

**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: December 17, 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

December 17, 2019 at 1:00 p.m.

| | | | |
|----|--------------------------------|-------------------|---------------------------------|
| 1. | 18-23901 -B-13 | DAN/MEGHAN MILLER | MOTION TO DISMISS CASE |
| | DPC -1 | Peter G. Macaluso | 11-22-19 [89] |

No Ruling

2. [18-24402](#)-B-13 CORTNEY CAMPBELL MOTION TO DISMISS CASE
 [DPC](#)-1 Mikalah R. Liviakis 11-22-19 [[61](#)]

No Ruling

3. [18-27902](#)-B-13 PAUL FISHER
[DPC](#)-1 Chad M. Johnson

MOTION TO DISMISS CASE
11-22-19 [[61](#)]

No Ruling

4. [19-26402](#)-B-13 JORGE VASQUEZ OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Thomas A. Moore PLAN BY DAVID P CUSICK
11-25-19 [[15](#)]

CONTINUED TO 1/14/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF
CREDITORS SET FOR 1/09/20.

Final Ruling

No appearance at the hearing is required. The court will enter a minute order.

5. [19-21705](#)-B-13 TOBY TOLEN
[JGD](#)-7 John G. Downing

MOTION TO CONFIRM PLAN
11-12-19 [[106](#)]

No Ruling

6. [19-21306](#)-B-13 JOSE/MERCEDES MORALES MOTION TO DISMISS CASE
[DPC](#)-1 Mikalah R. Liviakis 11-18-19 [[29](#)]

No Ruling

7. [19-21010](#)-B-13 CLARENCE COOK OBJECTION TO CONFIRMATION OF
[ETL](#)-3 John G. Downing PLAN BY TRINITY FINANCIAL
[Thru #8](#) SERVICES, LLC
11-29-19 [[111](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, objecting creditor Trinity Financial Services, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$104,647.47 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages and maintenance of the ongoing note installments, the plan cannot be confirmed.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(6) because the Debtor's ability to make all payments under the plan is speculative. Specifically, the plan calls for a payment of \$155,000 to the Trustee from the sale or refinance of real property. The Debtor has provided no evidence that he has attempted to sell or refinance the property.

The plan filed November 12, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

8. [19-21010](#)-B-13 CLARENCE COOK MOTION TO CONFIRM PLAN
[JGD](#)-6 John G. Downing 11-12-19 [[103](#)]

Tentative Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 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). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to not confirm the third amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(6) because the Debtor's ability to make all payments under the plan is speculative. Specifically, the plan calls for a payment of \$155,000 to the Trustee from the sale or refinance of real property. The Debtor has provided no evidence that he has attempted to sell or refinance the property.

Second, feasibility depends on the granting of a motion to value collateral for the Internal Revenue Service. Although the Internal Revenue Service filed an amended claim on May 7, 2019, its reduced secured balance of \$47,397.75 is not provided for in Debtor's plan.

The other issues raised by the Trustee have been resolved. The Debtor has the ability to pay the proposed monthly plan payments of \$3,400 for 57 months based on amended Schedules I and J filed December 10, 2019. The Debtor has also agreed to reduce attorney's fees from \$5,000 to \$4,000. This reduction of attorney's fees will allow the Debtor to pay the difference of \$25 required to cover the aggregate of Trustee's fees, monthly administrative expenses, and claims.

Nonetheless, the plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will enter a minute order.

9. [19-26311](#)-B-13 NOEMY RIVAS
[DPC](#)-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
11-25-19 [[20](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the proposed plan is not Debtor's best effort pursuant to 11 U.S.C. § 1325(b) since Debtor received a substantial tax refund the previous year and certain expenses may be improperly deducted. These improper expenses include \$2,903 in non-filing spouse's expenses, \$2,506 per month for taxes, community share of expenses totaling \$4,164.77.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$550, which represents the first plan payment. The 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).

The plan filed October 8, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

10. [18-26312](#)-B-13 MELEA SHEPPARD
[DPC](#)-1 Eric John Schwab

MOTION TO DISMISS CASE
11-18-19 [[35](#)]

No Ruling

11. [19-24313](#)-B-13 ANN CONRAD
[DPC](#)-1 Travis E. Stroud

MOTION TO DISMISS CASE
11-22-19 [[53](#)]

No Ruling

12. [19-26313](#)-B-13 CHRISTOPHER BAILEY
Thru #13 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-12-19 [[25](#)]

Tentative Ruling

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due November 7, 2019. 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.

