1325(b).
3. The plan fails to provide for the value, as of the effective date of the plan, of property to be distributed on account of each unsecured claim in at least the amount that would be paid if this were a chapter 7 case. This liquidation analysis is required by § 1325(a)(4).

Doc. #96. First, Trustee notes that section 3.05 provides for attorney fees of \$3,000.00 to be paid through the plan, but the plan fails to list a monthly dividend for attorney fees in section 3.06.

Second, Debtor deducts \$500.00 for post-petition legal fees for his ongoing divorce. Doc. #55, *Schedule J*, ¶ 21. The Third Amended Plan proposes to increase the dividend to unsecured claims to 58%. Doc. #81. However, Debtor anticipates no longer having to pay \$500 per month for post-petition legal fees in month 13, after the divorce is finalized. This would increase Debtor's disposable income to \$1,690.32, which would allow Debtor to pay a 100% dividend to unsecured creditors over 36 months.

Third, Debtor owns real property in Firebaugh, California, which is exempted under C.C.P. § 704.730 in the amount of \$82,850.44. Doc. #48, *Schedule C*. The property is owned by Debtor and his separated spouse, Veronica Lopez. The automatic stay was modified so that the Fresno County Superior Court could resolve their dissolution action, including any marital property division issues. Doc. #72. Any sale of marital property must be brought before this court as required by the order modifying the stay.

Trustee urges that the order confirming plan provide that if the real property is sold, the proceeds are subject to the reinvestment condition of C.C.P. § 704.720(b) so that the sale proceeds lose exempt status once the reinvestment period expires. Doc. #96 (citing *In re Jacobson*, 676 F.3d 1193, 1199 (9th Cir. 2012); *In re Anderson*,

988 F.3d 1210, 1215 (9th Cir. 2021)). This would provide additional funds that could be distributed to allowed unsecured claims in a chapter 7 liquidation.

This motion will be DENIED WITHOUT PREJUDICE for the procedural defect in the notice of hearing. Debtor's next plan confirmation motion should also address Trustee's objections.

7. [21-10443](#)-B-13     **IN RE: JORGE LOPEZ**  
[MHM-2](#)

RESCHEDULED CONTINUED MOTION TO DISMISS CASE  
6-1-2021    [\[77\]](#)

MICHAEL MEYER/MV  
DUSHAWN JOHNSON/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on July 6, 2021. Doc. #109. Accordingly, the hearing will be dropped from calendar.

8. [21-11046](#)-B-13     **IN RE: ROBERT/DARLENE AGUINAGA**  
[PBB-2](#)

RESCHEDULED MOTION TO AVOID LIEN OF KING CREDIT SERVICE  
6-17-2021    [\[29\]](#)

DARLENE AGUINAGA/MV  
PETER BUNTING/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Debtors Robert Aguinaga and Darlene Roxanne Aguinaga withdrew this motion on July 19, 2021. Doc. #43. Accordingly, the hearing will be dropped from calendar.

9. [18-12050](#)-B-13     **IN RE: GENEVIEVE SANTOS**  
[ALG-7](#)

RESCHEDULED MOTION TO MODIFY PLAN  
6-7-2021    [\[141\]](#)

GENEVIEVE SANTOS/MV  
JANINE ESQUIVEL OJI/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.

Genevieve Ann Santos ("Debtor") seeks to confirm her Second Modified Chapter 13 plan. Doc. #141. Debtor wishes to extend the duration of the plan to 66 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

This motion was set for hearing on July 28, 2021 with 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). Doc. #142. The court rescheduled that hearing to July 30, 2021. Doc. #150. The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021). Here, Debtor suffered reduced work hours and loss of income due to the COVID-19 pandemic. Doc. #144. Debtor's previous plan was confirmed on December 9, 2020, which is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #90. Accordingly, Debtor satisfies the requirements to extend their plan beyond 60 months under § 1329(d).

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. [21-11259](#)-B-13     **IN RE: LAWRENCE NIER**  
[MHM-1](#)

RESCHEDULED MOTION TO DISMISS CASE  
6-28-2021    [\[29\]](#)

MICHAEL MEYER/MV

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order dismissing the case  
without prejudice.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors, under Local Rule of Practice ("LBR") 3015-1(a) for failure to file a correct form of Chapter 13 Plan, and 11 U.S.C. § 109(h) for failing to file a Credit Counseling Certificate. Doc #29.

