

**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 COVER SHEET**

**DAY: TUESDAY**

**DATE: May 26, 2020**

**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

**May 26, 2020 at 1:00 p.m.**

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1. [20-21004](#)-B-13 KATIE MOONEY  
Mark Shmorgon

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-30-20 [[20](#)]

CASE DISMISSED: 4/30/2020

**Final Ruling**

The case was dismissed on April 30, 2020. The order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### Final Ruling

The motion for reconsideration has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f) (2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is not necessary. See Local Bankr. R. 9014-(f) (2) (C).<sup>1</sup>

The court's decision is to grant the motion for reconsideration as to Debtor's counsel having opted out of Local Bankr. R. 2016-1(c) but deny without prejudice the request for attorney's fees in the total amount of \$9,000.00.

Debtor's counsel John Downing ("Applicant") filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys on April 22, 2019, thereby signifying his opting in to compensation in accordance Local Bankr. R. 2016-1(c). Dkt. 28. The Rights and Responsibilities lists an initial fee of \$5,000.00, which is more than the \$4,000.00 maximum for a nonbusiness case but less than the \$6,000.00 maximum for a business case. The petition indicates the case was filed as a business case, or at least the Debtor is a sole proprietor. See dkt. 1 at Questions 4, 12. Applicant's task-time sheets also reflect he reviewed a business checklist. See dkt. 157, ex. 1 (4/26/2019 entry).

Applicant admits that he initially agreed to opt-in to the no-look fee under the local rules. But after doing so, he apparently suffered "buyer's remorse" insofar as he felt "it no longer seemed fair and reasonable to limit counsel's fees to that set forth in the Rights and Responsibilities." Dkt. 165, pp. 3-4. Although not stated, Applicant no doubt is aware that he cannot request additional compensation for "substantial and unanticipated" work pursuant to Local Bankruptcy Rule 2016-1(c) (3) because, as the court previously noted, all of Applicant's work for which additional compensation is sought (except for 3 hours which the court does not consider to be reasonable) is pre-, and not post-, confirmation work. Hence, the apparent reason Applicant disingenuously changed his request for compensation from complying with the no-look fee as stated in the filed Rights and Responsibilities to not complying with the no-look fee in the amended plans. Compare dkts. 33, 55, 109, 143 at sect. 3.05.

In any case, Debtor's third amended plan filed on February 4, 2020, and confirmed on March 17, 2020, provides at Section 3.05 that Applicant will seek approval or attorney's fees by "filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017" and not by "complying with Local Bankr. R. 2016-1(c)." Dkt. 143. The terms of a confirmed plan are binding as to Applicant, see *In re Hallmark*, 225 B.R. 192, 195 (Bankr. C.D. Cal. 1998) (citing *In re Black*, 116 B.R. 818 (Bankr. W.D. Okla. 1990)), and Applicant shall be awarded compensation in accordance to it.

That being said, various tasks in Applicant's invoice are "lumped," i.e., multiple services are included in a single and aggregated entry. See dkt. 157, exh. 1. The court is therefore unable to determine if the fees requested are even reasonable. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007); see also *In re Duta*, 175 B.R. 41, 46-47 (9th Cir. BAP 1994). The court advised Applicant of this problem in its May 5, 2020, ruling. See dkt. 161. Applicant has, however, chosen to ignore it. Therefore, Debtor's request for attorney's fees is denied without prejudice. Further,

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<sup>1</sup>The motion for reconsideration was set on the calendar reserved for dismissal hearings without the court's prior approval. Typically, the court would continue the hearing. In the interests of justice, however, the court will hear the motion on the dismissal calendar.

any re-filed application shall submit time-task billing evidence in an "unlumped" format, i.e., each task and its associated time identified separately. And because time-task evidence should have been submitted in an "unlumped" format in the first instance, no additional fees will be awarded for "unlumping" existing entries or for any subsequent fee application.

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

3. [20-21905](#)-B-13 DIANE MORRIS  
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-6-20 [[31](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due May 1, 2020. The court's docket reflects that the default was cured on May 18, 2020. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

4. [20-20218](#)-B-13 KATHY CUNNINGHAM  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-20-20 [[30](#)]

### **Final Ruling**

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due April 14, 2020. The court's docket reflects that the default has not been cured. The Debtor shall have until June 2, 2020, to cure the default.

