UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: November 12, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

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. 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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 12, 2019 at 1:00 p.m.

1.	15-25308-B-13 RJ-3	LARRY PERKINS Richard L. Jare	MOTION TO AVOID LIEN OF GREG PADILLA 10-11-19 [84]

Final Ruling

The Chapter 13 Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

2. 19-24624-B-13 SW-1 THOMAS/SELIMA GARRIS
Susan J. Turner
MOTION FOR RELIEF FROM AUTOMATIC STAY
10-23-19 [27]

ALLY BANK VS.

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers 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.

The court's decision is to grant the motion for relief from stay.

Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Minnie M-31BHDS (the "Vehicle"). The moving party has provided the Declaration of Jason Duthoy to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Duthoy Declaration states that there was a pre-petition default totaling $44,901.15 and that the Debtor's account was charged off due to the delinquency in monthly payments. Movant asserts that the claim is not provided for in the plan and that the Vehicle is in Movant's possession.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by the Vehicle is determined to be $44,901.15 and the value of the Vehicle is determined to be $22,150.00 as stated in the Duthoy Declaration.

The Debtors have filed a response of non-opposition and state that Movant is in possession of the Vehicle.

Discussion

[The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And a non-opposition having been filed by the Debtors, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. 19-24625-B-13 CASEY WOODBURY
AP-1 Pro Se

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-11-19 [18]

BANK OF NEW YORK MELLON TRUST COMPANY, N.A. VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. No appearance at the hearing is necessary.

The matter will be continued to December 10, 2019, at 1:00 p.m.

Bank of New York Mellon Trust Company, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 871 Crooked Lane, Newcastle, California (the "Property"). Movant has provided the Declaration of Rigoberto Corona to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Corona Declaration states that pursuant to paragraph 9(a) of the Deed of Trust, Movant may require immediate payment in full of all sums secured by the Property if a borrower dies and the Property is not the principal residence of at least one surviving borrower. Movant states that the original and sole borrower was Helen M. Woodbury and that she passed away on August 24, 2016. Movant thus disputes that debtor Casey Woodbury ("Debtor") has an interest in the property, which is nonetheless listed in Schedule A of the petition. Movant contends that the amount owed to it is $364,417.24 and that the cost of sale is $30,000.00. With the Property valued at $375,000.00 according to Debtor's schedules, Movant calculates Debtor's equity as -$19,417.24.

Opposition has been filed by Debtor asserting that the value of the Property is between $500,000 to $600,000. Debtor also filed a request to continue the hearing on the motion for relief from automatic stay in order to retain counsel. Movant was amenable to the continuance. The court entered an order granting the request and the hearing was continued from October 15, 2019, to November 12, 2019. Dkt. 41.

On November 7, 2019, Debtor filed another request to continue the hearing due to difficulty retaining counsel and the need to await an appraisal report that was recently completed on the Property. Debtor states that the appraisal report will not be available by the November 12, 2019, hearing date and requests that the motion for relief from stay be continued to a date in mid-December.

The primary issue here appears to be the value of the Property. If, as the Debtor suggests, the Property is worth $600,000.00, Movant is owed $364,417.24, and there is an 8% costs of sale at $30,000.00 factored in there would be $205,582.76 ($600,000 - $394,417.24) in equity. That translates to a 34.26% equity cushion which means Movant is adequately protected, even in the absence of payments. *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984). If, on the other hand, the Property is worth $375,000 as the Debtor states in the Schedules - which the court reminds the Debtor are filed under penalty of perjury - then there is no equity in the Property and the stay should terminate to permit Movant to exercise its rights under applicable non-bankruptcy law.

The court also notes that the Debtor has also failed to articulate how the Property could appreciate $225,000.00 in the several months between the time the Chapter 13 petition and stay relief motion were filed. Nevertheless, if the Debtor incorrectly stated the value of the Property in the Schedules, the Schedules may be amended as a matter of course at any time. *See* Fed. R. Bankr. P. 1009(a).