13. [19-26313](#)-B-13 CHRISTOPHER BAILEY
[DPC](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
11-25-19 [[30](#)]

Tentative Ruling

The order to show cause having been sustained and the case having been dismissed at Item #12, the objection to confirmation 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.

14. [19-21114](#)-B-13 LYNDIA STOVALL
[DPC](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE
11-26-19 [[89](#)]

No Ruling

15. [19-23016](#)-B-13 DENISE EDWARDS MOTION TO DISMISS CASE
[DPC](#)-1 Bruce Charles Dwiggins 11-22-19 [[26](#)]

No Ruling

16. [19-23220](#)-B-13 EDWARD MEDINA
[DPC](#)-1 Harry D. Roth

MOTION TO DISMISS CASE
11-18-19 [[26](#)]

No Ruling

17. [19-25821](#)-B-13 LARRY PERKINS
Thru #18 Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-21-19 [[54](#)]

Tentative 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 November 18, 2019. While the delinquent installment was paid on November 27, 2019, 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.

18. [19-25821](#)-B-13 LARRY PERKINS
[LBJ-2](#) Richard L. Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-8-19 [[42](#)]

ASPEN PROPERTIES GROUP, 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). The Chapter 13 Trustee filed a status response; however, no opposition was filed by any party in interest. The defaults of all parties in interest entitled to respond and who did not are entered.

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

Aspen Properties Group, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 773 Rolling Green Drive, West Sacramento, California (the "Property"). Movant has provided the Declaration of Stephen Gryglewski to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Gryglewski Declaration states that in the Debtor's prior bankruptcy, case no. 15-25308, the holder on the first deed of trust, Wilmington Trust Company, had filed and was granted a motion for relief from the automatic stay as to the Property. Movant, holder of the second deed of trust, had thereafter filed and was granted a motion for relief from the automatic stay in the prior bankruptcy. While the prior bankruptcy was still pending, the Debtor filed the instant Chapter 13 petition on September 17, 2019, which caused the foreclosure sale of the Property to be postponed. The Gryglewski Declaration states that there is currently \$2,622.11 in total delinquencies.

A response has been filed by the Trustee. The Trustee states that the Debtor's previous case has not been closed by the court. Nonetheless, the Debtor is current under the plan in the instant case and has paid a total of \$750.00 to date. The Movant is provided for in Class 2 of the plan. Confirmation of the plan was heard and denied on December 3, 2019. Dkts. 71, 72.

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 \$672,149 (consisting of Wilmington Trust Company's first deed of trust in the amount of \$580,474.19 and Movant's second deed of trust in the amount of \$91,674.81) based on the court's review of the claims registry. The value of the Property is determined to be \$560,000 as stated in Schedules A/B and D filed by Debtor.¹

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).

Finally, the court will grant relief under § 362(d)(4), which prescribes:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

The Debtor has filed bankruptcy a total of two times - in fact, the second case was filed even before the first case closed - in an effort to thwart Movant from foreclosing on the Property. Moreover, this action by the Debtor is evidence of bad faith and a scheme to delay, hinder, and defraud Movant.

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

¹The court notes that this value is exactly the same as the value listed in Debtor's prior 2015 case (no. 15-25308) and is contrary to the assertion of an increased value as made in a dismissed adversary (no. 19-02109) from the prior case.

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 the Property.

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.

19. [19-20722](#)-B-13 LILIA LEWIS
[DPC](#)-1 Mohammad M. Mokarram

MOTION TO DISMISS CASE
11-18-19 [[26](#)]

No Ruling

20. [19-24625](#)-B-13 CASEY WOODBURY
[DPC](#)-1 Pro Se

MOTION TO DISMISS CASE
11-22-19 [[55](#)]

No Ruling

21. [19-24126](#)-B-13 FRANCES REID MOTION TO DISMISS CASE
[DPC](#)-1 Mohammad M. Mokarram 11-22-19 [[22](#)]

No Ruling

22. [19-24628](#)-B-13 SCOTT EAGLE
Nicholas Wajda

TRUSTEE'S REPORT AND ACCOUNT
9-28-19 [[17](#)]

No Ruling

23. [18-21129](#)-B-13 TERINA BAILEY
[DPC](#)-1 David P. Ritzinger

MOTION TO DISMISS CASE
11-22-19 [[26](#)]

No Ruling

24. [19-26329](#)-B-13 DANNY/DAWN GRANATA ORDER TO SHOW CAUSE - FAILURE
Thru #25 Michael Benavides TO PAY FEES
11-13-19 [[23](#)]

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 \$79.00 due November 8, 2019. The court's docket reflects that the default was cured on November 21, 2019. 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.