Debtor did not oppose, but he did file a motion to voluntarily dismiss the case on July 23, 2021. Doc. #58. However, Debtor used a form from the Central District of California Bankruptcy Court, did not file a notice of hearing, and provided inadequate proof of service, so that motion is ineffective. The debtor did state on the improper form under penalty of perjury that he had no reason to continue with this Chapter 13 case. *Id.*

The debtor was advised to set a hearing or submit an order. Doc. # 59. The debtor did submit an order dismissing the case on July 27, 2021. But the debtor's motion was improper and the proof of service inadequate. The court did not sign the debtor's order.

This motion was set for hearing on July 28, 2021 with 28 days' notice as required by LBR 9014-1(f)(1). Doc. #30. The court rescheduled that hearing to July 30, 2021. Doc. #33. The failure of the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The debtor has failed to file a correct form of Chapter 13 Plan as provided by Local Rule 3015-1(a). And lastly, the Debtor failed to file a Credit Counseling Certificate as required by 11 U.S.C. § 109(h). Accordingly, the motion will be GRANTED, and the case dismissed. The dismissal is without prejudice and the order will so reflect.

11. [21-10681](#)-B-13     **IN RE: TERRY JACOBS**  
[PBB-3](#)

RESCHEDULED MOTION TO CONFIRM PLAN  
6-16-2021    [\[45\]](#)

TERRY JACOBS/MV  
PETER BUNTING/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.

Terry LaVon Jacobs ("Debtors") seeks confirmation of this First Modified Chapter 13 Plan. Doc. #45. No parties in interest timely filed written opposition.

This motion was set for hearing on July 28, 2021 with 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Doc. #46. The court rescheduled that hearing to July 30, 2021. Doc. #62. The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

12. [17-14293](#)-B-13     **IN RE: ERIC/MEREDITH KURTZ**  
[NES-9](#)

RESCHEDULED MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ,  
DEBTORS ATTORNEY(S)  
6-17-2021    [\[91\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Applicant"), attorney for Eric Walter Kurtz and Meredith Erin Kurtz ("Debtors"), requests final compensation under 11 U.S.C. §§ 330 and 331 in the amount of \$2,770.00, consisting of \$2,760.00 in fees and \$10.00 in costs for services rendered from May 26, 2021 through June 16, 2021. Doc. #91. Debtors signed a statement that they have reviewed the fees and have no objections. *Id.*, at ¶ 9(7).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 28, 2021 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #92. The court rescheduled that hearing to July 30, 2021. Doc. #95. The failure of the creditors, the debtors, the chapter 13 trustee, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing (Doc. #92) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Second, the exhibits do not comply with LBR 9004-2(d), which requires an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, there was an exhibit index, but it



did not identify the page on which each exhibit is located, and the exhibit pages were not consecutively numbered throughout the entire exhibit document. Doc. #93. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Debtors filed bankruptcy on November 7, 2017. The initial chapter 13 plan provided that Applicant was paid \$3,087.00 prior to filing the case and additional fees of \$12,000.00 shall be paid through the plan by filing a motion in accordance with 11 U.S.C. §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #5. *The Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* Form EDC 3-096 provides that initial fees charged were \$15,087, and of this amount, \$3,087.00 was paid prior to filing the petition. Doc. #7.

Debtors' Amended Chapter 13 Plan was filed February 5, 2018 and confirmed on April 16, 2018. Docs. #22; #44. This plan provided for the same fee structure.

Applicant's request for interim compensation of \$10,380.00 in fees and \$413.00 in costs, totaling \$10,793.00, was granted on January 21, 2020. Doc. #90. In light of the \$3,087 retainer, \$7,293.00 was permitted to be paid through the plan for fees.

Applicant now requests final compensation of \$2,770.00. Doc. #91. The source of the funds will be directly from the chapter 13 trustee ("Trustee") in accordance with the confirmed chapter 13 plan.

Applicant's office provided 9.90 billable hours of legal services for Debtors totaling \$2,760.00 was follows:

Professional	Rate	Hours	Total Amount
N.S. Attorney	\$300.00	8.50	\$2,550.00
J.L. Paralegal	\$150.00	1.40	\$210.00
<b>Totals</b>		<b>9.90</b>	<b>\$2,760.00</b>

*Id.*, ¶ 7; #93, Ex. B. Applicant also seeks reimbursement of **\$10.00** for postage. *Ibid.* These combined fees and expenses total **\$2,770.00**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) communicating with the chapter 13 trustee regarding plan payoff; (2) reviewing letters from the trustee's office; (3) reviewing claims; (4) communicating with creditors; (5) preparing fee applications; and (6) preparing discharge paperwork. Doc. #93, Ex. B. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

This motion will be GRANTED. Applicant will be authorized to receive \$2,760.00 in fees and \$10.00 in costs for services rendered from May 26, 2021 through June 16, 2021. Applicant shall be compensated \$2,770.00 on a final basis. Further, the court will approve on a final basis \$10,793.00 previously awarded on an interim basis for Applicant's prior application. The total amount of fees and expenses awarded to Applicant in this case is \$13,563.00.

