

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, October 7, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

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.

9:00 AM

1. [21-10607](#)-B-13 **IN RE: AZRREL HERREJON**
[MHM-2](#)

MOTION TO DISMISS CASE
8-20-2021 [\[25\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to set a fully noticed, modified plan for hearing. Doc. #25. Trustee's previous objection to confirmation was sustained on July 7, 2021, and no modified plans have been filed since then. Doc. #27.

Azrrel Abet Herrejon ("Debtor") timely responded, denying that any delay was unreasonable or prejudicial to creditors. Doc. #29. Debtor declares he acquired a second new job and had only received one pay advice at the time this motion was filed. Doc. #30. He received the second pay advice on September 22, 2021 at 9:22 a.m., which was forwarded to his attorney, Patrick Kavanagh, at 10:55 a.m. *Id.*, Doc. #31. Prior to receipt of the second pay advice, Debtor's attorney did not possess the information necessary to prepare a modified plan. *Id.* Debtor is current on payments under the original, unconfirmed plan. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v.*

Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and failure to notice a motion for confirmation of a modified plan.

The court has reviewed the schedules and there appear to be insignificant assets in the estate to be administered for the benefit of unsecured claims. Doc. #1, *Scheds. A/B, C, D*. Debtor's real and personal property is fully exempted or encumbered in its entirety. Therefore, dismissal serves the interests of creditors and the estate.

This matter will be called as scheduled to inquire whether Debtor has filed a modified chapter 13 plan. If Debtor files and notices a motion to confirm a modified plan before the hearing, the court will CONTINUE this motion to the date of the confirmation hearing. If no modified plan is filed, this motion may be GRANTED.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN
7-12-2021 [\[43\]](#)

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Rosa Elena Huezo Godoy ("Debtor") seeks confirmation of her First Modified Chapter 13 Plan. Doc. #43. Debtor wishes to extend the duration of the plan from 60 months to 84 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 objected under 11 U.S.C. § 1325(a)(6) because the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #51.

After entering the defaults of all non-responding parties except Trustee, the court continued this matter so that Debtor could file written opposition to the objection by September 23, 2021. Docs. ##53-55.

On September 13, 2021, the parties stipulated to resolve Trustee's objections to the plan. Doc. #58. This resolution is set forth in the jointly executed proposed order confirming plan that was filed as an exhibit concurrently with the stipulation. Doc. #59, Ex. A.

Based on this stipulation, Trustee withdrew his opposition.
Doc. #58.

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 fell behind in plan payments because she was diagnosed with COVID-19 and sick from May 19, 2021 through June 20, 2021. Doc. #45. Debtor's family members were also diagnosed with COVID-19. Debtor declares that because she was sick, she was unable to report hours worked and therefore unable to collect income from In-Home Support Services ("IHSS"). Moreover, Debtor's expenses increased because she had to pay for doctor visits and medications. Though Debtor's IHSS income has resumed, both of these caused her to experience material financial hardship directly caused by the COVID-19 pandemic.

Debtor's previous plan was confirmed on November 4, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #38. Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

Accordingly, 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.

3. [20-12221](#)-B-13 **IN RE: JENNIFER BURRIS**
[MHM-1](#)

MOTION TO DISMISS CASE
8-27-2021 [\[23\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee Michael H. Meyer withdrew this motion to dismiss on September 27, 2021. Doc. #30. Accordingly, this motion will be dropped from calendar.

4. [21-11443](#)-B-13 **IN RE: CARLOS DELGADILLO**
[JV-1](#)

MOTION TO CONFIRM PLAN
8-12-2021 [\[20\]](#)

CARLOS DELGADILLO/MV
JASON VOGELPOHL/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.

Carlos Alejandro Delgadillo ("Debtor") seeks confirmation of his Chapter 13 Plan. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) and (b) because the plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors and Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #30.