25. [19-26329](#)-B-13 DANNY/DAWN GRANATA OBJECTION TO CONFIRMATION OF
AP-1 Michael Benavides PLAN BY U.S. BANK NATIONAL
ASSOCIATION
12-2-19 [[27](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection but, nevertheless, deny confirmation of the plan.

U.S. Bank National Association ("Creditor") holds a deed of trust against real property commonly known as 2069 Wallaby Ranch Way, Plumas Lake, California. The Creditor has also filed Proof of Claim No. 23-1, which shows pre-petition arrears of \$2,404.98 and is comprised of principal and interest due and a projected escrow shortage. Debtors' plan filed October 23, 2019, lists Creditor in Class 4 with payments being made directly by Danny Granata and Dawn Granata ("Debtors") to the Creditor and no cure of pre-petition arrears. Creditor states that it is not opposed to the Class 4 treatment but requests that post-petition funds be applied to cure the pre-petition arrears.

Discussion

The United States Bankruptcy Court for the Eastern District of California has adopted a claim classification structure in Chapter 13 cases. General Order 18-03 adopts Form EDC 3-080, a standard form Chapter 13 plan, and Local Rule 3015-1(a) makes use of the Form 3-080 standard form Chapter 13 plan mandatory in Chapter 13 cases.²

The mandatory form Chapter 13 plan classifies long-term secured debts on which the last payment is due after the plan term and which are in default when the petition is filed as Class 1 claims. Class 1 claims are paid by the Trustee. Class 1 of the mandatory

²Local Bankruptcy Rule 3015-1(a) states as follows:

(a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan.

form Chapter 13 plan states as follows:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence. . . .

Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

EDC 3-080, § 3.07 & § 3.07(b).

The Debtors seek to classify Creditor's mortgage as a Class 4 claim. Classification of the Creditor's mortgage as a Class 4 claim would permit the Debtors to make post-petition mortgage payments directly to their lender rather than through the Trustee. Class 4 of the mandatory form Chapter 13 plan states as follows:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

EDC 3-080, § 3.10.

The Creditor does not cite to any authority to treat its claim as a Class 4. Presumably, the Debtors' placement of Creditor's mortgage in Class 4 rather than Class 1 is based on *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). Although *Lopez* states that §§ 1326(c) and 1322 of the Bankruptcy Code permit debtors to make payments outside the plan - or directly to creditors rather than through the trustee - it also recognizes that any right to make such direct payments is not absolute and the circumstances under which direct payments may be made are within the discretion of the bankruptcy court. *Id.* at 46-47, 53. This was confirmed in *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 (9th Cir. BAP 2010), wherein the Ninth Circuit Bankruptcy Appellate Panel stated: "In this appeal we are asked to determine whether [*Lopez*] allows a debtor the absolute right to pay an unimpaired claim directly to the creditor if the plan is otherwise confirmable. We find that a debtor has no absolute right to make such payments[.]" See also *Id.* at 690. In addition to ratifying the bankruptcy court's discretion to define the circumstances in which debtors may or may not make direct payments in a confirmed plan, *Geisbrecht* also explained that the bankruptcy court may properly exercise that discretion through local rules or general orders. *Id.* at 690-91; see also *In re Steinbaugh*, 2013 WL 5883765, *2 (Bankr. D. Idaho 2013) ("[*Geisbrecht*] held the bankruptcy court has discretion to determine when direct payments may not be appropriate."). The Eastern District of California Bankruptcy Court has done precisely that.

Consistent with *Geisbrecht*, this court has previously held that the Eastern District of California Bankruptcy Court has permissibly exercised its discretion to define the circumstances under which debtors in this district may and may not make direct payments to creditors. See e.g., *In re Vera*, case no. 18-23710 (Bankr. E.D. Cal. 2018), dkts. 102, 114. In short, the mandatory form Chapter 13 plan places long-term secured debts that are in default when the petition is filed in Class 1 (which are paid by the Trustee) and permits placement of long-term secured debts that are not in default when the petition is filed in Class 4 (which are paid directly by the debtor or a third-party).

