

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, February 4, 2016
Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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.

9:00 A.M.

1. [13-10692](#)-B-7 LUDOVICO PEREZ
[14-1116](#) BB-3
MAURICIO'S GRILL AND CANTINA,
INC. V. PEREZ
KERI BLAND/Atty. for mv.

MOTION FOR IMPOSITION OF
TERMINATING SANCTIONS AGAINST
DEFENDANT
1-6-16 [[93](#)]

Due to repeated failure to cooperate with discovery in the course of this litigation and violations of the court's orders compelling the debtor to appear and testify at his deposition, there is cause to strike the defendant's answer and enter his default.

The defendant appeared before the court December 4, 2014, where he was ordered to file and serve a responsive pleading by December 26, 2014. Subsequently the defendant filed a motion, through his attorney, to dismiss the adversary complaint. On February 5, 2015, the court granted the motion only as to the third claim for relief and denied it as to the first and second claims for relief. The plaintiff did not amend the complaint.

On March 12, 2015, the defendant's attorney filed a motion to withdraw, which the court subsequently granted, and the defendant filed a pro se answer to the complaint. The defendant, however has never served his Rule 26 disclosures.

The plaintiff's status conference statement, filed May 28, 2015, reported that the defendant had failed to appear at two properly noticed depositions. On September 8, 2015, the court granted the plaintiff's motion to compel the defendant to attend and testify at his deposition within ten days of service of the order.

Subsequently the plaintiff filed a motion for imposition of terminating sanctions against the defendant. The plaintiff's declaration, filed January 6, 2016, details the plaintiff's efforts to obtain the defendant's testimony at a deposition. After the September 8, 2015 court order compelling the defendant to appear and testify at his deposition, the plaintiff served the defendant with notice of deposition to be held December 30, 2015, along with a copy of the court's order compelling attendance and received confirmation of receipt of the notice. The defendant did not appear at that deposition.

The plaintiff re-noticed the defendant's deposition for January 19, 2016, pursuant to the court's order of January 8, 2016, ordering the defendant to appear on that date. On January 28, 2016, the plaintiff filed a supplemental declaration in this motion. The defendant appeared at his deposition and gave plaintiff's counsel a document purporting to invoke the defendant's Fifth Amendment right not to testify on the grounds of incrimination.

As discussed in the very recent case, *In re Vision Adventures, LLC*, ___ B.R. ___, 2016 WL 297367 (Bankr. R.I., January 25, 2016, slip opinion), in a civil case the Fifth Amendment privilege must be invoked properly. A total or blanket assertion of privilege is not sufficient. The defendant is required to take the oath and listen to each question. In addition, as the *Visions* court explains, relying on Supreme Court authority, "The privilege may only be relied upon if it is invoked in a proper and timely manner. *Roberts*, 445 U.S. at 559-60; see also 3-344 Collier on Bankruptcy ¶ 344.03 (15th ed. 2015) ('[I]t may not properly be invoked, for example, for the first time at a contempt hearing arising out of the refusal to answer.'). If the privilege is not timely asserted, it may be deemed waived. See *In re Gi Yeong Nam*, 245 B.R. at 226-27 (citing *Rogers v. United States*, 340 U.S. 367, 373, 71 S.Ct. 438, 95 L.Ed. 344 (1951))." *Id.* at *4, emphasis added.

Moreover, "a bankruptcy court may draw a negative inference from the invocation of the Fifth Amendment privilege." *In re Marrama*, 331 B.R. 10, 16 (D.Mass.2005) (citations omitted); see also *Baxter v. Palmigiano*, 425 U.S. 308, 333-34 (1976). It falls squarely within the court's discretion whether it will draw such an inference. *In re Carp*, 340 F.3d 15, 23 (1st Cir.2003) (drawing a negative inference upon the invocation of the Fifth Amendment in civil proceedings is a 'permissible, but not an ineluctable, concomitant of a party's invocation of the Fifth Amendment')." *Id.* at *5; See also *Keating v. Office of Thrift Supervision*, 45 F3d 322, 326 (9th Cir., 1995).