11:00 AM

1. [20-13712](#)-B-7     **IN RE: KAWALJEET KAUR**  
[21-1022](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT  
5-25-2021    [\[1\]](#)

SALVEN V. KAUR ET AL  
ANTHONY JOHNSTON/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

2. [20-12036](#)-B-7     **IN RE: SANDRA SANCHEZ**  
[21-1016](#)

RESCHEDULED CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-30-2021    [\[1\]](#)

SALVEN V. SANCHEZ ET AL  
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION:     Continued to September 1, 2021, at 11:00 am.

ORDER:             The court will issue the order.

The summons and complaint were served on the defendants on March 31, 2021. Doc. #6. No responsive pleading has been filed. Plaintiff is directed to promptly seek entry of default and set the necessary "prove up" hearing. If one is scheduled before the continued status conference, the status conference will be continued to the date of the prove up hearing. If not, the court will issue an OSC re: dismissal for failure to prosecute, if appropriate.

3. [14-14343](#)-B-13     **IN RE: RICHARD KELLEY**  
[21-1021](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT  
5-24-2021    [\[1\]](#)

KELLEY V. LANDSKRONER  
ROBERT HAWKINS/ATTY. FOR PL.

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

DISPOSITION:     Continued to September 22, 2021 at 11:00 am.

ORDER:             The court will issue the order.

Default was entered against defendant on July 20, 2021. Doc. #13. The plaintiff has been directed to set a prove up hearing. If one is scheduled by the continued status conference, the court will continue the status conference to the date of the prove up hearing. If not, the court will issue an OSC re: dismissal, if appropriate,

4. [20-12969](#)-B-7     **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**  
[21-1012](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-15-2021    [\[1\]](#)

EDMONDS V. CORTES ET AL  
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION:        Dropped.

ORDER:                The court will issue the order.

The court intends to approve the parties' settlement agreement in matter #5 below. Within five days of approval of the Settlement Agreement, Plaintiff will file a notice of dismissal with prejudice in this adversary proceeding.

This status conference will be DROPPED from calendar and may be reset by any party on 10 days' notice.

The clerk of the court will issue a Notice of Intent to Dismiss if the adversary proceeding has not been concluded or set for further status conference within 30 days. The plaintiff may request an extension of this time up to 30 days by ex parte application for cause.

5. [20-12969](#)-B-7     **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**  
[21-1012](#)     [ADJ-3](#)

RESCHEDULED MOTION TO COMPROMISE CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH CARLOS BRAVO CORTES AND BERTHA  
ESTHELA SPINDOLA  
6-23-2021    [\[19\]](#)

EDMONDS V. CORTES ET AL  
ANTHONY JOHNSTON/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.

Chapter 7 trustee Irma C. Edmonds ("Plaintiff") moves for an order approving a settlement agreement between Plaintiff and debtors Carlos Bravo Cortes and Bertha Esthela Spindola ("Debtors"), and non-debtor Martin Rodriguez Vega ("Vega") under Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #19. The settlement agreement ("Settlement Agreement") settles all claims by Plaintiff against Debtors and Vega (collectively "Defendants"). Under the terms of the Settlement A, Defendants will pay \$20,000.00 in full satisfaction of Plaintiffs claims against two parcels of real property. This payment will allow for payment of all unsecured creditor claims and costs of administration in full. Within five business days of approval of the Settlement Agreement, Plaintiff will dismiss this adversary proceeding with prejudice. Doc. #23, Ex. A.

The U.S. Trustee and all creditors were properly served with this motion. No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

#### BACKGROUND

Debtors filed chapter 7 bankruptcy on September 16, 2020. Case No. 20-12969 ("Bankr."), Doc. #1. Plaintiff was appointed as interim chapter 7 trustee that same day and became permanent trustee at the first meeting of creditors on October 26, 2020. Bankr. Doc. #3; docket generally.

Debtors' petition states that they reside at 2020 Teneya Ave., Corcoran, CA 93212 ("Teneya Property"). Bankr. Doc. #1. Teneya Property is listed in Schedule A/B with a value of \$216,312.00 and Debtors claim a 100% ownership interest. *Id.* However, Plaintiff declares that Vega holds legal title of record to Teneya Property. Doc. #21.

Debtors also list 1010 Adler Ave., Corcoran, CA 93212 ("Adler Property") in Schedule A/B but claim to only be co-signers for Debtor's brother, Jose Cortes ("Cortes") and his wife Rosa Jimenez.