That the Eastern District of California Bankruptcy Court has exercised its discretion differently than bankruptcy courts in other California districts does not mean that debtors in this district are denied *Lopez* rights. As the court also explained in *Vera*, in an appropriate case and under appropriate circumstances a debtor in the Eastern

District of California could confirm a plan that provides for direct payments to the creditor on a debt that was in default when the petition was filed. Indeed, that "safety valve" exists in Local Bankruptcy Rule 1001-1(f) which states as follows:

Modification of Requirements. The Court may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

As an initial matter here, the Debtors' inclusion of Creditor's mortgage in Class 4 of the plan is improper and renders the plan unconfirmable. A review of Creditor's mortgage proof of claim reflects that the Debtors' mortgage was in default when the petition was filed. Accordingly, under the applicable classification structure, Creditor's mortgage belongs in Class 1.

The court is also not persuaded that this case presents appropriate circumstances for a modification of the claim classification under Local Rule 3015-1(a). A modification is not warranted because the court is not persuaded that the plan is feasible if Creditor's mortgage is included in Class 4 and paid directly by the Debtor.

It is apparent from Creditor's proof of claim that the Debtors' pre-petition default includes a deficiency for principal and interest and, thus, a deficiency resulting from underpayment of the amount contractually due Creditor. Creditor reported \$1,157.37 in pre-petition arrears on its proof of claim. That amount includes \$854.31 in "principal and interest" and \$303.06 in "projected escrow shortage."

Viewed in isolation, the pre-petition arrears attributable to insufficient principal and interest payments might be seen as de minimus. But viewed in a larger picture and under the totality of the circumstances, the Debtors' mortgage default is representative of the Debtors' overall inability to pay creditors a contractually required amount at the time payment is contractually due. In fact, the Claims Register includes a number of proofs of claims filed by creditors to whom timely contractual payments were not made.

The court is not persuaded that the Debtors' plan, which proposes to modify the claim classification structure in the form Chapter 13 plan to allow direct payments on a mortgage in default when the petition was filed, is feasible as required by § 1325(a)(6).

The plan filed October 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is not confirmed.

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

The court will enter a minute order.

26. [19-24235](#)-B-13 STEVEN/GINA WILLIAMS MOTION TO DISMISS CASE
[DPC](#)-1 Chad M. Johnson 11-18-19 [[34](#)]

No Ruling

27. [19-24237](#)-B-13 ELENA PEREZ GONZALEZ MOTION TO DISMISS CASE
[DPC](#)-1 Peter G. Macaluso 11-18-19 [[75](#)]

No Ruling

28. [18-25840](#)-B-13 SHAVINA THOMAS
[DPC](#)-1 Richard L. Jare

MOTION TO DISMISS CASE
11-18-19 [[60](#)]

No Ruling

29. [17-22144](#)-B-13 KIMBERLY MAY
[DPC](#)-1 Richard L. Jare

MOTION TO DISMISS CASE
11-22-19 [[45](#)]

No Ruling

30. [19-23345](#)-B-13 MARZETT STAKLEY MOTION TO DISMISS CASE
[DPC](#)-1 Mikalah R. Liviakis 11-18-19 [[27](#)]

No Ruling

31. [19-21346](#)-B-13 CHARLES KOCH MOTION TO DISMISS CASE
[DPC](#)-1 Michael O'Dowd Hays 11-18-19 [[57](#)]

No Ruling

32. [19-26448](#)-B-13 DUANE OTT
[DPC](#)-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
11-26-19 [[26](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$177.88. The delinquency is due to the claim filed by Carrington Mortgage, claim no. 3 filed November 21, 2019, which reflects the ongoing payment as \$2,130.87. This change increases plan payments from \$3,072.59 to \$3,317.82. The 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).

The plan filed October 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

33. [19-26149](#)-B-13 SALLY DAVIDSON
[DPC](#)-2 Jeffrey M. Meisner

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-13-19 [[18](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection 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 objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

34. [19-26250](#)-B-13 MICHELLE/GABRIEL DELGADO ORDER TO SHOW CAUSE - FAILURE
Thru #35 Pro Se TO PAY FEES
11-8-19 [[20](#)]

Tentative 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 Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on November 4, 2019. While the delinquent installment was paid on November 13, 2019, 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.