FRCP 37(b) (2) (A) applicable in bankruptcy adversary proceedings by FRBP 7037, provides that "if a party fails to obey an order to provide or permit discovery, the court where the action is pending, may issue just orders [including] . . . (iii) striking pleadings in whole or in part; . . . (vi) rendering a default judgment against the disobedient party." This Circuit recognizes the bankruptcy court's authority under that Rule to strike a debtor's answer and enter a default. *Visionneering Construction v. U.S. Fidelity & Guarantee (In re Visionneering Construction)*, 661 F.2d 119, 122 (9th Cir. 1981); *Brunson v. Rice (In re Rice)*, 14 B.R. 843, 846 (9th Cir. BAP 1981). The Ninth Circuit requires that the trial court find that the inappropriate conduct be the result of "willfulness, bad faith, or fault" before severe sanctions can be imposed. *Jorgensen v. Cassidy*, 320 F.3d 906, 912 (9th Cir. 2003). "Willfulness" or "bad faith" is established if the evidence is that the disobedient conduct is not outside the control of the litigant. *Henry v. Gill Industries, Inc.* 983, F.2d 943, 948 (9th Cir. 1993). "While the court may be more lenient with *pro se* litigants, intentionally disregarded discovery rules may nevertheless result in default or dismissal." *Lindstedt v. City of Granby*, 238 F.3d 933, 937 (8th Cir. 2000).

The court finds that Mr. Perez's disobedient conduct has not been shown to be outside of his control and that it is willful. Among the facts establishing that are:

1. Mr. Perez did not list the plaintiff as a creditor in his original bankruptcy petition. (Main Case (MC) doc. no. 1.)

2. After the case was closed, the plaintiff filed a motion to reopen because the plaintiff never received notice of the bankruptcy. The motion was uncontested by Mr. Perez. (MC doc. nos. 17, 18 and 19.) The motion was granted on September 24, 2014.
3. Mr. Perez failed to appear at two properly noticed depositions dating back to early 2015. Attorney Bland's declaration dated January 6, 2016. (Adversary Proceeding (AP) doc. no. 96.)
4. The court previously granted plaintiff's motion to compel and ordered Mr. Perez to attend a deposition within 10 days and pay a sanction of \$753. (AP. doc. no. 82.) The sanction was not paid and Mr. Perez did not attend.
5. Mr. Perez appeared at a hearing on the court's order to show cause for failure of the plaintiff to prosecute the case on January 8, 2016. The court ordered Mr. Perez to appear for deposition on January 19, 2016, a date selected by Mr. Perez. The court warned Mr. Perez that the risk of not appearing would be the court granting the then pending motion to strike Mr. Perez's answer and enter his default and Mr. Perez would then "be out of court." (Court proceedings on January 8, 2016; AP. doc. no. 101.)
6. This motion was filed January 6, 2016, and the relief requested included striking Mr. Perez's answer and entering his default. The motion was served at an address Mr. Perez acknowledged was correct at the January 8, 2016 hearing. (AP doc. nos. 93-99.)
7. At no time before the deposition scheduled for January 19, 2016, did Mr. Perez invoke the Fifth Amendment privilege against self-incrimination to the court or state he was going to decline to testify.
8. At the deposition on January 19, 2016, Mr. Perez did not properly invoke the Fifth Amendment (AP doc. nos. 103-105). He answered even preliminary questions by invoking the privilege.
9. This bankruptcy proceeding has been pending over three years; 16 months since it was reopened. This adversary proceeding has been pending for 16 months.
10. The bankruptcy schedules indicated that at the time of the filing, Mr. Perez had over \$2,000 in a checking account. He had over \$50,000 of income per year before the filing the bankruptcy. There is no evidence that he is unable to pay the modest monetary sanction ordered by the court. Even if the court assumes that he is unable to pay that sanction, this establishes that further monetary sanctions would be ineffective.
11. The court is not aware of any issue with Mr. Perez receiving notice of the proceedings in this matter. From his failure to list this creditor in his original bankruptcy petition through his disregard of deposition notices and previous orders of this court, Mr. Perez has demonstrated willful failure to comply with court rules and court orders relating to discovery.

12. At the hearing January 8, 2016, Mr. Perez told the court that he did not appear at previous depositions because he did not have counsel. The court advised Mr. Perez that not having counsel was not an excuse to disobey civil discovery rules and orders. At his scheduled deposition January 19, 2016, he raised for the first time the fifth amendment privilege which, in light of the record in this case demonstrates intentional evasion. The document handed to counsel for the plaintiff at the deposition included case citations which strongly suggests Mr. Perez obtained legal advice and consciously chose to avoid answering any questions, at all. (Bland declaration, AP doc. no. 103.)

For the foregoing reasons, the court concludes that Mr. Perez's derelictions are willful and in bad faith and justify the drastic remedy of striking his answer and entry of default.