Debtor filed a declaration in response to the objection, but that response does not appear to have been properly served because it was not filed concurrently with proof of service. Doc. #34. Debtor explains that his non-filing spouse's unemployment income has been reduced and it is unclear whether she will return to work in the foreseeable future. Based on this adjusted income, he would be unable to meet the payments suggested by the Trustee.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the plan (Doc. #13) does not appear to have been served on all parties in interest. Doc. #23. Pursuant to LBR 3015-1(c)(2), Debtor is to serve the chapter 13 plan on the Trustee, along with Forms EDC 3-086, 3-087, and 3-088, which must be received by Trustee no later than 14 days after the petition date. If Trustee timely receives the plan, he will serve it on all creditors and other parties entitled to notice with a copy of the plan. LBR 3015-1(c)(3). If Trustee does not timely receive the plan, then Debtor must seek confirmation under the procedure specified in LBR 3015-1(d).

Here, Debtor filed chapter 13 bankruptcy on June 1, 2021 and the plan on June 15, 2021. Doc. #1. The plan was filed on the 14th day after the petition date, but not until 7:07:28 PM, which suggests that Trustee did not receive it until at least the 15th day. Doc. #13. No certificate of service was filed with the plan within three days as required by LBR 9014-1(e)(1) and (2). The plan is not included in the certificate of service for this motion (Doc. #23), so it appears that Debtor failed to notice or serve the plan on all parties in interest as required by Fed. R. Bankr. P. 2002(b) and LBR 3015-1(d)(1).

Second, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Third, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice here states that opposition must be "filed and served on the Debtor by mail and his counsel, at the address on this pleading," but does not list the Debtor's address. Doc. #21. The names and addresses of the Debtor and the Chapter 13 Trustee, as representative of the estate, should have been included in the notice.

Fourth, the evidence filed in support of this motion is insufficient. The only evidence offered are the declaration of Jason Vogelpohl, Debtor's attorney, and in reply to Trustee's objection, the Debtor's declaration. Docs. #22; #34. Vogelpohl declares, "Upon information and believe, the Debtor's Chapter 13 Plan satisfies the requires of 11 U.S.C. §1322 and §1325 (*sic*).\" This is a legal conclusion. "[T]he tenet that a court must accept as true all allegations . . . is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Debtor has therefore failed to plead sufficient factual matter to make a *prima facie* showing that he is entitled to the relief sought. *Tracht Gut, LLC v. Cty. of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014).

Further, though Debtor's declaration addresses the reduction in his net income, neither declaration proves the elements needed to confirm a chapter 13 plan. § 1325.

The above grounds are enough to deny this motion. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*). Debtor's next attempt at confirmation should also resolve Trustee's objections.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

5. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-23](#)

MOTION FOR COMPENSATION FOR LEONARD K WELSH, DEBTORS
ATTORNEY(S)
9-16-2021 [\[437\]](#)

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 hearing.

Leonard K. Welsh for the Law Offices of Leonard K. Welsh
("Applicant"), attorney for Shelby Dane King and Carol Dean King
("Debtors"), requests final compensation in the sum of \$4,903.42
pursuant to 11 U.S.C. §§ 330 and 331. Doc. #437. This amount
consists of \$4,522.50 for reasonable compensation for services
rendered and \$380.92 as reimbursement for actual, necessary expenses
incurred from May 1, 2020 through August 31, 2021.

Joint debtor Carol King declares that she and her husband, Shelby
King, have reviewed the final application and believe it accurately
reflects services rendered, and costs advanced, by Applicant.
Doc. #439. Debtors have no objection to paying this application and
understand that unpaid fees will be discharged. They acknowledge
that nothing prevents them from voluntarily paying post-discharge.
Id.

Written opposition was not required and may be presented at the
hearing. In the absence of written opposition, the court is inclined
to GRANT this motion.

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, 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. All
parties in interest were notified at least 21 days before the
hearing pursuant to Fed. R. Bankr. P. 2002(a)(6).

The Fourth Modified Plan was filed July 20, 2021 and confirmed
September 13, 2021. Docs. #426; #434. It provides that Applicant was
paid \$1,327.50 prior to filing the case and, subject to court
approval, additional fees of \$31,800.00 shall be paid through the
plan by filing a motion in accordance with §§ 329, 330, Fed. R.
Bankr. P. 2002, 2016, and 2017. Doc. #426; #434. The *Disclosure of*
Compensation (B2030) and *Rights and Responsibilities* forms indicate
that Applicant was paid \$1,327.50 for services through March 31,
2016 and the filing fee \$310.00. Docs. #10. The fees were drawn from

a \$2,500 retainer, leaving \$1,172.50 on the petition date, before being used to pay part of the third fee application. Docs. #157; #290.

