

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Mark Wallace, Presiding  
Courtroom 225 Calendar**

Tuesday, December 1, 2020

Hearing Room 225

2:00 PM

**6:03-22114 Michael Gene Gallup and Debra Ann Gallup**

**Chapter 7**

**#1.00**

CONT Hrg. on Order to Show Cause why this case should not be re-closed on the ground that no valid cause of action regarding an implanted medical device existed on the petition date of August 13, 2003

(Cont. from 9/22/20)

Docket 0

**\*\*\* VACATED \*\*\* REASON: NOTICE OF VOLUNTARY DISMISSAL  
OF MOTION FILED 11/09/20 - SLH**

**Tentative Ruling:**

<b>Party Information</b>
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**Debtor(s):**

Michael Gene Gallup

Represented By  
Judy Driver - INACTIVE -

**Joint Debtor(s):**

Debra Ann Gallup

Represented By  
Judy Driver - INACTIVE -

**Trustee(s):**

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Tuesday, December 1, 2020

Hearing Room 225

2:00 PM

6:17-17195 Luis A. Jimenez and Maria T. Jimenez

Chapter 7

#2.00

Hrg. on trustee's final report; applications for compensation

**[Larry D. Simons, chapter 7 trustee]  
[Fees; \$988.25; Expenses; \$19.25]**

Docket 0

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**APPEARANCES NOT REQUIRED.**

In a case under chapter 7 or 11, the court may allow reasonable compensation under § 330 to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. 11 U.S.C. § 326(a).

The Court finds that the Trustee's requested compensation meets the requirements of 11 U.S.C. § 326(a) and represents reasonable compensation for actual, necessary services rendered in the administration of this estate.

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**CONT... Luis A. Jimenez and Maria T. Jimenez**

**Chapter 7**

The compensation is approved as to the Trustee, with fees in the amount of \$988.25 and expenses in the amount of \$19.25.

Bond payments to International sureties are approved .

CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Luis A. Jimenez

Represented By  
C Scott Rudibaugh

**Joint Debtor(s):**

Maria T. Jimenez

Represented By  
C Scott Rudibaugh

**Trustee(s):**

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Hearing Room 225

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6:19-11097 Edith Rodriguez

Chapter 7

#3.00

Hrg. on trustee's final report; applications for compensation

**[Howard Grobstein, chapter 7 trustee]  
[Fees; \$1319.30; Expenses; \$0]**

Docket 0

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**APPEARANCES NOT REQUIRED.**

In a case under chapter 7 or 11, the court may allow reasonable compensation under § 330 to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. 11 U.S.C. § 326(a).

The Court finds that the Trustee's requested compensation meets the requirements of 11 U.S.C. § 326(a) and represents reasonable compensation for actual, necessary services rendered in the administration of this estate.

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**CONT... Edith Rodriguez Chapter 7**

The compensation is approved as to the Trustee, with fees in the amount of \$1,319.30 and expenses in the amount of \$0.00.

CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Edith Rodriguez

Represented By  
David Lozano

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

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**6:19-18367 Affordable Auto Repair, Inc.**

**Chapter 11**

**#4.00**

Hrg. on Debtor's Objection to Claim No. 6 of California Department of Tax and Fee Administration

Docket 148

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**TELEPHONIC APPEARANCES REQUIRED.**

The California Department of Tax and Fee Administration ("CDTFA") filed a tax claim (Claim 6) on or about July 3, 2020, largely for sales and use taxes, in this case.

Following an audit, the CDTFA filed an amended claim in a larger amount than the amount stated on the original claim. Debtor Affordable Auto Repair, Inc. ("Debtor") objects to the CDTFA amended claim on the ground that there is no factual basis for it "because there had no yet been any audit" (i.e., the amended claim was filed before the audit was conducted).

The facts here show that a CDTFA representative executed the amended claim on October 14, 2020 and filed it in this Court on October 14, 2020.

Documentation introduced into evidence by the CDTFA shows that Debtor was

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**CONT... Affordable Auto Repair, Inc.**

**Chapter 11**

notified of the pending audit of the tax periods January 1, 2018 through and including March 31, 2020 by the CDTFA by letter dated September 9, 2020, that the audit was conducted during the month of September 2020 and culminated in the issuance of a Notice of Determination dated September 15, 2020.

To be sure, this is only one of the many tax periods for which the CDTFA is seeking payment of \$106,355.03 in amended Claim 6. Amended Claim 6 also seeks payment for tax periods in 2015, 2016, 2017, 2018 (full year, not just the first quarter) and part of 2019. The CDTFA provides no evidence of when audits for these tax periods were performed.