The Ninth Circuit has a five-part test with three subparts to the fifth part, to determine whether a case dispositive sanction under FRCP 37(b) (2) is just:

"(1) [T]he public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Connecticut General Life Insurance Company v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). The subparts of the fifth factor are, whether the court has considered lesser sanctions, whether it tried the lesser sanctions, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions. *Conn. Gen. Life Ins. Co.*, 482 F.2d at 1096, citing *Jorgensen*, supra 320 F.3d. at 912; quoting *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

Both of the first two factors (public interest in expeditious resolution of litigation and docket control) support of imposition of sanctions. Mr. Perez has delayed this adversary proceeding. Mr. Perez's conduct significantly impeded resolution of this action, has caused delay, including the court issuing an OSC, and has prevented the bankruptcy court from scheduling trial. The fifth amendment privilege asserted by Mr. Perez will not lead to resolution of this matter. Both the main case and this adversary proceeding have been pending for a long time and the issues raised by the adversary proceeding are not complicated and do not warrant 16 months before setting a trial.

The third criteria (prejudice to the parties seeking sanctions) strongly supports the sanction. A party is prejudiced if the opposing party impairs the ability to go to trial. *Adriana International Corporation v. Thoeren*, 913 F.2d. 1406, 1412 (9th Cir. 1990). The two remaining claims in this adversary proceeding are nondischargeability under 11 U.S.C. § 523(a)(6) - willful malicious injury by the debtor to another entity or the property of another entity and 11 U.S.C. § 523(a)(4) - fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny. Evidence of Mr. Perez's veracity is relevant to both claims. Mr. Perez's actions have

prevented the plaintiff from exploring that issue. Further, Mr. Perez answered the complaint and raised various affirmative defenses. The plaintiff has to date been unable to explore those defenses with Mr. Perez.

The fourth criteria (policy favoring decision on the merits) supports the sanction here. No judgment is being entered. The plaintiff still has to prove its case.

The final criteria (less severe sanction) also supports the sanction here. All of the components listed in *New Images of Beverly Hills*, 482 F.3d at 1096 are in evidence here. First, a less severe sanction was ordered by the bankruptcy court on September 8, 2015. Mr. Perez was ordered to appear at deposition within 10 days and pay a sanction of \$753. Neither occurred. Thus, the court did consider lesser sanctions and implemented them to no avail. Finally, the court warned Mr. Perez on January 8, 2016. Independently, this motion was then pending and served upon Mr. Perez. He has had ample notice of this motion and has not filed a response.

The sanction order is short of the entry of an immediate default judgment which would be permissible under FRCP 37. Instead, the plaintiff will need to comply with the provisions of FRCP 55 made applicable to adversary proceedings by FRBP 7055 and Local Bankruptcy Rules.

Accordingly, the defendant's default will be entered as to the motion for imposition of terminating sanctions. The defendant's answer to the adversary complaint will be stricken and the defendant's default will be entered. The plaintiff shall prepare the order and set a motion for a prove-up hearing for the entry of a default judgment pursuant to FRCP 55, incorporated in the Bankruptcy Code by FRBP 7055, and LBR 7055-1. No appearance is necessary.

10:00 A.M.

1. [15-13622](#)-B-7 CODY WEEDON
JMV-1

CONTINUED OPPOSITION RE:
TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
12-5-15 [[14](#)]

This matter was continued to permit the debtor to appear at his continued meeting of creditors. In his opposition, filed December 28, 2015, to the trustee's motion, debtor declared that had been unable to attend the initial meeting date due to job and school commitments. The record shows that the debtor has subsequently failed to appear at either of his two continued meetings of creditors and has not filed any further response to the trustee's motion. Accordingly, the debtor's default will be entered and the case will be dismissed. No appearance is necessary.

2. [15-14538](#)-B-7 NELSON VILLATORO
APN-1
SANTANDER CONSUMER USA INC./MV
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-22-15 [[12](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered and the motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

3. [15-13444](#)-B-7 TRAVIS/AMBER BREWER
PPI-1
HILLARY BJORNEBOE/MV
LEONARD WELSH/Atty. for dbt.
MISTY PERRY-ISAACSON/Atty. for mv.
DISCHARGED, NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-4-16 [[23](#)]

This motion for relief from stay and for annulment of the stay was fully noticed in compliance with the Local Rules and the debtors filed a notice of non-opposition. The motion will be denied as moot as to the debtors because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to proceed in the state court action, identified as "Superior Court of California, County of Kern ("KCSC"), (Case No. BCV-15-101298)" and to enforce its remedies under applicable nonbankruptcy law. The proposed order shall specifically describe the action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

4. [13-11262](#)-B-7 MIGUEL/ROSALINDA GOMEZ
PK-2
MIGUEL GOMEZ/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF ARROW
FINANCIAL SERVICES, LLC
1-15-16 [[23](#)]

5. [13-11262](#)-B-7 MIGUEL/ROSALINDA GOMEZ
PK-3
MIGUEL GOMEZ/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF
FINANCIAL CREDIT NETWORK, INC.
1-15-16 [[29](#)]

Based on the respondent's opposition, this matter will be continued to March 3, 2016, at 10:00 a.m. This matter is now deemed to be a contested matter. Pursuant to Federal Rules of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The debtors shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will prepare and enter a civil minute order. No appearance is necessary.