If the installment is not timely paid the case may be dismissed without further notice or hearing. If any future installment is not timely paid the case may also be dismissed without further notice or hearing.

If the installment is timely paid the order to show cause shall be deemed discharged.

The order to show cause is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the ruling appended to the minutes and the case is CONDITIONALLY DISMISSED.

The court will enter a minute order.

5. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-15-20 [[50](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay \$77.00 due April 10, 2020. The court's docket reflects that the default was cured on May 5, 2020. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

6. [18-20026](#)-B-13 BRIAN SHAW  
Peter L. Cianchetta

ORDER TO SHOW CAUSE - FAILURE  
TO TENDER FEE FOR FILING  
TRANSFER OF CLAIM  
4-13-20 [[71](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause.

The Order to Show Cause was issued due to Santander Consumer USA Inc.'s filing of a transfer of claim on March 30, 2020, without payment of the \$25.00 filing fee. The court's docket reflects that the transfer of claim fee was paid on May 8, 2020. The Order to Show Cause as to this creditor will be discharged.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.



### **Final Ruling**

The motion for reconsideration has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f) (2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is not necessary. See Local Bankr. R. 9014-(f) (2) (C).

The court's decision is to grant the motion to dismiss case.

The court has before it a motion to dismiss filed by the Chapter 13 Trustee ("Trustee"). The Trustee moves to dismiss this case under 11 U.S.C. § 1324(b). The motion was filed on April 29, 2020, and it is not opposed.

The court has reviewed the motion and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c) (1).

Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

### Background

This case was filed on December 27, 2019. The plan was filed on January 24, 2020. The plan was not served on all parties in interest. Accordingly, no confirmation hearing was noticed or has been held. There is no confirmation hearing pending.

The *Notice of Chapter 13 Bankruptcy Case* filed on January 15, 2020, set February 13, 2020, as the date for the § 341 meeting of creditors. See Dkt. 15.

### Discussion

Bankruptcy Code § 1324(b) states that "[t]he hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date." 11 U.S.C. § 1324(b). Section 1324(b) requires an actual confirmation hearing to be timely held. See *In re Hegeduis*, 525 B.R. 74, 82 (Bankr. N.D. Ind. 2015); *In re Tiliakos*, 2013 WL 3943502 at \*3 (Bankr. M.D. Fla. 2013). The court may shorten the time for holding the confirmation hearing but it may not extend it. See *In re Butcher*, 459 B.R. 115, 119 (Bankr. D. Colo. 2011) ("11 U.S.C. § 1324(b) requires chapter 13 confirmation hearings to be held between 20 and 45 days after the § 341 meeting date. It gives the Court discretion to hold the confirmation hearing sooner but not later."). Conversion or dismissal is appropriate if an initial confirmation hearing is not timely held. See *In re Donnell*, 2012 WL 8255546 at \*2 (Bankr. E.D. Cal. 2012).

Forty-five days from the February 13, 2020, meeting of creditors expired on March 29, 2020, or - because that date was a Sunday - the following day, Monday, March 30, 2020. No confirmation hearing was actually held before that date. And since the 45-day period has now expired, a confirmation hearing can not now be timely held. The court

will therefore order this case dismissed.<sup>1</sup>

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

The court will enter a minute order.

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<sup>1</sup>Inasmuch as the plan that was filed proposes a 0% payment to unsecured creditors, dismissal rather than conversion is in the best interest of creditors and the estate.

8. [20-21032](#)-B-13 MARJORIE ALCANTARA  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-1-20 [[35](#)]

**Final Ruling**

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on April 27, 2020. While the delinquent installment was paid on May 1, 2020, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter a minute order.

9. [20-21832](#)-B-13 JUAN RODRIGUEZ  
Jeffrey M. Meisner

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-4-20 [[19](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due April 29, 2020. The court's docket reflects that the default was cured on May 15, 2020. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

10. [20-20333](#)-B-13 ROBERT PAYNE  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-27-20 [[41](#)]

### **Final Ruling**

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

This is the third time the court has issued an Order to Show Cause for the Debtor's failure to pay the installment filing fee. In the court's civil minutes dated April 28, 2020, dkt. 43, the court stated that "[i]f any future installment is not timely paid the case may also be dismissed without further notice or hearing."

The Debtor has failed to pay \$77.00 due April 20, 2020. The court's docket reflects that the default has not been cured.

