

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto

Hearing Date: Thursday, January 12, 2017

Place: Department B – Courtroom #13

Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [16-10643](#)-B-12 MARK FORREST
LKW-9

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-15-16 [[133](#)]

LEONARD WELSH/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount 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.

2. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER
FW-7
JONATHAN MAYER/MV

MOTION FOR ORDER AUTHORIZING
DEBTOR-IN-POSSESSION TO KEEP
BANK ACCOUNTS OPEN
12-15-16 [[50](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled. The court has reviewed the U.S. Trustee's opposition and it appears the opposition may be resolved in the order if the debtors are in agreement.

Tentative Ruling: The court intends to grant the motion provided that all the terms of the order comply with the U.S. Trustee's requirements. Movant shall submit a proposed order after hearing that has been signed by the U.S. Trustee.

3. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER
FW-8
JONATHAN MAYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO ASSUME LEASE OR
EXECUTORY CONTRACT
12-15-16 [[54](#)]

The hearing on this motion will be called as scheduled.

Tentative Ruling.-Debtor's Motion for Order Authorizing Assumption of Executory Contract is DENIED without prejudice. The court will issue a civil minute order.

The debtors ask the court to authorize the assumption of an employment agreement between debtor Dr. Jonathan Mayer, a physician, and Affiliated Physician Practice, Inc. ("APP"). The employment agreement mentions certain loans made to Dr. Mayer which are separately evidenced by promissory notes that may be paid or forgiven through payroll deductions.

The U.S. Trustee ("UST") opposes the motion arguing that the debtors provided no analysis in the motion why the employment agreement is not a financial accommodation and thus cannot be assumed under 11 U.S.C. § 365 (c)(2) or why it is severable from the employment provisions. In addition, the UST claims that assumption of the contract would result in a violation of "the absolute priority rule" upon plan confirmation. Finally, the UST contends the agreement (at least the loan provisions) are not executory and could not be assumed any way.

In reply, the debtors contend that the employment agreement is a "single" contract including the provisions regarding the advancement and payment of the loans and that any argument about the "absolute priority rule" is premature.

The court denies the motion to assume the contract for the lack of proof.

First, the debtors do not provide any proof that APP consents to the assumption. 11 U.S.C. § 365 (c)(1) precludes assumption of an executory contract if applicable law excuses the non-debtor party from accepting performance from an entity other than the debtor or the debtor-in-possession and such party does not consent to such assumption or assignment. In the Ninth Circuit this statute is strictly construed to mean that, where a debtor-in-possession lacks hypothetical authority to assign the contract, then it may not be assumed even though the debtor-in-possession has no actual intention of assigning the contract. *Catapult Entertainment*, 165 F.3d 747, 749-54 (9th Cir. 1999); see also, *id.* at 752 reconciling the seemingly conflicting provision of §365(f)(1). "Whether or not a contract is a personal services contract is a question of fact to be [determined] under state law after all facts and circumstances are considered." *In re Health Plan of the Redwoods*, 286 B.R. 407, 409 (Bankr. N.D. Cal. 2002) ("*Redwoods*") citing, *In re Headquarters Dodge, Inc.*, 13 F.3d 674, 683 (3rd Cir. 1993). The determination generally depends on the

sui generis attributes of the performance. *Redwoods*, 286 B.R. at 409, citing *In re Noonan*, 17 B.R. 793, 798 (Bankr. S.D.N.Y. 1982).

In order to be considered a personal service contract, there must be a special relationship between the parties, or the party to perform must possess special knowledge or a unique skill such that no performance save that of the contracting party could meet the obligations of the contract. *Redwoods*, 286 B.R. at 409, citing cases. Dr. Mayer's performance under the contract cannot be specifically compelled. Cal. Civ. Code § 3390. Nor is it assignable under California law if it is a personal services contract. See, *LaRue v. Groezinger*, 84 Cal. 281, 285; 24 P. 42 (1890); *Coykendall v. Jackson*, 17 Cal. App. 2d 729, 731; 62 P.2d 746 (1936); *Madison v. Moon*, 148 Cal. App. 2d 135, 144-45; 306 P.2d 15 (1957).