6. [11-19664](#)-B-7 VICKIE BARKER

MOTION TO AVOID LIEN OF

RSW-3
VICKIE BARKER/MV
ROBERT WILLIAMS/Atty. for dbt.

AMERICAN EXPRESS CENTURION BANK
1-11-16 [[25](#)]

The motion will be denied without prejudice. No appearance is necessary. The record does not establish that the motion was served on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). In re Villar, 317 B.R. 88 (9th Cir. BAP 2004). While the original notice of the preliminary hearing pursuant to LBR 9014-1(f)(2) was served in compliance with 7004(h), certified to an officer, the amended notice, which amended the date, the time, and the address of the hearing, was not so served.

7. [15-13970](#)-B-7 CHERIE MOUSSEAU
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
PATRICK KAVANAGH/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-16-15 [[9](#)]

This matter will be dropped from calendar without a disposition. The record shows that the debtor has now filed a fully completed and executed agreement with the movant that reaffirms this debt. No appearance is necessary.

8. [15-14679](#)-B-7 CESAR/MARIELA CONTRERAS
BMO-1
KERN FEDERAL CREDIT UNION/MV
WILLIAM EDWARDS/Atty. for dbt.
BRANDON ORMONDE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-20-16 [[14](#)]

11:00 A.M.

1. [15-14115](#)-B-7 RICARDO DELUNA

REAFFIRMATION AGREEMENT WITH
WESTAMERICA BANK
12-18-15 [[12](#)]

STEVEN STANLEY/Atty. for dbt.

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. Part V of the agreement is missing. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. CA 2003). The hearing will be dropped from calendar.

2. [15-13916](#)-B-7 ALBERT VILLASENOR

REAFFIRMATION AGREEMENT WITH
CALIFORNIA REPUBLIC BANK
12-30-15 [[17](#)]

WILLIAM OLCOTT/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.

3. [15-14375](#)-B-7 JOSE/ANA PEREZ

PRO SE REAFFIRMATION AGREEMENT
WITH ALLY BANK
1-6-16 [[24](#)]

4. [15-13588](#)-B-7 GILBERTO/MARISSA GIL

REAFFIRMATION AGREEMENT WITH
BALBOA THRIFT & LOAN
12-18-15 [[17](#)]

NEIL SCHWARTZ/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.

1:30 P.M.

1. [15-13605](#)-B-13 ANTOINETTE MARANI MOTION TO DISMISS CASE
MHM-1 12-18-15 [[24](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

2. [11-10409](#)-B-13 ADRIAN/JOSEPHINE NORMAN MOTION OR SUBSTITUTION AND
PLG-2 WAIVER OF THE CERTIFICATION
ADRIAN NORMAN/MV REQUIREMENTS FOR ENTRY OF
DISCHARGE IN A CHAPTER 13 CASE
FOR JOINT DEBTOR
12-31-15 [[47](#)]
STEVEN ALPERT/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order that has been approved by the chapter 13 trustee. No appearance is necessary.

3. [15-14409](#)-B-13 ALICIA RIZO CONFIRMATION HEARING RE: PLAN
11-13-15 [[5](#)]
WILLIAM OLCOTT/Atty. for dbt.
4. [15-13512](#)-B-13 SYLVIA CASTRO MOTION TO DISMISS CASE
MHM-2 11-30-15 [[29](#)]
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

5. [12-18413](#)-B-13 WILMA AMASON
MHM-2
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
12-23-15 [[63](#)]

ROBERT WILLIAMS/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The chapter 13 trustee shall submit a proposed order. No appearance is necessary.

6. [12-16014](#)-B-13 WENDY REDWINE
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
12-10-15 [[75](#)]

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

7. [15-11017](#)-B-13 ODILON/SAURISARET
MHM-1 PEREZ-FLORES
MICHAEL MEYER/MV
PHILLIP MYER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
10-27-15 [[70](#)]

8. [15-10928](#)-B-13 DAVID FOX
DMG-5
DAVID FOX/MV
D. GARDNER/Atty. for dbt.