Bankr. Doc. #1. Cortes is also listed in Schedule H as a co-debtor. *Id.*

Plaintiff filed this adversary proceeding on March 15, 2021 seeking judgment (a) determining that Teneya Property is property of the bankruptcy estate; (b) turning over Teneya Property to Plaintiff; and authorizing sale of any co-owner's interest in Teneya Property. Doc. #1.

That same day, Plaintiff sought an order compelling Debtors to turnover Adler Property. Bankr. Doc. #22. That matter is still pending and was recently continued to August 10, 2021. Bankr. Doc. #52.

The parties have agreed to settle this action. Under the terms of the Settlement A, Defendants will pay Plaintiff \$20,000 in exchange for full satisfaction of any and all claims against or related to:

- (a) Defendants and Teneya Property;
- (b) Debtors and Adler Property; and
- (c) Debtors and any other property interest.

Doc. #23, Ex. A. Debtors will pay:

- (a) \$4,000 within 30 days of the effective date of the Settlement Agreement;<sup>3</sup>
- (b) \$600 for 23 months commencing with the first payment on the 60th day after the effective date, due each month on the same date;<sup>4</sup>
- (c) \$659 due as a final payment due within 25 months of the effective date.<sup>5</sup>

*Id.*, Art. 1, ¶ 1.1, at 2. Within five days of approval of the Settlement Agreement, Plaintiff will file a notice of dismissal with prejudice in this adversary proceeding. *Id.*, Art. 1, ¶ 1.5, at 3. The proposed order of dismissal shall provide for the bankruptcy court to retain jurisdiction to enforce the agreement. *Ibid.*

#### DISCUSSION

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. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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<sup>3</sup> The Settlement Agreement is effective on the date of the last signature in the agreement. Doc. #23, Ex. A, at 1. Here, the effective date is June 16, 2021. *Id.*, at 5. Effective date + 30 days is July 16, 2021.

<sup>4</sup> Effective date + 60 days is August 15, 2021. Each monthly payment would be due on the 15th of each month.

<sup>5</sup> Effective date + 25 months is July 16, 2023.

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is:

1. Probability of success in litigation: Plaintiff asserts that she would likely prevail at trial for her claims concerning Teneya Property. Doc. #22. Since Debtors affirm ownership of an equitable interest in Teneya Property in Schedule A/B, it is property of the estate under 11 U.S.C. § 541. However, probability of success is still far from assured. Trial preparation and prosecution are costly and time consuming and the estate is insolvent. It is uncertain whether Plaintiff would prevail with respect to Adler Property, since Debtors represent that they hold bare legal title solely for the benefit of their relatives.

2. Difficulties, if any, to be encountered in collection: The estate would incur additional costs, including brokerage commission, to sell Teneya Property. Plaintiff would also have to first prevail on her turnover motion for Adler Property and then evict occupants before it could be sold. Both properties would require additional expenses to collect additional funds for the bankruptcy estate.

3. Complexity of litigation involved, and expense, inconvenience, and delay necessarily attending to it: While the issues involved in this litigation are not complex, litigation itself is time consuming. Proceeding in litigation will decrease the net recovery to the estate due to additional legal fees and expenses. Plaintiff states that creditors will not improve their position by continuing litigation instead of pursuing settlement, which avoids these expenses, inconvenience, uncertainty, and delay because the settlement renders the estate solvent.

4. Paramount interest of the creditors and a proper deference to their reasonable views: Plaintiff contends that creditors will benefit from this settlement because they will receive a 100% dividend on their unsecured claims. The sum of unsecured claims is \$9,362.80. Doc. #21. While no creditors have made their views known, the settlement will resolve this adversary proceeding quickly, with minimal expense, and provide funds sufficient to pay all claims, including attorney and trustee's fees.

The settlement is fair and equitable. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise over litigation for its own sake. *Id.* No parties in interest timely filed opposition. This motion will be GRANTED.

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

6. [19-13374](#)-B-7      **IN RE: KENNETH HUDSON**  
[19-1128](#)

RESCHEDULED CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-26-2019 [[1](#)]

BROWN V. HUDSON  
GLEN GATES/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

The court issued a ruling on Michelle Brown's ("Plaintiff") motion for summary judgment on July 9, 2021. Doc. #141. The motion was granted July 22, 2021. Doc. #144. Judgment against Kenneth Ray Hudson ("Defendant") was entered in favor of Plaintiff on that same date. Doc. #145. Plaintiff was directed to seasonably request costs, expenses, and attorney's fees, if any, as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054. Accordingly, the status conference will be dropped from calendar because the adversary proceeding is resolved.