In any case, given the Debtor's experience with real estate values in the Newcastle

area, because the Debtor lacks an attorney and has attempted unsuccessfully to retain an attorney, and because it is not implausible that a Chapter 13 plan provides for the payment of a reverse mortgage that fully matured pre-petition by the death of the borrower, *see In re Michaud*, 548 B.R. 582 (Bankr. S.D. Fla. 2016); *In Re Griffin*, 489 B.R. 638 (Bankr. D. Md. 2013); *In re Brown*, 428 B.R. 672 (Bankr. D.S.C. 2010), the court will grant the Debtor one last continuance to submit additional evidence of the Property's value.

The Debtor's request for a continuance is GRANTED and the hearing on this motion will be continued to December 10, 2019, at 1:00 p.m. **Absent exceptional and extraordinary circumstances, no further continuances will be granted.**

The court will enter a minute order.

4. 18-20332-B-13 WANDA BARBER
AP-1 Scott D. Hughes

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-15-19 [74]

NATIONSTAR MORTGAGE LLC VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion for relief from stay.

Nationstar Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2619 Valley Oak Way, Fairfield, California (the "Property"). Movant has provided the Declaration of Chastity Wilson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration states that there are 2 post-petition payments in default totaling $1,052.20.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $270,118.92 based on Movant's documents and Schedule D filed by the Debtor. The value of the Property is determined to be $260,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory

basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5.	19-24232-B-13 EJS-1	TIMOTHY/CHRISTINA FRANKS Eric John Schwab	MOTION TO CONFIRM PLAN 9-30-19 [30]

No Ruling

6. 19-26448-B-13 DUANE OTT — MOTION TO EXTEND AUTOMATIC STAY
MEV-1 Marc Voisenat — 10-25-19 [10]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers 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.

The court's decision is to deny without prejudice the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 26, 2019, due to delinquency in plan payments (case no. 18-27372, dkt. 67). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the issues that prevented him from making plan payments in the prior case have been resolved. Debtor contends that Wells Fargo had inexplicably closed the joint account Debtor had shared with his non-filing spouse. Because of this, Debtor could not access funds to cure the delinquency in plan payments. Debtor states that it took six weeks to access the funds. Debtor also asserts that circumstances have changed because, although he continues to be unemployed and receive disability benefits, his non-filing spouse is working more hours to increase the household income.

While the Debtor states that circumstances have changed, the Debtor does not provide a declaration from his non-filing spouse indicating her financial contribution that will ensure the success of Debtor's bankruptcy. The court finds that the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. 19-23572-B-13 LITA GOEBBEL MOTION TO CONFIRM PLAN
JMC-1 Joseph M. Canning 9-27-19 [45]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

The court will enter a minute order.

8. 19-23975-B-13 LISA BRANNAN
FF-2 Gary Ray Fraley

AMENDED MOTION TO CONFIRM PLAN
10-8-19 [44]

Thru #10

No Ruling

9. 19-23975-B-13 LISA BRANNAN
FF-3 Gary Ray Fraley

MOTION TO VALUE COLLATERAL OF USAA SAVINGS BANK
10-8-19 [45]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of USAA Savings Bank at $6,800.00

Debtor's motion to value the secured claim of USAA Savings Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Honda Civic ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,800.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by USAA Federal Savings Bank is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 17, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $10,176.83. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $6,800.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

10. 19-23975-B-13 LISA BRANNAN
FF-3 Gary Ray Fraley

MOTION TO VALUE COLLATERAL OF USAA SAVINGS BANK
10-9-19 [50]

DUPLICATE FILING

Final Ruling

This motion to value is a duplicate to that filed at dkt. 45. Therefore, this motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

11.	17-25195-B-13 RJ-4	JUSTINO SANCHEZ Richard L. Jare	MOTION TO MODIFY PLAN 10-3-19 [65]

No Ruling

12. 19-21999-B-13 CRAIG MACEY
MJD-5 Matthew J. DeCaminada

MOTION TO MODIFY PLAN
10-3-19 [88]

No Ruling