35. [19-26250](#)-B-13 MICHELLE/GABRIEL DELGADO OBJECTION TO CONFIRMATION OF
DPC-1 Pro Se PLAN BY DAVID P CUSICK
11-26-19 [[22](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtors have not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the proposed plan is incomplete and blank. Debtors do not propose to pay any claims in the plan, the classes are left blank, and the plan is not dated or signed. Also treatment to Debtors' creditors listed in Schedules D and F are unclear. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Fourth, the plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$73,020. Schedule C is blank and the Debtors failed to propose a dividend to unsecured creditors.

The plan filed October 17, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

36. [19-24151](#)-B-13 JAMES ADAMS
[DPC](#)-1 Mikalah R. Liviakis

MOTION TO DISMISS CASE
11-18-19 [[20](#)]

No Ruling

37. [16-26053](#)-B-13 JOHN PUGH
[JGD](#)-8 John G. Downing

MOTION TO MODIFY PLAN
11-13-19 [[119](#)]

Final Ruling

The motion was not set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Only 34-days' notice was provided. The motion is therefore denied without prejudice.

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

The court will enter a minute order.

38. [19-20354](#)-B-13 ERIC BENSON AND KARRI MOTION TO DISMISS CASE
[DPC](#)-1 O'DONNELL 11-18-19 [[82](#)]
Stephen M. Reynolds

No Ruling

39. [19-23359](#)-B-13 JOSE CASTRO
[DPC](#)-1 Marc Voisenat

MOTION TO DISMISS CASE
11-18-19 [[50](#)]

No Ruling

QUICKEN LOANS INC. 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.

Quicken Loans Inc. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 113 Summertime Lane, Suisun City, California (the "Property"). Movant has provided the Declaration of James Wimbush to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Wimbush Declaration states that there are 7 pre-petition payments in default totaling \$26,568.84. Additionally, there are 5 post-petition payments in default totaling \$10,249.70.

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 \$372,424.71 as stated in the Wimbush Declaration and Schedule D filed by the Debtor. The value of the Property is determined to be \$390,000 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, in a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Based on the Movant's documents submitted with its motion, Movant accepts the Debtor's valuation of the Property at \$390,000.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$365,924.71 as of November 13, 2019. Based on the Property's \$390,000.00 value, that leaves equity of \$24,075.29, which in turn creates an equity cushion of 6.17%. Creditor is therefore not adequately protected.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

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 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 November 29, 2019, due to delinquency in plan payments and failure to file an amended plan (case no. 19-23828, dkt. 43). 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 states that there has been a substantial change in his financial affairs from the previous case. Specifically, Debtor's monthly income has increased by \$450 from increased social security benefits and increased monthly rent for a dwelling on his property. There has also been a change in personal affairs since the Debtor is now represented by bankruptcy counsel after he had misplaced confidence in his prior attorney, who had stated that he could negotiate a loan modification agreement on Debtor's real property, advised Debtor to file a petition himself, and would not represent Debtor in his bankruptcy case.

The Debtor has 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 granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will enter a minute order.

42. [16-27762](#)-B-13 YVONNE MANCILLA
[DPC](#)-1 Edward A. Smith

CONTINUED MOTION TO DISMISS
CASE
11-12-19 [[69](#)]

No Ruling

43. [17-22863](#)-B-13 CAITLIN MILLS
[DPC](#)-1 Lucas B. Garcia

MOTION TO DISMISS CASE
11-22-19 [[50](#)]

No Ruling

44. [19-20463](#)-B-13 VICTORIA HOVAN MOTION TO DISMISS CASE
[DPC](#)-1 Mohammad M. Mokarram 11-18-19 [[28](#)]

No Ruling

45. [19-24463](#)-B-13 ANTHONY ANDERSON
Thru #46 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-18-19 [[46](#)]

No Ruling

46. [19-24463](#)-B-13 ANTHONY ANDERSON
[DPC](#)-1 Pro Se

MOTION TO DISMISS CASE
11-22-19 [[48](#)]

No Ruling

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 the motion to impose automatic stay without prejudice.

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtors' third bankruptcy petition pending in the past 12 months. The Debtors' first bankruptcy case was dismissed on August 2, 2019, after Debtors failed to timely file documents (case no. 19-24423, dkt. 11). The Debtors' second bankruptcy case was dismissed on November 27, 2019, after Debtors failed to pay filing fee installments (case no. 19-24949, dkt. 54).