On this record, the court is left with Dr. Mayer's largely conclusory declaration and the agreement itself. The employment agreement provides Dr. Mayer is to devote "his entire professional time and attention to the practice of medicine for [APP]." Section 3.1. Dr. Mayer's services are exclusive to APP. *Id.* APP designates the patients Dr. Mayer will serve. Section 9. Dr. Mayer must perform services faithfully and diligently. Section 11(d). The debtors even argue (though the court is not deciding) that the agreement is integrated with the loan provisions. To be sure, there is some authority that agreements between physicians and HMO's are perhaps assumable. See, *Redwoods*. However, this contract is not such an agreement. There is no proof of any facts or circumstances that this contract, from the debtors' or APP's perspective, is other than a personal services contract. Accordingly, APP must consent to an assumption and there is no evidence that it has done so.

Second, there is no proof by either the debtors or the UST whether this contract includes the loan provisions and, on this record, the court cannot make such a determination. Severability is determined by the intent and actions of the contracting parties. *In re Qintex Entertainment Inc.*, 950 F. 2d 1492, 1496 (9th Cir. 1991). Whether a contract is entire or severable generally is a question of intention, to be determined from the language employed by the parties, viewed in the light of the circumstances surrounding them at the time they contracted. *Id.*, quoting *Christian v. Christian*, 42 N.Y. 2d 63, 73; 365 NE2d 849 (1977). Ultimately, the question is one of state law. *United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F. 3d 609 (7th Cir. 2005).

The only proof on this issue is Dr. Mayer's declaration which, on this important topic, is inconclusive. Dr. Mayer states he "believes" that fulfilling the repayment terms is necessary to maintain his employment. (Doc. 56 3:8-11) This self-serving conclusion does not provide a factual basis upon which to decide this motion, especially when the contract and other documents belie the claim on their face.

With regard to the loans, the original contract and the amendments state that the relevant loans are "forgivable." That does not mean the agreement

will be terminated if the loans are not paid by payroll deduction. "Forgivable" according to Webster's Third New International Dictionary, means, "being of a kind that can be forgiven." *Emphasis added.* This does not mean, "must" be forgiven. The notes themselves incorporate the same language, suggesting that payroll deduction provides a manner to repay the loans. Not the only way. If the agreement is terminated, Dr. Mayer is still liable. Also, the loans can be prepaid without penalty. Finally, the "Conditions of Employment" provisions of the agreement (section 6) omit any reference to non-payment being a terminating event or even "cause" to terminate the contract.

Third, the debtors' positions regarding the importance of the loans to the contract are contradictory. The debtors' initial position was that the repayment of the loans by payroll deduction is central to the life of the employment agreement. The court does not agree as noted above. Now, the debtors seem to take the position that the loans are merely incidental to the contract and thus the object of the employment agreement is not repayment of the loans. The cases cited by the debtor in reply, *Charrington*, 98 B.R. 65 (Bankr. M.D. Fla. 1989) and *Farrell*, 79 B.R. 300 (Bankr. S.D. Ohio, 1987), both hold that when some credit extensions are incidental to the executory contract, the contract can still be assumed. So, which is it? Are the loans critical or incidental? The court does not know and presumably the UST cannot determine that either.

The motion will be DENIED.

4. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER
UST-1
TRACY DAVIS/MV
PETER FEAR/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-8-16 [[44](#)]

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference. Based on the U.S. Trustee's opposition, this matter is now deemed to be a contested matter and, pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Tentative Ruling.

The court intends to deny the U.S. Trustee's motion to dismiss the case. In view of the court's tentative ruling in calendar number 2, above, DC# FW-7, concerning the post-petition bank accounts, and in calendar number 3, DC# FW-8, regarding assumption of the contract with APP, the U.S. Trustee's remaining grounds for its motion are pursuant to §1112(b)(4)(H), based on the debtors' failure to add the UST as a party to be notified in the event their insurance, provided by USAA, is cancelled. The debtor argues in his declaration that he has complied with the requirements, as set forth in the United States Trustee Program Policy and Practices Manual, Volume 3, § 3-3.2.3 Insurance: "The Debtor should instruct its insurance companies and agents to include the Office of the United States Trustee (the "Trustee") as a notice party on any insurance policies so that the Trustee receives prior notification regarding any change, cancellation, or expiration of a debtor's insurance policy." The debtor's declaration then lists the actions he has taken to comply with this directive.