Applicant has been awarded a total of \$59,418.33 in fees and paid \$59,418.34 as itemized below:

PREVIOUS APPROVED FEE APPLICATIONS & PAYMENT

#	Date Approved	Time Period	Fees	Costs	Total	Trustee Payment	Debtor Payment
1	10/11/16	4/1/16 - 8/31/16	\$9,672.50	\$115.18	\$9,787.68	\$9,787.68	\$0.00
2	1/3/17	9/1/16 - 10/31/16	\$3,227.50	\$72.93	\$3,300.43	\$3,300.43	\$0.00
3	3/13/17	11/1/16 - 1/31/17	\$5,722.50	\$123.15	\$5,845.65	\$1,911.89	\$3,933.76
4	8/29/17	2/1/17 - 6/30/17	\$13,275.00	\$248.63	\$13,523.63	\$13,523.63	\$0.00
5	12/6/17	7/1/17 - 9/30/17	\$4,497.50	\$162.88	\$4,660.38	\$2,276.37	\$2,384.01
6	12/14/18	10/1/17 - 10/31/17	\$19,255.00	\$170.40	\$19,425.40	\$0.00	\$19,425.41
7	6/4/20	11/1/18 - 4/30/20	\$2,835.00	\$40.16	\$2,875.16	\$0.00	\$2,875.16
Total Interim Fees Approved:			\$58,485.00	\$933.33	\$59,418.33	\$30,800.00	\$28,618.34

See Docs. #79; #112; #214; #315; #329; #400; #412.

The court Approved Applicant's fees on an interim basis under § 331, subject to final review under § 330 for the following time periods:

- (1) \$9,787.68: April 1, 2016 - August 31, 2016 (LKW-2);
- (2) \$3,300.43: September 1, 2016 - October 31, 2016 (LKW-3);
- (3) \$5,845.65: November 1, 2016 - January 31, 2017 (LKW-10);
- (4) \$13,523.63: February 1, 2017 - June 30, 2017 (LKW-13);
- (5) \$4,660.38: July 1, 2017 - September 30, 2017 (LKW-14);
- (6) \$19,425.40: October 1, 2017 - October 31, 2018 (LKW-19); and
- (7) \$2,875.16: November 1, 2018 - April 30, 2020 (LKW-20).

In total, Applicant has been awarded \$59,418.33 in fees and expenses. Trustee has paid \$30,800.00 through the chapter 13 plan and Debtors have paid \$28,618.34.¹ Applicant now requests final compensation of \$4,903.42, as well as authorization approving the previous \$59,418.34 in fees and costs on a final basis. Doc. #437.

Applicant indicates that his firm performed 17.70 billable hours of legal services at the following rates, totaling **\$4,522.50** in fees:

FEE SUMMARY

Professional	Rate	Hours	Amount
Leonard K. Welsh	\$300.00	13.20	\$3,960.00
Trinette M. Lidgett	\$125.00	4.50	\$562.50
Total Hours & Fees		17.70	\$4,522.50

Id., ¶ 11; Doc. #441, Ex. B. Trinette M. Lidgett is Applicant's paralegal. Applicant also advanced costs of **\$380.92**:

EXPENSES

Postage	+ \$302.42
WebPACER Charges	+ \$33.50
CourtCall Fees	+ \$45.00
Total Expenses	= \$380.92

Ibid. These combined fees and expenses total **\$4,903.42**.

The source of funds for the fees and expenses will be paid by the Debtors, not the chapter 13 trustee. Doc. #440, ¶ 9. Applicant states that payment will not affect the feasibility of the plan because Debtors have completed all plan payments. *Ibid.* Applicant acknowledges that Debtors will be discharged of all personal liability upon entry of the discharge, but nothing prevents them from voluntarily repaying the fees. *Id.*, ¶ 10.