Discussion

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

Here, the Debtors have filed two previous cases in the last 1-year period. The Debtors contend that their personal affairs have substantially changed because they have hired new counsel who will better represent them. The Debtors state that their prior counsel did not administer the Chapter 13 cases properly. However, the Debtors provide no substantial excuse for why they failed to timely file documents or pay filing fee installments in their earlier cases. Indeed, the Debtors should be aware of the duties required of Chapter 13 debtors because this is their fifth overall bankruptcy filing since 2013.

The Debtors have offered no sufficient explanation from which the court can conclude that their financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtors have not shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D). Moreover, and independent of the statutory presumption this case was not filed in good faith, repeatedly filing non-productive bankruptcy cases is bad faith and indicative of filing bankruptcy cases for an improper purpose, particularly, when the Debtors' prior Chapter 13 cases were immediately dismissed after they were filed for the reasons stated above.

The motion is denied without prejudice.

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

The court will enter a minute order.

48. [18-26272](#)-B-13 PAULETTE PERFUMO MOTION TO DISMISS CASE
[DPC](#)-1 Stephan M. Brown 11-22-19 [[64](#)]
Thru #49

No Ruling

49. [18-26272](#)-B-13 PAULETTE PERFUMO MOTION TO INCUR DEBT
[TBG](#)-3 Stephan M. Brown 12-3-19 [[68](#)]

No Ruling

50. [18-25574](#)-B-13 KAY MILLER MOTION TO DISMISS CASE
[DPC](#)-1 Mary Ellen Terranella 11-18-19 [[62](#)]

No Ruling

51. [19-21375](#)-B-13 CYNTHIA ARIETA
[DPC](#)-1 Susan J. Turner

MOTION TO DISMISS CASE
11-18-19 [[26](#)]

No Ruling

52. [19-23775](#)-B-13 THOMAS/DENISE RAHMING MOTION TO DISMISS CASE
[DPC](#)-1 Jeffrey S. Ogilvie 11-18-19 [[22](#)]

No Ruling

53. [19-21876](#)-B-13 SCOTT YODER MOTION TO DISMISS CASE
[DPC](#)-1 Richard L. Sturdevant 11-18-19 [[70](#)]

No Ruling

54. [19-20077](#)-B-13 JOHN JAMES
[DPC](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE
11-18-19 [[86](#)]

No Ruling

55. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS OBJECTION TO CONFIRMATION OF
[DPC](#)-1 MONGALO ROBLETO PLAN BY DAVID P CUSICK
Thru #57 Michael M. Noble 11-26-19 [[49](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The court has determined that a hearing will not assist in the resolution of this matter. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on December 3, 2019. The confirmation hearing for the amended plan is scheduled for January 21, 2020. The earlier plan filed October 7, 2019, is not confirmed.

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

The court will enter a minute order.

56. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS OBJECTION TO CONFIRMATION OF
[RMP](#)-1 MONGALO ROBLETO PLAN BY REAL TIME RESOLUTIONS,
Michael M. Noble INC.
11-27-19 [[53](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The court has determined that a hearing will not assist in the resolution of this matter. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Real Time Resolutions, Inc.'s objection, the Debtors filed an amended plan on December 3, 2019. The confirmation hearing for the amended plan is scheduled for January 21, 2020. The earlier plan filed October 7, 2019, is not confirmed.

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

The court will enter a minute order.

57. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS OBJECTION TO CONFIRMATION OF
[RPZ](#)-1 MONGALO ROBLETO PLAN BY U.S. BANK, N.A.
Michael M. Noble 12-2-19 [[56](#)]

Final Ruling

U.S. Bank, N.A. having filed a notice of withdrawal of its objection, the objection is

dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Separately, the Debtors filed an amended plan on December 3, 2019. The confirmation hearing for the amended plan is scheduled for January 21, 2020. The earlier plan filed October 7, 2019, is not confirmed.

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

The court will enter a minute order.

58. [17-27879](#)-B-13 EILEEN CHAVEZ
[DPC](#)-1 Michael O'Dowd Hays

MOTION TO DISMISS CASE
11-22-19 [[83](#)]

No Ruling

59. [19-26879](#)-B-13 GHASSAN KAMAL MOTION TO VALUE COLLATERAL OF
[PGM](#)-1 Peter G. Macaluso YOUSEF DOUMIT
11-14-19 [[13](#)]

CONTINUED TO 2/04/19 AT 1:00 P.M. TO PROVIDE DEBTOR AN OPPORTUNITY TO OBTAIN A
FORMAL APPRAISAL OF THE SUBJECT PROPERTY.