The U.S. Trustee bears the burden of proof in this motion to show, by a preponderance of the evidence, that there is cause under §1112(b)(4)(H) to dismiss the case. The Tubesing declaration submitted by the UST, docket number 46, recites the UST's written request that the debtors provide documentation that the debtors have so instructed USAA, and that the UST has not yet received such information. However, the motion is devoid of any evidence that the debtors have not instructed USAA to add the UST as a party to be notified, in fact the debtor's declaration, document number 69, provides evidence to the contrary. Further discovery, including, perhaps a deposition of a representative of USAA, could be required to determine whether there is sufficient evidence that USAA was not so instructed by the debtors.

5. 16-10643-B-12 MARK FORREST
LKW-10

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-5-17 [141]

LEONARD WELSH/Atty. for dbt.
OST PENDING

This matter 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 a civil minute order if a further hearing is necessary.

1:30 P.M.

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| 1. 16-13702 -B-13 REBECCA MARTINEZ
MHM-2
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
DISMISSED | MOTION TO DISMISS CASE
12-7-16 [30] |
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This matter will be dropped from calendar. The case has already been dismissed. No appearance is necessary.

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| 2. 16-13305 -B-13 JAMES MUNRO
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING | MOTION TO DISMISS CASE
12-5-16 [30] |
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If the trustee's motion is not withdrawn prior to the hearing, it will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

The trustee's motion to dismiss was based on unreasonable delay caused by the debtor's failure to set a motion to avoid a lien on the debtor's residence held by Zions First National Bank. The debtor filed an opposition based on the debtor's motion to value Zions First National Bank's collateral below at calendar number 3 (DC # PBB-1). The court intends to grant that unopposed motion. Accordingly, it appears the trustee's issue will be resolved and no further relief is necessary or appropriate.

3. [16-13305](#)-B-13 JAMES MUNRO
PBB-1
JAMES MUNRO/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF ZIONS
FIRST NATIONAL BANK
12-7-16 [[34](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount 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.

It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

4. [16-12310](#)-B-13 ROBIN RANK
JDR-1
NILES KANT/MV
F. GIST/Atty. for dbt.
JEFFREY ROWE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-29-16 [[32](#)]

This matter will proceed as scheduled. This matter was noticed as a preliminary matter pursuant to LBR 9014-1(f)(2). The residential real property lease that is the subject of this motion is listed in the proposed plan in section 3.02 and therefore is not specifically rejected. The debtor's chapter 13 plan has not yet been confirmed. The court notes that, by the terms of the plan, upon confirmation the automatic stay will be modified so that it no longer applies to the subject lease.

5. [16-12310](#)-B-13 ROBIN RANK
MHM-1
MICHAEL MEYER/MV
F. GIST/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-5-16 [[19](#)]

The trustee's motion will be continued to January 26, 2017, at 1:30 p.m., to be heard with the debtor's motion to confirm a modified plan. The court will enter a civil minute order. No appearance is necessary.

6. [16-13415](#)-B-13 JUAN/ETELVINA PEDROZA
TOG-1
JUAN PEDROZA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
12-1-16 [[23](#)]

This motion will be set for a continued hearing on February 16, 2017, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than February 2, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 9, 2017.

Pursuant to §1324(b), the court intends to set March 30, 2017, as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on the trustee's declaration.

If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

7. [16-11720](#)-B-13 JEFFREY HERRING
NSV-1
JEFFREY HERRING/MV
NIMA VOKSHORI/Atty. for dbt.
WITHDRAWN

OBJECTION TO CLAIM OF CHECK N
GO, CLAIM NUMBER 6
10-24-16 [[22](#)]

This matter will be dropped from calendar. The objection to claim has been withdrawn. No appearance is necessary.