11 U.S.C. § 330(a)(1)(A) & (B) permit 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) advising Debtors about the administration of their case; (2) preparing and filing the seventh fee application (LKW-20); (3) delivering payments of \$2,840 per month for May and June 2020 as required by the Third Modified Plan; and (4) preparing and filing the Fourth Modified Plan (LKW-21; LKW-22). Docs. #437; #441, Ex. B. The court finds the services and expenses reasonable, actual, and necessary.

As noted above, Debtors consented to the application and understand that they do not have any personal liability for payment of the fees post-discharge. Doc. #439. In the absence of opposition at the hearing, this motion will be GRANTED. Applicant will be awarded \$4,522.50 in fees for services rendered and \$380.92 in costs incurred from May 1, 2020 through August 31, 2021. Applicant shall be compensated \$4,903.42 on a final basis pursuant to § 330. Further, the court will approve on a final basis the \$59,418.34 requested and paid pursuant to Applicant's prior interim fee applications, including \$0.01 under Fed. R. Civ. P. 60(a). The total amount of fees and expenses awarded to Applicant in this case is \$64,321.76.

¹ The court notes that the sixth fee application (Doc. #391) requested \$19,255.00 in fees and \$170.41 in costs, totaling \$19,425.41, but the order (Doc. #400) awarded \$19,255.00 in fees and \$170.40 in costs. It appears that Debtors paid the extra \$0.01. This \$0.01 discrepancy is a *de minimis* clerical error. It will be included in the final approval of the interim applications pursuant to Fed. R. Civ. P. 60(a) (Fed. R. Bankr. P. 9024).

10:00 AM

1. [19-14015](#)-B-7 **IN RE: MAXIMUS III COMPANY**
[JMV-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
9-9-2021 [\[71\]](#)

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/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 Jeffrey M. Vetter ("Trustee") seeks authority to pay administrative tax claims in the amount of \$1,701.60 to the Franchise Tax Board ("FTB") for the tax years ending 2020 and 2021. Doc. #71.

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 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 Sys., 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, LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice here states that opposition must be "served on the parties identified attached hereto," but there is no attachment identifying the names and addresses of the required parties. Doc. #72. These names and addresses should have been included in the notice. 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. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including:

- (B) any tax—
 - (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
 - (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after commencement of the case;
- (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
- (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. § 503(b)(1)(B-D). Under 28 U.S.C. § 960(b), trustees are required to pay bankruptcy estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Maximus III Company ("Debtor") filed bankruptcy on September 23, 2019. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on November 15, 2019. Doc. #3. Trustee moved to employ James E. Salven ("Accountant") to provide accounting services to the estate on June 21, 2021, which was approved by this court on June 29, 2021. Docs. #60; #63. Accountant has advised Trustee that the estate has tax liability of \$1,701.60 due to FTB for taxes due for the 2020 and 2021 tax years. Doc. #73.

In the event of any unexpected future tax liabilities, from FTB or any other tax agency, Trustee requests authority to pay additional tax liability in an amount not to exceed \$1,000.00. Doc. #71. Trustee shall seek further approval if the sum of these payments exceeds \$1,000.00. Thus, Trustee requests an order allowing payment to FTB in the amount of \$1,701.60 for 2020 and 2021 taxes, plus an additional \$1,000.00 buffer for any interest, fees, other penalties, or any other tax liabilities incurred by the estate.

This motion was fully noticed and no party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion,

\$1,701.60 to FTB for 2020 and 2021 taxes. Further, Trustee will be authorized to pay an additional amount not to exceed \$1,000.00 for any unexpected tax liabilities without further court approval.

2. [10-18138](#)-B-7 **IN RE: EDWARD/TAMMATHA WELCH**
[RSW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
9-9-2021 [\[41\]](#)

TAMMATHA WELCH/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Edward Welch, Jr., and Tammatha Welch ("Debtors") seek approval of a settlement agreement for a lawsuit that arose after their chapter 7 bankruptcy was closed. Doc. #41.

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Tracht Gut, LLC v. Cty. of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

On August 13, 2003 and prior to filing, joint debtor had a medical device surgically implanted. Doc. #43. Unaware of any potential claim, Debtors filed this chapter 7 bankruptcy on July 21, 2010. *Id.*; Doc. #1. Debtors' chapter 7 discharge was entered on November 22, 2010 with no distribution to unsecured creditors. Doc. #32. The case was closed on December 3, 2010. Doc. #34.