In this situation, the allocation of the burden of proof becomes of critical importance. Under rules applicable to non-tax claims, the burden of proof is on the claimant if the party objecting to the claim produces evidence equal or greater in probative force to the evidence shown in the proof of claim. However, the rule for tax claims is entirely different. The Supreme Court of the United States determined in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, 120 S. Ct. 1951, 147 L. Ed. 2d 13 (2007) that the burden of proof with respect to allowance or disallowance of tax claims is determined on the basis of applicable non-bankruptcy tax law. California allocates the burden of proof on tax matters here at issue to the taxpayer. Thus, Debtor has the burden of proof here and has failed to carry that burden. Debtor has failed to prove that the proposed assessments of taxes and interest set forth in the Notices of Determination are incorrect or invalid.

Accordingly, the objection to Claim 6 is overruled. Claim 6 is allowed in its full amount.

<b>Party Information</b>
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**Debtor(s):**

Affordable Auto Repair, Inc.

Represented By  
Michael Jones  
Sara Tidd

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**CONT... Affordable Auto Repair, Inc.**

**Chapter 11**



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**Tuesday, December 1, 2020**

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**6:19-18367 Affordable Auto Repair, Inc.**

**Chapter 11**

**#5.00**

Hrg. on Debtor's Objection to Claim No. 10 of California Dept. of Tax and Fee Administration

Docket 149

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**TELEPHONIC APPEARANCES REQUIRED.**

The California Department of Tax and Fee Administration ("CDTFA") filed a tax claim (Claim 10) on or about May 27, 2020 in this case. Following an audit, on October 14, 2020, the CDTFA filed an amended claim in a larger amount than the amount stated on the original claim. The Court assigned Claim No. 10-3 to this amended claim. Debtor Affordable Auto Repair, Inc. ("Debtor") objects to claim 10-3 on the ground that there is no factual basis for it "because there had no yet been any audit" (i.e., the amended claim was filed before the audit was conducted).

The facts here show that Claim 10 was amended again through an amended proof of claim filed in this Court on November 4, 2020 (thus becoming Claim 10-4). The difference between Claim 10-3 and Claim 10-4 is that Claim 10-4 adds a claim in the

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**CONT... Affordable Auto Repair, Inc.**

**Chapter 11**

amount of \$20,255.32 with respect to the tax period July 1, 2020 through September 30, 2020.

The Court determines that Claim 10-3 – the claim to which Debtor has objected – has been superseded by Claim 10-4. The Court therefore disallows Claim 10-3 in its entirety as a superseded claim. Claim 10-4 – to which Debtor has not objected – remains outstanding in its full amount. All rights are reserved to Debtor to object to Claim 10-4.

Debtor to lodge order.

<b>Party Information</b>
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**Debtor(s):**

Affordable Auto Repair, Inc.

Represented By  
Michael Jones  
Sara Tidd

**United States Bankruptcy Court  
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Tuesday, December 1, 2020

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**6:20-12017 Jorge Antonio Zendejas and Rosa Isela Zendejas**

**Chapter 7**

**#6.00**

Hrg. on Motion for Turnover of Estate Property held by debtors pursuant to 11 USC § 542(a) and (e)

Docket 21

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**TELEPHONIC APPEARANCES REQUIRED.**

The Court intends to grant the Motion.

CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Jorge Antonio Zendejas

Represented By  
Daniel King

**Joint Debtor(s):**

Rosa Isela Zendejas

Represented By  
Daniel King

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**CONT... Jorge Antonio Zendejas and Rosa Isela Zendejas**

**Chapter 7**

**Movant(s):**

Larry D Simons (TR)

Pro Se

**Trustee(s):**

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court  
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Tuesday, December 1, 2020

Hearing Room 225

2:00 PM

**6:20-12274 Absolute Care Assisted Living & Memory Care, LLC**

**Chapter 11**

**#7.00**

Hrg. on Motion for an order approving post petition loan with third party lender pursuant to 11 U.S.C. Section 364(b)

Docket 73

**Tentative Ruling:**

**In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person. Persons appearing telephonically are highly encouraged to use a landline for higher reception and clarity, and the use of speaker phones is prohibited.**

**TELEPHONIC APPEARANCES REQUIRED.**

Pursuant to Sherman v. Habin (In re Habin), 486 F.3d 570 (9th Cir. 2007), the Court grants retroactive approval of the postpetition financing transaction proposed here. The Court exercises its equitable powers in this regard, finding that the four criteria set forth in Sherman have been met (or are not applicable).

**DEBTOR TO LODGE ORDER VIA LOU WITHIN 7 DAYS.**

**Party Information**

**Debtor(s):**

Absolute Care Assisted Living &

Represented By  
Robert S Altagen

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**CONT... Absolute Care Assisted Living & Memory Care, LLC**

**Chapter 11**

**Movant(s):**

Absolute Care Assisted Living &

Represented By  
Robert S Altagen