Final Ruling

No appearance at the hearing is required. The court will enter a minute order.

60. [19-24285](#)-B-13 TRAVIS GROSJEAN
[DPC](#)-1 Mark Shmorgon

MOTION TO DISMISS CASE
11-18-19 [[39](#)]

No Ruling

61. [19-26987](#)-B-13 CAMERON POWE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-25-19 [[23](#)]

DEBTOR DISMISSED: 11/26/2019

Final Ruling

The case was dismissed on November 26, 2019. Therefore, 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.

U.S. BANK NATIONAL
ASSOCIATION 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.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 355 Parkview Ter Apt B1, Vallejo, California (the "Property"). Movant has provided the Declaration of James Stefani to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Stefani Declaration states that there are pre-petition payments in default totaling \$778.57. Additionally, there are 3 post-petition payments in default totaling \$2,191.17.

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 \$65,724.78 as stated in the Stefani Declaration. The value of the Property is determined to be \$55,000.00 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 the Property.

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.

63. [17-23289](#)-B-13 CONCETTA MANZANO
Eric John Schwab

MOTION TO RECONSIDER, MOTION TO
SUBSTITUTE ATTORNEY
12-2-19 [[46](#)]

No Ruling

64. [19-24691](#)-B-13 KENNETH FALJEAN
[DPC](#)-1 Gabriel E. Liberman

MOTION TO DISMISS CASE
11-18-19 [[38](#)]

No Ruling

Final Ruling

No appearance at the hearing is necessary. The court has determined that a hearing will not assist in the resolution of this matter. See Local Bankr. R. 9014-1(h).

On October 23, 2019, the clerk of court issued a *Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are not Timely Filed*. Dkt. 8. Missing documents consist of a Chapter 13 plan, a Statement of Monthly Income, Schedules A/B, C, D, E/F, G, H, I, J, Statement of Financial Affairs, Summary of Assets and Liabilities.

Debtor Philip Marria ("Debtor") filed a response stating that he is in the process of trying to settle debt with Caliber Home Loans Inc. ("Creditor"), which holds a deed of trust on his real property and is set to foreclose. Dkts. 12-15. Debtor states that Caliber is his only creditor and he is waiting for the payoff amount and instructions from the lender. Debtor therefore contends it would be "a waste of time and resources to require the Debtor to file all the remaining required schedules and forms at this point in time when he is in the process of paying off the debt." Dkt. 13, ¶ 3.

The Debtor is not entitled to seek the protections of bankruptcy generally, and the automatic stay of 11 U.S.C. § 362(a) in particular, without complying with his statutory duties. See 11 U.S.C. § 521(a). The court therefore construes the Debtor's response as a request for an extension of the deadline to file missing documents and will grant it.

Therefore, all documents identified in docket 8 shall be filed by no later than 4:00 p.m. on Tuesday, December 24, 2019. If all documents identified in docket 8 are not timely filed, the Clerk of Court shall enter an order dismissing this case for failure to timely file documents without further hearing or notice to the Debtor or his attorney.

The court will enter a minute order.

66. [19-24393](#)-B-13 LILIA WATTS
[DPC](#)-1 Mark Shmorgon

MOTION TO DISMISS CASE
11-18-19 [[35](#)]

No Ruling

67. [18-23795](#)-B-13 DENNIS GARRETT
[DPC](#)-1 Bonnie Baker

MOTION TO DISMISS CASE
11-18-19 [[281](#)]

No Ruling

68. [19-22396](#)-B-13 RUMMY SANDHU
[DPC](#)-1 Peter G. Macaluso

MOTION TO DISMISS CASE
11-18-19 [[77](#)]

No Ruling

69. [19-20297](#)-B-13 MICHAEL/KINDRA DICKERMAN MOTION TO DISMISS CASE
[DPC](#)-1 Mikalah R. Liviakis 11-18-19 [[22](#)]

No Ruling

70. [19-26297](#)-B-13 SALEH ABDULLAH
[HLG](#)-2 Kristy A. Hernandez

MOTION TO CONFIRM PLAN
11-1-19 [[25](#)]

No Ruling

71. [17-20999](#)-B-13 PRISCILLA MONTES
[DPC](#)-1 Mark A. Wolff

MOTION TO DISMISS CASE
11-22-19 [[62](#)]

No Ruling