After the case was closed, joint debtor began experiencing pain in 2012. Doc. #43. After seeing a television ad about lawsuits relating to the medical device and claiming that it was defective, joint debtor contacted Perdue & Kidd, a personal injury law firm, and signed an employment contract on May 2, 2012. Joint debtor consulted with a doctor who recommended removal surgery, which took place on September 12, 2012. Joint debtor was advised that they will likely have pain and problems for the rest of their life and might require additional surgery.

On December 2, 2012, Debtors filed a lawsuit against the manufacturer of the medical device in the Southern District of West Virginia, in conjunction with multi-district litigation for thousands of similarly situated plaintiffs. Joint debtor's lawsuit was transferred to the Eastern District of California on October 13,

2020. After participating in the lawsuit for 8 years, a settlement was reached in early 2021 in the gross amount of \$225,000.00. *Id.* After deducting 40% attorney fees of \$90,000, expenses of \$22,504.45, and payment of a Medicare lien of approximately \$70,000.00, the net payable to the joint debtor is \$42,495.55. *Id.* This amount is for personal injuries and future medical needs. Debtors now seek approval of the settlement because the defendant will not release the funds without bankruptcy court approval. *Id.*

This case was reopened by the United States Trustee on June 22, 2021. Doc. #37. Jeffrey M. Vetter was appointed as successor chapter 7 trustee ("Trustee"). Doc. #39.

The original schedules did not list the lawsuit nor any other contingent and unliquidated claims. Doc. #1, *Sched. B*. Upon reopening, Debtors amended the schedules to list the lawsuit with a gross value of \$225,000.00. Doc. #45, *Am. Sched. A/B*. The Debtors did not change their exemptions since they apparently did not know of the claim when they filed the case.

On a motion by the *trustee* and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("Rule") 9019(a). Absent from Rule 9019 is standing for the chapter 7 debtor to seek such approval. Only the trustee may file a motion to approve a compromise or settlement.

Since Debtors do not have standing, either this motion must be filed by Trustee, the Trustee must abandon the asset, or Debtors will have to initiate an adversary proceeding. Rule 7001(2).

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

3. [21-11066](#)-B-7 **IN RE: CHRISTOPHER MANNING**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-18-2021 [\[13\]](#)

MIDFIRST BANK/MV
JAMES BEIRNE/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 9/7/21

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

DISPOSITION: Granted in part and denied as moot in part.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

MidFirst Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 12603 Grand Teton Drive, Bakersfield, CA 93312 ("Property"). Doc. #13.

No party in interest timely filed written opposition. This motion will be DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C) and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 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 Sys., 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.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on September 7, 2021. Doc. #19. Therefore, the automatic stay terminated with respect to the debtor on September 7, 2021.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 16 payments. The movant has produced evidence that debtor is delinquent at least \$29,342.19 and the entire balance of \$246,497.14 is due. Doc. #15, #17.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 16 payments to Movant.

11:00 AM

1. [21-10734](#)-B-7 **IN RE: MANUEL GONZALES**
[21-1030](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-8-2021 [[1](#)]

STRATA FEDERAL CREDIT UNION V.
GONZALES, III
BRANDON ORMONDE/ATTY. FOR PL.

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

DISPOSITION: Continued to November 3, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The Plaintiff's prove up hearing for entry of default judgment is scheduled for November 3, 2021. Doc. #28. Accordingly, this matter will be continued to November 3, 2021 at 11:00 a.m. to be heard in connection with the prove up hearing.

2. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[21-1032](#)

STATUS CONFERENCE RE: COMPLAINT
8-5-2021 [[1](#)]

VETTER V. PETROLEUM CAPITAL
INCOME PROPERTIES, LLC, A
LISA HOLDER/ATTY. FOR PL.

NO RULING.

11:30 AM

1. [21-11059](#)-B-7 **IN RE: SERGIO DIAZ MUNOZ**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST CREDIT FINANCE
8-27-2021 [\[14\]](#)

VINCENT QUIGG/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [21-11379](#)-B-7 **IN RE: YESENIA LARA**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
9-14-2021 [\[14\]](#)

LEROY AUSTIN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be

accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.