8. [16-11129](#)-B-13 DAVID/LINDA MILAZZO
LKW-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LEONARD K. WELSH
FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-15-16 [[89](#)]

LEONARD WELSH/Atty. for dbt.

This matter 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 a civil minute order if a further hearing is necessary.

9. [13-10830](#)-B-13 ANTONIO/BLANCA HOLGUIN
HDN-7
ANTONIO HOLGUIN/MV
HENRY NUNEZ/Atty. for dbt.
DISMISSED

MOTION TO VACATE DISMISSAL OF
CASE
12-21-16 [[152](#)]

This matter will proceed as scheduled. The court intends to inquire into the circumstances of the chapter 13 trustee's fourth motion to dismiss the case and the debtors' late response filed in opposition and non-appearance on July 21, 2016, at the hearing on that motion.

10. [16-14036](#)-B-13 MARIA OJEDA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-12-16 [[17](#)]

This matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

If the OSC is vacated, the court will modify the order permitting the payment of filing fees in installments to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

11. 16-14636-B-13 ERIKA CENDEJAS
PSB-1
ERIKA CENDEJAS/MV
PAULDEEP BAINS/Atty. for dbt.

MOTION TO IMPOSE AUTOMATIC STAY
12-28-16 [8]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make any of the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to impose the automatic stay. The debtor's prior two cases were filed without assistance of counsel and were dismissed for the

failure to file documents with the court. In this case the debtor has retained an attorney and all of the necessary documents have been filed. The debtor appears to require the benefit of chapter 13 in saving her home from a foreclosure sale. The motion will be granted and the automatic stay imposed for all purposes as to all parties who received notice, unless terminated by further order of this court. 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 a civil minute order.

12. [16-13237](#)-B-13 GUADALUPE ZAMUDIO
JDW-1
GUADALUPE ZAMUDIO/MV
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
SPECIALIZED LOAN SERVICING, LLC
12-9-16 [[35](#)]

This motion to value collateral will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

The respondent in the motion is identified as Specialized Loan Servicing, LLC, however pursuant to the proof of claim filed on December 29, 2017, the holder of the lien is FV-1, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC. In addition, the amount of the junior lien is listed as approximately \$132,000, however the proof of claim shows the amount of the junior lien as \$23,447.80, which is consistent with the debtor's schedule of secured claims.

13. [16-13237](#)-B-13 GUADALUPE ZAMUDIO
MHM-2
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-2-16 [[29](#)]

This matter will proceed as scheduled. The trustee's motion is based on the debtor's failure to file, serve, and set for a hearing a motion to value a junior deed of trust. The debtor filed an opposition to the trustee's motion. Although the debtor attempted to file the required motion to value, the proof of claim filed subsequent to that motion shows that the debtor misidentified the holder of the lien and so the motion was denied.

14. [16-11040](#)-B-13 JORGE VALLEJO AND ANA MOTION TO MODIFY PLAN
TOG-3 SALCEDO 11-14-16 [[57](#)]
JORGE VALLEJO/MV
THOMAS GILLIS/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

The court notes that the prior confirmed plan, filed April 19, 2016, proposed a 0% dividend to unsecured creditors. While the moving papers state that the dividend remains at zero, the proposed plan actually provides for a 1% return to unsecured creditors.

15. [16-11853](#)-B-13 VICTOR VILLALVAZO MOTION TO CONFIRM PLAN
RS-2 12-15-16 [[69](#)]
VICTOR VILLALVAZO/MV
RICHARD STURDEVANT/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled. The court will consider whether the oppositions to confirmation filed by a secured creditor and by the trustee can be resolved in the order confirming the plan.

16. [16-12854](#)-B-13 BECKY GOMEZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-8-16 [[17](#)]

JAMES MILLER/Atty. for dbt.
\$77.00 FINAL INSTALLMENT
PAID 12/12/16

The OSC will be vacated. The record shows that the required fee has been paid in full. No appearance is necessary.

17. [16-12960](#)-B-13 GAYNE ALEXANDER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-19-16 [[23](#)]

DAVID JENKINS/Atty. for dbt.
FINAL INSTALLMENT PAID
1/3/17

The OSC will be vacated. The record shows that the required fee has been paid in full. No appearance is necessary.