The order to show cause is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes and the case is DISMISSED.

The court will enter a minute order.

11. [19-27846](#)-B-13 AMANDA/NICK SHADWICK  
Steele Lanphier

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-23-20 [[38](#)]

CASE DISMISSED: 4/30/2020

**Final Ruling**

The case was dismissed on April 30, 2020. The order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. [20-20759](#)-B-13 MALIK JOHNSON  
Matthew J. DeCaminada

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-16-20 [[40](#)]

### **Final Ruling**

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

This is the second time the court has issued an Order to Show Cause for the Debtor's failure to pay the installment filing fee.

The first Order to Show Cause was issued on March 17, 2020, due to Debtor's failure to pay the \$79.00 installment due March 12, 2020. In the court's civil minutes dated April 28, 2020, dkt. 42, the court gave Debtor an extension to cure his \$79.00 default by May 5, 2020. On May 4, 2020, the Debtor paid an installment fee of \$140.00

The second Order to Show Cause was issued on April 16, 2020, due to Debtor's failure to pay the \$77.00 installment due April 13, 2020. When factoring in Debtor's payment made in May, the Debtor's total default is \$16.00. The Debtor shall have until June 2, 2020, to cure this \$16.00 default and shall be current on his third installment of \$77.00 that was due May 11, 2020.

If the installment is not timely paid, the case may be dismissed without further notice or hearing. The court will not issue additional extensions to any future untimely paid installment.

If the Debtor is current up through his third installment by June 2, 2020, the order to show cause shall be deemed discharged.

The order to show cause is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the ruling appended to the minutes and the case is CONDITIONALLY DISMISSED.

The court will enter a minute order.

13. [20-20361](#)-B-13 RAMONA LITTLE  
Pauldeep Bains

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-27-20 [[20](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due April 22, 2020. The court's docket reflects that the default was cured on May 4, 2020. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.



14. [20-21471](#)-B-13 JOHN STAHLECKER  
Pauldeep Bains

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-16-20 [[26](#)]

**Final Ruling**

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on April 13, 2020. While the delinquent installment was paid on April 22, 2020, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter a minute order.

15. [20-20179](#)-B-13 JOSE ZUNIGA  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-20-20 [[47](#)]

DEBTOR DISMISSED: 4/30/2020

**Final Ruling**

The case was dismissed on April 30, 2020. The order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. [20-20084](#)-B-13 BERNADETTE TEDING  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-13-20 [[46](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due April 7, 2020. The court's docket reflects that the default was cured on April 13, 2020, and the final installment was paid on May 11, 2020.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

17. [19-21385](#)-B-13 RICHARD/MONICA VINEY  
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE  
TO TENDER FEE FOR FILING  
TRANSFER OF CLAIM  
4-13-20 [[55](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause.

The Order to Show Cause was issued due to Santander Consumer USA Inc.'s filing of a transfer of claim on March 30, 2020, without payment of the \$25.00 filing fee. The court's docket reflects that the transfer of claim fee was paid on May 8, 2020. The Order to Show Cause as to this creditor will be discharged.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

18. [20-21596](#)-B-13 JEFFREY/NIKEA HARRISON  
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-21-20 [[14](#)]

DEBTOR DISMISSED: 5/3/2020

**Final Ruling**

The case was dismissed on May 3, 2020. The order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19. [20-21696](#)-B-13 AMANDA SHRINER  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-27-20 [[28](#)]

DEBTOR DISMISSED: 5/10/2020

**Final Ruling**

The case was dismissed on May 10, 2020. The order to show cause is discharged as moot.

The order to show cause is ORDERED DISCHARGED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

20. [19-27597](#)-B-13 PAVEL LISETSKY CONTINUED MOTION TO DISMISS  
[DPC-1](#) Pro Se CASE  
**Thru #21** 1-29-20 [[26](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to dismiss case.

First, the Debtor did not appear at three meetings of creditors held January 23, 2020, April 30, 2020, and May 21, 2020, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of at least \$110.00 due January 25, 2020. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

The court will enter a minute order.

21. [19-27597](#)-B-13 PAVEL LISETSKY CONTINUED OBJECTION TO  
[DPC-2](#) Pro Se CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
1-29-20 [[22](#)]

**Final Ruling**

The case having been dismissed at Item No. 20, DPC-1, the objection to confirmation by the Chapter 13 Trustee is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.