MOTION TO MODIFY PLAN
12-24-15 [[113](#)]

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

9. [15-11828](#)-B-13 ALBERT/LINDA CARTER
PK-5

PATRICK KAVANAGH/Atty. for dbt.

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PATRICK KAVANAGH
FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-12-16 [[83](#)]
10. [15-14428](#)-B-13 GRANT HOWZE

VINCENT GORSKI/Atty. for dbt.

CONFIRMATION HEARING RE: PLAN
11-15-15 [[5](#)]
11. [15-13630](#)-B-13 JAIME/RUTH GARZA
MHM-2
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-30-15 [[49](#)]
12. [15-13630](#)-B-13 JAIME/RUTH GARZA
PK-3
JAIME GARZA/MV

PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CALHFA MORTGAGE ASSISTANCE
CORPORATION
1-6-16 [[54](#)]

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtors may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan. The debtors shall submit a proposed order consistent with this ruling. No appearance is necessary.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

13. [15-14330](#)-B-13 JOSE/PAULA BUSTAMANTE
BN-1
THE GOLDEN 1 CREDIT UNION/MV
D. GARDNER/Atty. for dbt.
VALERIE PEO/Atty. for mv.
THE GOLDEN 1 CREDIT UNION
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-16 [[46](#)]

14. [15-14330](#)-B-13 JOSE/PAULA BUSTAMANTE
DMG-2
THE GOLDEN 1 CREDIT UNION/MV
D. GARDNER/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY THE GOLDEN 1 CREDIT
UNION
1-5-16 [[36](#)]

This matter will be dropped from calendar as moot. The plan to which this objection relates has been withdrawn by the debtor. No appearance is necessary.

15. [15-14330](#)-B-13 JOSE/PAULA BUSTAMANTE
DMG-2
JOSE BUSTAMANTE/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
12-3-15 [[26](#)]

This matter has been withdrawn. No appearance is necessary.

16. [15-13336](#)-B-13 ELIZABETH GRACIA
JAA-1
OCWEN LOAN SERVICING, LLC/MV
ROBERT WILLIAMS/Atty. for dbt.
JESSICA ABDOLLAHI/Atty. for mv.

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY OCWEN
LOAN SERVICING, LLC
12-31-15 [[32](#)]

17. [15-14640](#)-B-13 CLARA OSAGIE-AMAYO
BF-1
JPMORGAN CHASE BANK, N.A./MV
NEIL SCHWARTZ/Atty. for dbt.
BRANDYE FOREMAN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
12-29-15 [[14](#)]

This matter will be continued to March 3, 2016, at 1:30 p.m. The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order. No appearance is necessary.

18. [15-14546](#)-B-13 REBECCA STARK
NEIL SCHWARTZ/Atty. for dbt.

CONFIRMATION HEARING RE: PLAN
11-24-15 [[7](#)]

19. [15-14646](#)-B-13 RANDAL/GRETTA STUDY
DMG-1
RANDAL STUDY/MV

MOTION TO CONFIRM PLAN AND/OR
MOTION TO CONFIRM DEADLINE TO
FILE COMPLAINT OBJECTING TO
DISCHARGEABILITY OF DEBT
1-15-16 [[27](#)]

D. GARDNER/Atty. for dbt.

This matter will be continued to March 3, 2016, at 1:30 p.m. The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order. No appearance is necessary.

20. [15-14355](#)-B-13 JASON/DANELLE BLACK

PATRICK KAVANAGH/Atty. for dbt.

CONFIRMATION HEARING RE: PLAN
11-6-15 [[6](#)]

21. [11-63156](#)-B-13 TIMOTHY HARBOUR
MHM-3
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO DISMISS CASE
12-7-15 [[134](#)]

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

22. [15-14459](#)-B-13 KENNETH/JILL BURDICK

WILLIAM OLCOTT/Atty. for dbt.

CONFIRMATION HEARING RE: PLAN
11-17-15 [[5](#)]

23. [12-14264](#)-B-13 JOSE GONZALES
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
12-7-15 [[63](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

24. [15-14164](#)-B-13 ISAIAH JONES
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
12-29-15 [[15](#)]

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

25. [14-14683](#)-B-13 SHERLYN BULL
PK-7

PATRICK KAVANAGH/Atty. for dbt.

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-8-16 [[105](#)]

26. [15-10985](#)-B-13 CHERYL LOPEZ
MHM-3
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.

MOTION TO DISMISS CASE
12-10-15 [[54](#)]

27. [15-13887](#)-B-13 BERNARD NAWORSKI
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
12-18-15 [[20](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

28. [13-17292](#)-B-13 DEWAYNE MORRIS
MHM-4
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-10-15 [[67](#)]