18. [13-16362](#)-B-13 ROGELIO REYES AND ANA
MHM-1 PAEZ MOTION TO DISMISS CASE
MICHAEL MEYER/MV 12-5-16 [[46](#)]
THOMAS GILLIS/Atty. for dbt.

This matter will proceed as scheduled and will be heard in conjunction with calendar number 19, below, DC # TOG-2.

19. [13-16362](#)-B-13 ROGELIO REYES AND ANA
TOG-2 PAEZ MOTION TO APPROVE THE
ROGELIO REYES/MV SETTLEMENT OF WORKERS
COMPENSATION CASE
12-29-16 [[52](#)]
THOMAS GILLIS/Atty. for dbt.

This matter will proceed as scheduled.

20. [16-12968](#)-B-13 ANNA MORALES
MHM-2 MOTION TO DISMISS CASE
MICHAEL MEYER/MV 11-30-16 [[37](#)]
TIMOTHY SPRINGER/Atty. for dbt.

This motion will proceed as scheduled. The trustee's motion is based on a material default in plan payments. If the debtors are not current at the time of the hearing, the court intends to dismiss the case.

The debtors have filed an opposition without a docket control number that appears to ask that the trustee's motion, MHM-1, be heard with this matter. However, that motion has been withdrawn.

21. [16-13671](#)-B-13 DAVID MORALES
SCOTT LYONS/Atty. for dbt.
DISMISSED ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-15-16 [[20](#)]

This matter will be dropped from calendar. The case has already been dismissed. No appearance is necessary.

22. [16-11473](#)-B-13 SHELBY/CAROL KING
ETL-1
MEDALLION BANK/MV

LEONARD WELSH/Atty. for dbt.
ERICA LOFTIS/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-9-16 [[93](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The secured claim relating to this collateral is provided for in Class 4 of the debtor's confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion.

23. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-4
SHELBY KING/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
12-19-16 [[100](#)]

This matter will proceed as scheduled. The court will entertain arguments regarding any planned claim objections by debtors and debtors' intentions, if any, to file a modified chapter 13 plan that meets the liquidation analysis as required by the Bankruptcy Code.

Based on the trustee's concerns, the court will also consider authorizing the sale with the proceeds deposited in a blocked account until the issues raised by the trustee can be resolved.

24. [14-11175](#)-B-13 DANNY/SARA BAEZA
KNM-4
DANNY BAEZA/MV
KARNEY MEKHITARIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
11-30-16 [[78](#)]

This motion will be set for a continued hearing on February 16, 2017, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than February 2, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 9, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

25. [16-10479](#)-B-13 CELINA MUNIZ
TOG-2
CELINA MUNIZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
12-1-16 [[42](#)]

This matter will proceed as scheduled. The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice and the trustee filed an opposition. No other opposition was filed and the defaults of those respondents will be entered.

Pursuant to the trustee's opposition, if the debtors are current at the time of the hearing, the court intends to grant the motion for plan confirmation.

26. [16-12984](#)-B-13 REFUGIO GUTIERREZ
TOG-5
REFUGIO GUTIERREZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-29-16 [[40](#)]

This motion will be set for a continued hearing on February 16, 2017, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than February 2, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 9, 2017. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

27. [16-10294](#)-B-13 LINA CONTRERAS
WAR-1
LINA CONTRERAS/MV
WILLIAM ROMAINE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-30-16 [[87](#)]

This motion will be set for a continued hearing on February 16, 2017, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than February 2, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 9, 2017. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

28. 14-11878-B-13 HOLLY DAVENPORT
RSW-4
HOLLY DAVENPORT/MV
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO SELL AND/OR
MOTION TO INCUR DEBT
12-21-16 [69]

This motion will proceed as scheduled.

This motion was continued to this date pursuant to a conditional order shortening time that depended on submission by debtor's counsel of evidence that the creditor and chapter 13 trustee have no objection to the motion. If such evidence is presented at the hearing, the court intends to grant the motion and direct movant to submit a proposed order.

If no such evidence is presented, the court intends to deny the motion and issue a civil minute order.